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 O.L. (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

SUFFOLK COUNTY'S RESPONSE TO LILCO'S OBJECTIONS TO INTERVENORS' REVISED EMERGENCY PLANNING CONTENTIONS AND TO NRC STAFF RESPONSE TO REVISED EMERGENCY PLANNING CONTENTIONS

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August 8, 1983

TABLE OF CONTENTS

		Page
I.	General Response to Generic Objections	2
	A. The "County's Own Doing" Objection	2
	B. The "No Legal Requirement" Objection	9
	C. The "Lack of Basis" Objection	12
	D. The "Lack of Specificity" Objection	14
	E. The "Phase I" Objection	15
II.	Response to Objections to Particular Contentions	17
	A. Contentions 1-10: LILCO's Lack of Legal Authority	17
	B. Contentions 11-14: Command and Control	20
	C. Contention 15: LILCO's Lack of Credibility	29
	D. Contentions 16-21: Public Education and Information	34
	E. Contention 22: Adequacy of LILCO's Proposed EPZ	42
	F. Contention 23: The Evacuation Shadow Phenomenon	52
	G. Contention 24: LILCO's Lack of Agreements with Organizations and Personnel Relied Upon in the Plan	58
	H. Contention 25: Role Conflict of Emergency Workers	76
	I. Contention 26: Notification of Emergency Response Personnel	78
	J. Contention 27: Mobilization of Emergency Response Personnel	81
	K. Contentions 28-34: Communications Among Emergency Response Personnel	82
	L. Contentions 35-44: Training of Emergency Workers	85

M. Contentions 45-51: Accident and Dose Assessment and Projection..... 93

N. Contention 52: Emergency Operations Center..... 96

O. Contention 53: Security During a Radiological Emergency..... 97

P. Contention 54: Medical and Public Health Support..... 99

Q. Contentions 55-59: Notification to the Public..... 101

R. Contentions 60-77: Protective Actions..... 104

S. Contentions 78-83: Food, Water and Livestock Control..... 119

T. Contentions 84-91: Recovery and Reentry..... 121

U. Contention 92: State Emergency Plan..... 125

V. Contentions 93-97: Loss of Offsite Power and Bad Weather..... 125

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Suffolk County hereby responds to the objections and comments of LILCO and the NRC Staff concerning Intervenors' Revised Emergency Planning Contentions filed July 26, 1983 (hereinafter, "Contentions"), as set forth in LILCO's Objections to Intervenors' "Revised Emergency Planning Contentions," dated August 2, 1983 (hereinafter, "Objections"), and in the NRC Staff Response to Revised Emergency Planning Contentions, dated August 2, 1983 (hereinafter, "Staff Response").

Section I below contains the County's general response to the generic objections made by LILCO and the Staff. Section II contains the County's responses to the objections asserted with respect to particular contentions. This filing attempts to address all the major objections which have been raised. The County will respond to other objections orally on August 9.1/

1/ The Board's schedule set forth in its July 20 Prehearing Conference Order did not specify that Intervenors respond

(Footnote cont'd next page)

I. General Response to Generic Objections

A. The "County's Own Doing" Objection

LILCO stated in its July 8 Objections (see p. 9 of that document) that it asserts this objection to any contention it believes to be "a particularly bald statement of the County's unwillingness [to participate in emergency planning] and nothing more." In its August 2 objections, LILCO again makes its "County's own doing" objection with respect to several contentions. The objection generally is explained by LILCO with a statement to the effect that the County should not be allowed to argue that, as a result of the County's own actions, LILCO is unable either to meet regulatory requirements or to implement the LILCO Plan. With much less frequency, the Staff asserts a similar objection by first characterizing a contention as "premised solely on the absence of a Suffolk County approved [evacuation] plan," and then asserting that the Board's April 20, 1983 Order prohibits the admission of such a contention. The LILCO and Staff arguments are addressed in turn.

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in writing to the Objections or to the Staff Response. However, in view of the lengthy filings which have been received, the County decided it would assist the Board to have the County's views on these matters in advance of the August 9 conference.

1. LILCO's "County's own doing" objection is baseless. First, for this objection to have even a theoretical basis LILCO would need to show that the County was under some obligation or duty to adopt and implement an offsite emergency response plan. LILCO has made no such showing and it is clear that the NRC has no law which purports to compel such County action. Accordingly, it is completely illogical for LILCO to assert that the County's failure to do something it is not required to do somehow can be used to penalize the County. LILCO may not be happy with the County decision not to adopt or implement an emergency plan, but this County decision cannot be made to disappear simply because LILCO does not like or cannot effectively deal with the consequences of that decision.

Similarly, the fact that, in LILCO's view, County nonparticipation may be the reason for either an inadequacy in the LILCO Plan, or LILCO's inability to implement the LILCO Plan, does not constitute a basis for an admissibility objection to a contention that the LILCO Plan is inadequate or cannot be implemented. The reason this litigation is taking place at all is to provide LILCO the "opportunity" try to to demonstrate, if possible, that its own Transition Plan can compensate for Suffolk County's decision not to adopt or implement an emergency response plan. See LBP 83-22, slip op. at 1.

LILCO itself has stated: "LILCO is prepared to present evidence on an emergency plan that can adequately protect the health and safety of the public and can be implemented without Suffolk County's approval or cooperation. Indeed, LILCO here asserts that this is the case." LILCO's Brief in Opposition to Suffolk County's Motion to Terminate this Proceeding and for Certification, dated March 18, 1983, at 64. (Emphasis added). In yet another pleading LILCO stated: "County personnel are not relied [on] . . . to demonstrate that the interim plans can be implemented. LILCO's Memorandum of Service of Supplemental Emergency Planning Information, dated May 26, 1983, at 11. It is astonishing for LILCO to have made such assertions in earlier filings and to assert now that the County cannot contest LILCO's ability to implement the LILCO Plan.

Moreover, the purpose of this proceeding on LILCO's Transition Plan is to determine whether the public health and safety can be adequately protected by LILCO itself under the circumstances of no participation by local or State government. The fact is that LILCO's "County's own doing" objection is just an illogical play on words which would undermine a fair review of LILCO's Plan under the actual circumstances which exist on Long Island.

Finally, LILCO asserts several times in its August 2 Objections, that, in its view, "it is inconceivable" that in an emergency County personnel would not participate in the emergency response. LILCO relies upon this argument to conclude that certain inadequacies in its Plan or its inability to perform certain functions are not issues worthy of the Board's attention, or are not appropriate for litigation. However, the laws of Suffolk County are clear that County resources, including personnel, may not be used in offsite response in the event of a Shoreham emergency. See County Legislative Resolutions 262-1982, 456-1982, 457-1982, and 111-1983. Unless those laws are changed or successfully challenged by LILCO in a court proceeding, there simply is no basis for LILCO's assertions that the County will in fact respond to a Shoreham emergency. See also LBP-83-22, slip op. at 1-2, 60.

What LILCO apparently refuses or is unable to accept is that the NRC's regulations demand a showing of adequate preparedness as a precondition to an operating license. LILCO, instead, wants this Board to ignore the lack of preparedness and to issue a license in the hope that after a license is issued, the County may change its mind. However, this proceeding is geared to determine whether LILCO presently can demonstrate that it meets the requirements for an operating license. No

speculation regarding what might happen if a license were issued is relevant to the issue of whether a license in fact can lawfully be issued.

This proceeding is premised upon the assumption that Suffolk County will not adopt or implement any plan or otherwise assist in offsite emergency response. LILCO cannot properly object to contentions by arguing that this premise does not, or will not in the future exist. Reality alone contradicts LILCO's argument. All of LILCO's "County's own doing" objections should be summarily rejected.

2. The Staff purports to base its version of the "County's own doing" objection on the Board's April 20, 1983 Order. Thus, the Staff suggests that a contention is objectionable if the deficiency in the Plan might be remedied if the County agreed to implement a plan. In fact, the general guidance in that Order makes clear the propriety of the objected-to contentions. We set forth in full below the portion of the April 20, 1983 order that deals with the scope of contentions:

> Scope of Contentions
>
> Contentions shall be stated with reasonable basis and specificity, as required by 10 C.F.R. §2.714, and shall reference both specific portions of the LILCO plan alleged to be deficient and specific sections of the NRC regulations and the guidance of NUREG-0654 which are allegedly not

> complied with by the LILCO plan. The Board contemplates using the provisions of NUREG-0654 as guidance in the litigation of these contentions. Consistent with our prior discussion, parties are free to litigate the proposition that particular factual guidance in NUREG-0654 is either not necessary or not sufficient for the Shoreham facility to comply with the Commission's regulations. However, we will entertain no contentions inconsistent with this order. For example, we will not entertain contentions premised solely on the absence of a Suffolk County approved plan.
>
> Among other matters, we will entertain contentions regarding LILCO's ability to implement its offsite emergency plan. Such contentions, however, also must be narrowly drawn and reference specific sections of the plan which LILCO is allegedly unable to implement. A contention stating simply that LILCO's entire plan is not capable of implementation, based upon the County's refusal to implement any plan, would be overly broad.

LBP-82-22, slip op. at 62-63 (emphasis added).

The Intervenors submit that their contentions meet every requirement set forth in the April 20, 1983 Order. Indeed, the contentions clearly challenge LILCO's ability to implement the Transition Plan as written. Such contentions are not objectionable just because the County, if it were participating, might be able to implement a portion of the Plan while LILCO

cannot. Clearly, a contention that LILCO is unable to carry out or implement a provision of its own Plan is admissible under LBP-83-22, as quoted above. Indeed, if proven, the contention would conclusively demonstrate the inadequacy of LILCO's Plan.

Thus, the Staff's version of the "County's own doing" objection, in reality, amounts to the creation of a strawman, premised on an incorrect characterization of what the contentions assert, which the Staff then purports to knock down. The County has no contentions "premised solely on the absence of a Suffolk County approved plan." The County has many contentions, however, premised properly on LILCO's inability to implement the actions it specifies in the LILCO Plan. Thus, the Staff's version of the "County's own doing" objection should be rejected.

It is important to bear in mind that the County moved the Commission on February 24, 1983, to terminate this proceeding for the legal reason that there is no County emergency plan. The Commission ruled against the County's motion, thus requiring the County to submit contentions of fact. Those are now the very contentions of fact which LILCO pleaded with the Commission to have an "opportunity" to confront in this proceeding. Simply put, we are all in this proceeding only

because of LILCO's pleas for an opportunity to put its Transition Plan to the test of litigation. Now that LILCO has created this proceeding, it, and in some cases the Staff, is trying to keep the intervenors from arguing the very contentions which LILCO earlier asked for the chance to disprove. Such efforts should be rejected out of hand as nothing more than posturing.

B. The "No Legal Requirement" Objection

Both the Staff and LILCO invoke with some frequency a "no legal requirement" objection to certain contentions. A variation on this objection is the characterization of a contention as going "beyond the regulations." These objections are discussed individually below; however, the following comments are generally applicable to such objections.

First, contentions and their subparts must be viewed in their entirety -- that is, including the preamble, if any, and, in the case of a subpart, the contention proper -- since the regulatory bases are frequently set forth in preambles or contention introductions to avoid repeating citations. Thus, it is usually inappropriate to look at a particular contention or subpart in isolation, and to assert that there is no stated applicable regulatory requirement. Many of the "no legal requirement" objections asserted by the Staff and LILCO are

without foundation when the contention or portion of the contention objected to is viewed in the proper context.

Second, many of the "no legal requirement" objections are asserted along with an argument that what would be necessary to correct the deficiency identified in the contention is, in the view of LILCO or the Staff, not required by the regulations. Such an argument does not constitute an appropriate admissibility objection. In determining the admissibility of a contention, this Board must look at the contention, not at what may be necessary, in LILCO's or the Staff's view, to correct an identified problem. If the contention is stated with the requisite specificity and regulatory basis, the contention is admissible. The reasoning of LILCO and the Staff, on the other hand, would lead to absurd results. For example, if the LILCO Plan had no provision for evacuation transportation of hospitalized patients, and the Intervenors contended that LILCO thus failed to comply with 10 CFR Section 50.47(b)(10) and NUREG 0654 Section II.J.10.d, under LILCO's reasoning it could properly object to the admissibility of such a contention by saying: "in order to provide for evacuation of hospitalized patients in our Plan we would have make arrangements to provide buses and trains and there is no regulatory requirement that an applicant provide buses or trains."

Moreover, in most instances this type of "no legal requirement" objection is asserted when the clear intent of a contention is to challenge LILCO's ability to implement an aspect of its Plan, as required by 10 CFR Section 50.47(a)(1). The objections are a transparent attempt to focus on one reason that implementation is asserted to be impossible, rather than to deal with the ultimate -- and essential -- fact: that a particular aspect of the LILCO Plan cannot and will not be implemented. The "no legal requirement" objections that thus blatantly ignore the legal requirement of implementability which is a stated basis for the contention, should be dismissed out of hand.

Third, LILCO's and the Staff's "no legal requirement" objections frequently are nothing more than a naked assertion, without explanation, legal argument, or legal citation, that the regulations do not require a particular action. Such an unsupported "objection" to a contention that contains citations to regulations and thus meets a prima facie test of stating a regulatory basis, is clearly insufficient to justify a ruling that the contention is inadmissible.

LILCO and the Staff may disagree with Intervenors' interpretation of a regulation and thus, at the appropriate time, may argue that the particular regulatory requirements cited in

a contention are satisfied without LILCO's having to address the problem identified in that contention. (See e.g., LBP-82-22, slip. op. at 62). Indeed, resolving that basic dispute between the parties is the purpose of this litigation. The Board will make its findings on that matter, however, either in ruling on summary disposition motions, where the parties' legal theories can be explained and documented, or after the parties present their evidence, not in deciding the admissibility of contentions based on unsupported assertions made by the parties. Thus the "lack of legal requirement" objections, based on bald assertions that in the view of LILCO or the Staff the regulations do not require the actions which Intervenors assert are required by specified regulations, should fail as admissibility objections.

C. The "Lack of Basis" Objection

Both LILCO and the Staff assert a "lack of basis" objection to several of the Intervenors' contentions. LILCO's definition of its lack of basis objection was set forth in its July 8, 1983 Objections to the Intervenors' June 23 consolidated contentions (see page 4 of that document). A general discussion of the Staff's lack of basis objection is set forth at page 2 of the Staff Response. The County's general response to the lack of basis objection was contained in its July 12,

1983 Response to the July 8 objections of LILCO and Staff (see pages 7-11 of that document). The discussion of legal authorities contained in the County's earlier response is incorporated by reference and thus will not be repeated here.

The Intervenors' contentions are supported by factual assertions, contained in the contentions, which Intervenors intend to prove at the hearing. It is well established that Intervenors need not supply the underpinnings for, or the bases of, such factual assertions in their contentions in order to satisfy the basis requirement of 10 CFR Section 2.714. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980); Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973).

The "lack of basis" objections which have been asserted by LILCO and the Staff, in almost every instance, constitute a statement of disagreement with the factual assertion set forth in the contention. In several instances, discussed in detail below, LILCO sets forth an explanation of why it believes its Plan satisfactorily deals with a problem identified in a contention, or refers to something contained in the new Revision 1 of the Plan, which it believes resolves the deficiency identified in the contention. Similarly, the Staff uses a lack of

basis objection as a vehicle for stating its apparent belief that the factual assertions contained in a contention are not or cannot be true (by and large, these Staff objections characterize a contention as "speculative").

Whether the factual assertions which form the basis of the contentions are themselves correct is irrelevant to the issue of admissibility. The correctness of a factual assertion contained in a contention goes to the merits of the contention, which is a matter to be determined either through summary disposition or at the hearing. Whether the stated basis of a contention is itself correct is not a proper subject for a ruling on the admissibility of the contention. See Grand Gulf, supra, 6 AEC at 426; Allens Creek, supra, 11 NRC at 551. Thus, the LILCO and Staff "lack of basis" objections that dispute the factual premise of contentions must be rejected.

D. The "Lack of Specificity" Objection

We will not repeat here the discussion contained in the County's July 12, 1983 response, which detailed the County's position that the contentions meet NRC specificity requirement because they put the parties on notice of what they will have to defend against or oppose. (See discussion at pages 11-15 of July 12 Response.) As discussed in detail below, however, both LILCO and the Staff argue, with respect to certain contentions,

that because Intervenors fail to describe how an identified deficiency or inadequacy could or should be remedied by LILCO, the contentions lack specificity and should not be admitted. This does not constitute a proper admissibility objection, whether labelled "lack of specificity" or anything else. Intervenors are under no obligation to state in contentions the method by which identified deficiencies could or should be remedied. Indeed, neither LILCO nor the Staff cite any legal authority to support their assertions that such an obligation exists. If a contention sets forth the issue raised with sufficient specificity to put the parties on notice of what will be litigated, that contention meets the specificity requirement and is admissible. See Allens Creek, supra; Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1947); Grand Gulf, supra. In addition, several of the lack of specificity objections, when examined closely, again amount to a disagreement with a factual assertion contained in a contention. As noted above in Section I.C., questions relating to the merits of contentions are not properly addressed in the context of rulings on admissibility.

E. The "Phase I" Objection

The Staff asserts several "Phase I" objections to the contentions. LILCO asserts only four. They are discussed

individually below. In general, however, the Staff's and LILCO's interpretations of what constitute Phase I issues are inconsistent with previous statements by the Board.

The distinction between Phase I and Phase II emergency planning issues has been discussed many times by the Board. However, in its April 20, 1983 "Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceedings," at page 63, the Board defined the distinction as follows:

> 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 . . . .

(Emphasis added). Thus, the Board defined Phase I issues as all matters which were capable of final resolution prior to the release of an offsite plan. Clearly, insofar as such matters depended upon provisions of an emergency plan, they were limited to those addressed in the LILCO onsite plan.

The current litigation deals with LILCO's offsite plan -- the Transition Plan -- which was issued in May, 1983.2/ That

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2/ The County also moved on June 27, 1983 for leave to file contentions in this proceeding dealing with certain

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Plan for the first time places the issues of offsite response (other than the onsite response of certain offsite entities) before the Board and parties. Under the LILCO Transition Plan, LILCO itself is responsible for all offsite (as well as onsite) response to an emergency at Shoreham, a fact which was not a part of the Phase I litigation. Therefore, for the reasons set forth in the detailed discussion of contentions, the assertions that contentions should be excluded from the present litigation because they allegedly were raised, or more frequently, that they could have been raised, during Phase I, should be rejected.

II. Response to Objections to Particular Contentions

A. Contentions 1-10: LILCO's Lack of Legal Authority

LILCO objects to Contentions 1-10; the Staff does not object to any of these contentions.3/ LILCO's asserts its

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offsite elements of LILCO's onsite emergency plan, which could not have been resolved during the Phase I emergency planning proceeding.

3/ The Staff expresses its belief that portions of Contentions 4 and 8 are redundant and that Contention 9 contains "excess verbiage," but does not assert admissibility objections to them. The County will respond to these matters orally on August 9 if the Board desires.

"County's own doing" objection to Contentions 1-10. LILCO thus states: "[t]he County has created the present situation with respect to LERO's legal authority to take actions, both by refusing to perform these actions and by refusing to authorize LILCO to perform them," and concludes that "[t]he County should not be allowed to argue that as a result of its own actions, LILCO is unable to adequately respond in an emergency. Therefore, these contentions should not be admitted." (Objections at 3-4).

LILCO's objection to Contentions 1-10 is a glaring example of its attempt to avoid having to litigate the precise issue which lies at the center of this proceeding: that is, whether LILCO is capable of implementing an off-site emergency plan without the participation of state and local governments. The fact that the County is not participating in off-site emergency response is not at issue in this proceeding; to the contrary, that fact is the premise upon which this proceeding is based. See Section I.A, above.

LILCO's additional argument concerning Contentions 1-10 -- that "the question of legal authority is a sham issue" (Objections at 4) -- is an equally transparent, but slightly more convoluted, attempt to avoid a fact which, like it or not, LILCO must face. LILCO asserts that "it is not credible that

the County would refuse to participate" in the response to an actual emergency. LILCO uses this assertion as the premise for its argument that it needs to show only that LILCO's preparation of a plan is feasible, not that the LILCO Plan can be implemented by LILCO, because, in LILCO's view, the County will be involved in the response and "incorporated" into the LILCO Plan if an accident were to occur. This argument must be rejected. The law of Suffolk County is that:

> Suffolk County shall not asign funds or personnel to test or implement any radiological emergency response plan for the Shoreham Nuclear Plant unless that plan has been approved, after public hearing, by the Suffolk County Legislature and the County Executive.

Resolution 456-1982 (emphasis supplied). In Resolution 111-1983, the County made clear it will approve no plan. Thus, as has been explained in Section I.A, the County will not respond as LILCO asserts it will and no amount of LILCO speculation or argument can change that fact.

Contentions 1-10 set forth straightforward and specific issues that are appropriate for litigation in this proceeding. They allege that under identified state and local laws, LILCO and LILCO employees do not have the legal authority to perform particular functions which are assigned to LILCO under the LILCO Plan. In order to demonstrate that its Plan meets NRC

requirements, including the requirement that it can and will be implemented in the event of an emergency, LILCO must demonstrate that it is capable, both legally and factually, of performing the actions required under its Plan. Contentions 1-10 are admissible.4/

B. Contentions 11-14: Command and Control

Contention 11. LILCO and the Staff assert lack of basis objections to Contention 11.

Contention 11 alleges that LILCO personnel will be unable to exercise command and control responsibilities effectively because, as LILCO employees, command and control personnel will have an incentive to protect LILCO's financial and institutional interests that could lead them to act in a way contrary to the public interest. The contention includes a particular

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4/ LILCO's further argument that Contentions 1-10 "will have to await further events before they can be resolved" (Objections at 4), is simply untrue. These contentions are no different from any others. If future events cause relevant facts or laws to change, the parties can take such changes into account in presenting their evidence or in filing motions before this Board. Further, LILCO's bald assertion that the legal authority issues "may be mooted by the Governor's action after he hears from the Fact Finding Panel he appointed in May" (Objections at 4) should be ignored. LILCO does not explain why this is the case; thus it appears to be nothing more than additional LILCO speculation.

example of what could happen, and how it could happen, as a result of the conflict of interest identified in the contention. LILCO argues that, in its view, "common sense suggests" that LILCO employees would have a strong incentive to act in precisely the opposite fashion from that set forth in Contention 11. (Objections at 5) Thus, this objection merely states LILCO's disagreement with the factual assertion contained in the contention, which is not a proper admissibility objection. See Section I.C above.

Presumably in support of the lack of basis objection, LILCO also asserts that "information during an incident at any plant is always given by the utility, . . . [and] the Intervenors have not asserted special facts here that might suggest that LILCO will not respond properly." (Objections at 6). This LILCO argument ignores the point and mischaracterizes the contents of Contention 11. The contention does not deal with LILCO's provision of information to a governmental entity in command and control, which process may, in fact, occur "during any incident at any plant." Rather, Contention 11 deals with LILCO's inability to exercise command and control itself; it focuses not on the transmission of information from the plant to command and control personnel, but rather on the transmission of such information and protective action recommendations

from the command and control personnel to emergency workers or to the public.

Further, contrary to LILCO's suggestion, Intervenors have asserted in Contention 11 facts in support of the contention that LILCO personnel will not be able to exercise command and control responsibilities effectively or properly.5/ LILCO's additional argument that "if the County truly is concerned that LILCO will not respond properly it can participate in emergency planning and provide government officials to take part in the command and control decisions" (Objections at 6), is a variation of the "County's own doing" objection and, as noted above, is completely beside the point. The issue in this proceeding is whether LILCO is capable of implementing a satisfactory emergency plan. The County is firmly of the view that LILCO is not.

5/ The Waterford case cited by LILCO is totally inapposite. In that case there was no contention asserting the existence of a conflict of interest, and that fact was the primary reason for the ruling that questioning on the subject was improper. The Appeal Board suggested, however, that if the conflict of issue had been within the scope of the contention and its impact on evacuation explained, cross-examination on the issue would have been appropriate. Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC ___, slip op. at 37-38 (June 29, 1983).

Finally, LILCO's argument that there is no legal requirement that LILCO institute measures comparable to those required by 10 CFR Part 50, Appendix B, Criterion 1 for QA/QC personnel, also misses, and mischaracterizes, the point made in Contention 11. That contention alleges that correct and appropriate command and control decisions will not be made by LILCO employees because conflicts of interest will make them unable to do so. The conflict between LILCO's interests and the public's interest exists because the command and control personnel are not independent of the personnel who own and run the plant. The portion of the contention subject to LILCO's lack of legal requirement objection is merely a statement that the LILCO Plan includes no measures to compensate for the lack of independence which gives rise to the deficiency identified in the contention. All LILCO's objections to Contention 11 should be overruled.

The Staff objects to Contention 11 because it allegedly "is extremely speculative," and because, allegedly, "there is no basis" for the facts asserted in the contention. However, the Staff ignores the plain words of the contention. Thus, the contention does allege tht LILCO personnel will experience severe conflicts that will affect performance of emergency response functions and the County is prepared to present expert

witnesses to support this assertion. This clearly overcomes any basis objection. See Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Moreover, by merely challenging the factual assertion contained in the contention, the Staff fails to raise a proper admissibility objection. See Section I.C, above.

Contention 12. LILCO asserts a lack of basis and a lack of specificity objection to Contention 12. The Staff asserts a lack of basis and a no legal requirement objection.

Contention 12 alleges that LILCO personnel will be unable to exercise command and control responsibilities properly or effectively because they will not be adequately familiar with specified conditions in Suffolk County. LILCO's lack of basis objection to Contention 12, again, is nothing more than a disagreement with one of the factual assertions contained in the contention. LILCO thus states that "contrary to the Intervenors' assertions, most LERO personnel live in the area and are familiar with it." (Objections at 7). As noted in part I.C of the General Response section above, such disputes as to the merits of factual assertions in a contention are properly the subject of either summary disposition motions or the hearing process itself. They are not proper admissibility objections. The Staff's lack of basis objection is without foundation for the same reason.

LILCO's additional objection that Contention 12 is not adequately specific should also be rejected. It is obvious from a reading of the contention in its entirety what is intended by the terms "various entities, institutions, organizations and the population" in the last sentence of the contention. The specificity requirement is a notice requirement. (See Section I.D of the General Response section above). It is disingenuous for LILCO to suggest that Contention 12 does not indicate the issue which Intervenors intend to litigate under that contention. Further, it is impossible for the County to list the "other institutions and volunteer organizations" on which the LILCO Plan relies because LILCO's own plan fails for the most part to provide such details. The County has requested such information in its informal discovery requests but no response has yet been received. The lack of specificity objection asserted by LILCO should be rejected.6/

Finally, the Staff's argument that Contention 12 fails to cite a legal requirement to support "a contention that emergency personnel must live near the site" (Staff Response at 6), is specious and misses the point. The legal requirements upon

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6/ LILCO's reference to a Phase 1 Contention is completely irrelevant, as can be seen by a review of Phase I Contention EP 1, which is the contention referred to by LILCO.

which Contention 12 is based are set forth in the preamble to Contentions 11-14.7/ The regulations do require that individuals and organizations responsible for and capable of exercising command and control responsibilities be identified in emergency response plans. The fact that LILCO personnel do not live near and are not familiar with the area of Suffolk County surrounding the plant is one reason that LILCO personnel will be unable to exercise command and control functions properly. The Staff's no legal requirement objection is without foundation and should be rejected.

Contention 13. LILCO and the Staff divide this contention into two parts and assert separate objections to those two parts. Intervenors disagree with the notion that two separate issues are presented in this contention. The contention is that LILCO employees will be unable to exercise command and control over the personnel in non-LILCO support organizations relied upon in the Plan and two specific reasons for that contention are set forth.

LILCO argues that the portion of Contention 13 which discusses LILCO's inability to exercise authority because its

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7/ See Revised Contentions at 13-14, citing 10 CFR §§50.47(a)(1), (b)(1), and (b)(3), Part 50, Appendix E, Section IV, and NUREG 0654, Section II.A.

attempt to do so would conflict with normal chains of command, assignment of responsibilities, and internal operating procedures of non-LILCO organizations, "is merely a restatement of whether there exist adequate agreements and training." (Objections at 9.) LILCO mischaracterizes Contention 13. It is true that there are contentions, under the headings "lack of agreements" and "training", that deal with the emergency response actions of non-LILCO organizations. Contention 13, however, deals with the separate issue of LILCO's ability to exercise command and control over the personnel in those organizations. The issue set forth in Contention 13 would exist with or without an agreement and with or without training. Thus, LILCO's redundancy objection should be rejected. The Staff makes a similar objection which should also be rejected.

LILCO and the Staff also argue that the portion of Contention 13 which explains that LILCO's failure to indemnify non-LILCO personnel will also contribute to LILCO's inability to exercise command and control over those personnel should not be admitted because there is no legal requirement that indemnification be provided. This objection is based upon a misreading of Contention 13 and suffers from one of the defects discussed in part I.B of the General Response section above. The legal requirement upon which this portion of Contention 13

is based is not a requirement of indemnification. The requirement, set forth in the preamble to Contentions 11-14, is that LILCO personnel must be capable of exercising command and control. The lack of indemnification identified in Contention 13 is one reason, in Intervenors' view (and that of their experts), that LILCO personnel will be unable to exercise such responsibilities effectively. Accordingly, the lack of legal requirement objection is inapposite.

Finally, both LILCO and the Staff assert a lack of basis objection to the portion of Contention 13 relating to indemnification. LILCO's objection is merely a disagreement with the factual assertion contained in Contention 13 (i.e., LILCO states, at page 9 of its Objections, "LILCO does plan to indemnify LERO emergency response personnel"). The Staff's lack of basis objection is again nothing but an assertion that Contention 13 "is speculative." (Staff Response at 6). Both lack of basis objections should be rejected. See Section I.C, supra.

Contention 14. The Staff asserts no objection to this contention. LILCO references something contained in Revision 1 of the Plan (which was provided to the Intervenors on August 1, 1983), and asserts that Contention 14 "should not be admitted." LILCO's assertion is nothing but a dispute with the facts set forth in Contention 14, and is not a proper admissibility objection.8/

8/ The County has had no opportunity to perform any detailed review of Revision 1.

C. Contention 15: LILCO's Lack of Credibility

Other than one redundancy observation, the Staff does not assert any objections to Contention 15. LILCO, on the other hand, asserts a "County's own doing" objection to the entire contention, and also objects to several of the subparts.

LILCO's objection to the lack of credibility contention as a whole is a restatement of its assertion that LILCO personnel are performing activities referenced in Contention 15 because the County refuses to do so. As a result, according to LILCO, Intervenors should not be permitted to litigate the issues of whether LILCO personnel are in fact capable of performing those activities. LILCO also repeats in this objection its observation that, in its view, "it is inconceivable that during an actual emergency the County (or the State) would not respond." (Objections at 13) For the reasons stated in part I.A of the General Response section above and in response to the objections to Contentions 1-10, these objections by LILCO should be summarily rejected.

LILCO adds a new twist to this argument, however, in its comments on Contention 15. LILCO states:

> The information provided to the public during an emergency and the tasks that the Intervenors say will not be sufficiently implemented due to LILCO's being the key source of information will in large part be done in fact by a government during an

> emergency. As a result, these issues are not real problems and the Board and parties should not use resources in litigating them.

(Objections at 13). This argument must be rejected, given (1) the purpose of this litigation (i.e., to give LILCO an opportunity to demonstrate that it can implement its own plan without governmental participation of any kind), and (2) the ruling of this Board that the other so-called "plans" of LILCO which involved the possible participation of various governmental entities, were not the proper subject of litigation in this proceeding. See Order Limiting Scope of Submissions, June 10, 1983. LILCO has no basis to assert that the tasks assigned to LILCO under its own Plan "will in large part be done in fact by a government." LILCO may wish this Board to believe that the issues set forth in Contention 15 "are not real problems," and that resources should not be used to litigate them. Contrary to LILCO's wishful thinking, however, the problems identified in Contention 15 in fact go to the heart of the central issue in this litigation: is LILCO capable of implementing an offsite plan? LILCO's objection to Contention 15 should be rejected out of hand.

Contention 15.A. LILCO objects to Contention 15.A by mischaracterizing it as "redundant to Contention 24 regarding

letters of agreement." (Objections at 11) The issue set forth in Contention 15.A is not the same as that set forth in the letters of agreement contention. The fact that LILCO's lack of credibility will cause non-LILCO emergency workers to refuse to obey LILCO command and control directions (the issue presented in Contention 15.A), would exist whether an agreement were in existence or not. Therefore, LILCO's redundancy argument is incorrect. 9/

Contentions 15.B, 15.C and 15.D. LILCO objects to Contentions 15.B, 15.C and 15.D because, in LILCO's view, these contentions "imply" that LILCO cannot show adequate emergency planning unless it proves that the public will follow protective action recommendations and will be protected even if they do not. (Objections at 11). LILCO then concludes, based upon the implication it invented, that the contentions go "beyond the emergency planning regulations," because LILCO is not obligated to guarantee that the public will act in accordance with

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9/ In addition, the County notes that the separation of the issue presented in Contention 15.A from the issue presented in Contention 24 was done at the specific request of the Board and LILCO. Thus, rather than setting forth in one contention all the issues dealing with the participation of non-LILCO employees in the LILCO Transition Plan, such issues were divided into those related to lack of credibility, lack of agreements, communications, mobilization, command and control, etc.

recommendations. (Id.) These objections should be rejected. Contentions 15.B, 15.C and 15.D do not state nor imply that LILCO is obligated "to guarantee" that all members of the public will act in accordance with LILCO's recommendations. The contentions state, instead, that as a result of LILCO's lack of credibility, specified protective action recommendations under the LILCO Plan cannot or will not be implemented, contrary to the requirements of 10 CFR Sections 50.47(a)(1) and 50.47(b)(10). Each contention sets forth specific factual reasons for the non-implementability allegation. Clearly, the contentions do not go beyond the emergency planning regulations, and LILCO's objection to them is without foundation.

The Staff's observation that Contention 15.B is redundant to Contention 23.A also misses the point. Contention 15.B, as does all of Contention 15, focuses on LILCO's lack of credibility as a reason for the public's failure to follow a sheltering order. Contention 23.A, however, concerns the array of factors which result in the evacuation shadow phenomenon. Thus, the Staff's redundancy argument is without basis. While the Staff does not object to Contention 15.D, it asserts that the portion of the contention alluding to heightened fear and anxiety of evacuees caused by a radiological emergency should be struck because there is no basis asserted establishing a nexus between

fear and LILCO's lack of credibility. On the contrary, however, Contention 15.D asserts the County's position that LILCO's lack of credibility will exacerbate the already stressful conditions which will exist during an evacuation, which in turn will cause greater disobedience of LILCO's traffic guides. Thus, the Staff's claim is without basis; Contention 15.D should remain as written.

Contentions 15.E and 15.G. LILCO objects to Contention 15.E on the basis that it is redundant to contentions discussing EBS messages. LILCO's assertion is incorrect. The issue set forth in Contention 15.E is the effect of LILCO's lack of credibility upon the adequacy of the sample EBS messages that are contained in the LILCO Plan. Other contentions dealing with EBS messages discuss separate issues and separate inadequacies in those messages; they do not repeat the substance of Contention 15.E relating to LILCO's lack of credibility. In addition, this issue was separated from other EBS contentions at the suggestion of LILCO and the Board. LILCO's objection to Contention 15.G (i.e., that it is redundant to contentions dealing with public education materials), is without foundation for the same reason and should be rejected.

Contention 15.F. LILCO asserts a lack of basis objection to this contention, stating that "Intervenors give no basis for the notion that LILCO employees cannot perform rumor control." (Objections at 12). However, this simply ignores the plain words of Contention 15 and subpart 15.F. The reason for LILCO's inability to control rumors is the fact that the source of rumor control is not credible. Thus, a clear basis is provided and LILCO's objection to Contention 15.F should be rejected.

D. Contentions 16-21: Public Education and Information

Contention 16. LILCO asserts a "County's own doing" objection to all of Contention 16 except for subpart 16.J. LILCO states:

> The County, if it were participating in emergency planning, would have control over the content of the public education brochure (within the bounds of legal requirements and reason). The LERO brochure is not written as the Intervenors would wish because the County will not participate in emergency planning, the deficiency complained of is a result of the County's own actions, and the Intervenors should not be allowed to raise any contentions on the content of the brochure . . . .

(Objections at 14). As with the other "County's own doing" objections, this one is without basis and should be rejected. The issue presented in Contention 16 is the adequacy of the brochure which is part of the LILCO Plan. Whether, under

circumstances not present in this case, the County may or may not have "had control" over the content of brochure is totally irrelevant.

LILCO also objects to Contentions 16.A through 16.I as "inappropriate for litigation." The reason for this assertion, however, is somewhat unclear. (See Objections at 15-16). Contentions 16.A through 16.I identify specific deficiencies and inaccuracies in LILCO's brochure. Such deficiencies and inaccuracies in a brochure are appropriate for intervenors to raise and for a Board to resolve. See Consumers Power Company (Big Rock Point Plant), LBP-82-60, 16 NRC 540, 544-550 (1982). The Intervenors recognize that an important function of an educational brochure is to advise the public to tune in specific radio and television stations for information. However, it is also important that a brochure be accurate and not misleading. "[I]naccuracies may become known and may detract from the credibility and the necessary acceptance" of the information contained in the brochure. Id.

LILCO will be free to argue during the hearing or in summary disposition motions that the deficiencies and inaccuracies identified in Contention 16 are nonexistent, immaterial, or even that they are necessary. LILCO counsel's opinion that "a better use of this Board's resources would be to limit the

inquiry" as to the contents of the brochure (Objections at 16), however, does not constitute a basis for a ruling that the contentions are inadmissible. The Staff has no objection to Contention 16.A.

Contentions 16.B. and 16.C., and 16.D. Both LILCO and the Staff state that Contention 16.B is, in their opinion, redundant to other contentions and therefore should not be admitted. The Staff makes a similar objection to Contention 16.C, suggesting that it be consolidated with Contention 60. However, the other contentions referenced in Contention 16.B do not deal with the contents of the public information brochure; the issue set forth in Contention 16.B was separated from other issues related to the placement of offsite workers in order to gather under one heading all contentions dealing with public information and education. While the issue is related to other contentions regarding whether offsite workers will respond, the question in 16.B is whether the public should be told in the brochure that such workers will, unequivocally, respond promptly. The County believes that LILCO should not tell the public in its brochure that all emergency workers will be in place when, in fact, there are substantial doubts about the accuracy of the statement. Thus, there is no redundancy.

Similarly, Contention 60 deals with the Plan's lack of guidelines to be used by command and control personnel in choosing to recommend selective sheltering. It is not at all the same as the public information brochure issue set forth in Contention 16.C. The redundancy objections should therefore be rejected. The Staff has no objection to Contention 16.D.

Contentions 16.E and 16.F. LILCO objects to Contentions 16.E and 16.F because they allegedly "would require LILCO to take action outside of and contrary to the spirit of the emergency planning regulations." (Objections at 14-15). LILCO's meaning is not explained. The County disagrees with LILCO's suggestion that disclosure of accurate and truthful information concerning the effects of radiation and the organization responsible for emergency response is contrary to the spirit or letter of emergency planning regulations. Indeed, Contention 16 sets forth the regulatory basis for these contention that such disclosures are necessary. LILCO's objections to Contentions 16.E. and 16.F. should be rejected.

The Staff asserts a lack of basis objection to Contentions 16.E and 16.F. The referenced contentions, however, do set forth their bases with specificity. As stated in Contention 16.E. the public should be made aware of the seriousness of exposure to radiation so that they will take all appropriate

protective actions. Likewise, with respect to Contention 16.F, the source of the information is an extremely important factor in the public's evaluation of the information and recommendations it will be receiving in the event of an emergency. Thus, the Staff's objection is not well founded.

Contention 16.G. LILCO disputes the factual assertion contained in this contention by noting that "the Plan does state that persons located outside the 10-mile zone will be receiving certain public information and public education materials." (See footnote 3 at page 15 of the Objections). This LILCO objection is properly the subject of a summary disposition motion, not an objection to the admissibility of the contention.

The Staff observes that in its view Contention 16.G is redundant to Contention 22. The Staff is incorrect; the issue presented in Contention 16.G (necessity of education materials for persons outside the EPZ) is different from the issue presented in Contention 22 (inadequacy of the EPZ size). Regardless of the size chosen ultimately for the EPZ, distribution of data beyond 10 miles from the plant is essential because persons in that area, without adequate data, may take actions which interfere with the protective actions of persons within the EPZ.

Contention 16.H. The Staff has no objection to Contention 16.H.

Contention 16.I. LILCO asserts a lack of legal requirement objection to Contention 16.I by mischaracterizing the contention and then asserting that "there is no legal requirement that emergency planning provide monitoring and decontamination for the population at large following an evacuation." (Objections at 15). The Staff appears to join in this objection as well. (See Staff Response at 10). Contention 16.I deals with an inadequacy in LILCO's public information brochure -- not with the fact that LILCO fails to provide monitoring and decontamination for the population at large. Contention 16.I states that since LILCO's "brochure does not inform the reader that in the event of an evacuation or after sheltering, he or she should report to a relocation center to be monitored and, if necessary, decontaminated," the brochure is incomplete, misleading, and fails to comply with Section 50.47(b)(7), Part 50 Appendix E, Section IV.D.2, and NUREG 0654 Sections II.G.1 and 2. If LILCO believes it can comply with the cited regulatory requirements without including such information in its brochure, that argument is properly made in a summary disposition motion or by evidence at trial. Its bald "no legal requirement" assertion is not sufficient grounds for a ruling that the

contention is inadmissible since legal requirements clearly are alleged by Intervenors. The Staff's lack of legal requirement objection to Contention 16.I is similarly without foundation, as is its lack of basis objection to that contention.

Contention 16.J. Neither the Staff nor LILCO objects to Contention 16.J.

Contention 17. LILCO asserts no objection to this contention. The Staff asserts that the contention "fails to establish a basis for concluding that alternatives [to the written materials relied upon in the LILCO Plan] would be better." (Staff Response at 11) Contrary to the Staff's assertion, the subparts of Contention 17 do set forth with specificity the basis for the contention. See Revised Contentions at 32-33. The Staff also states that it opposes admission of Contention 17 because it is "in contradiction to the regulations and beyond the scope of this hearing." (Id.) The Staff fails to explain why, in its view, the contention "contradicts" the regulations. The County cannot respond to such a vague objection and it should be rejected.

Contention 18. The Staff has no objection to this contention. LILCO purports to assert a lack of legal requirement and a lack of basis objection, but, in reality, both objections are merely statements of LILCO's disagreement with the factual

assertion contained in Contention 18. Thus, LILCO asserts that while it is "not required under emergency planning regulations to tell each household which zone it is in," "[p]eople can discern which zone they are in by looking at the maps they are given and determining where they are located on the map." LILCO also states that, in its view, "common sense suggests" that people will use various means to determine which they should evacuate. (Objections at 16-17). For the reasons set forth in part I.C of the General Response section above, LILCO's dispute with the factual assertions in Contention 18 does not constitute a proper objection to the admissibility of the contention. Therefore, LILCO's objections should be rejected.

Contention 19. LILCO asserts a "County's own doing" objection to Contention 19, using the same argument it made with respect to Contention 16 - i.e., if the County were participating in emergency planning, the information referenced in Contention 19 would be included in sample EBS messages. For the reasons set forth in response to the objections to Contention 16, this objection should be rejected. LILCO makes the additional observation that the sample messages in the LILCO Plan "are the same ones used by utilities throughout New York State." (Objections at 17) This observation is irrelevant to the admissibility of Contention 19.

The Staff asserts a lack of basis objection to Contention 19, asserting that the contention is "speculative." The Staff's objection simply ignores the contents of the contention and also constitutes a disagreement with the factual assertion contained in Contention 19. See Section I.C, supra. The Staff's lack of basis objection should be rejected.

Contention 20. Neither LILCO nor the Staff objects to Contention 20.

Contention 21. SOC will respond to the objections to this contention.

E. Contention 22: Adequacy of LILCO's Proposed EPZ

Contention 22. In Contention 22, Intervenors contend that LILCO's 10-mile EPZ is inadequate in size to protect those members of the public who are likely to be affected by an accident at Shoreham. LILCO asserts that by this contention Intervenors are attempting to "set" an EPZ of 20 miles. (Objections at 28). LILCO, however, mischaracterizes Intervenors' position. Contention 22 states that "[u]nder the site-specific circumstances existing on Long Island, an EPZ larger than 10 miles and perhaps as large as 20 miles is necessary." Thus, Contention 22 does not attempt to establish the boundaries of the EPZ at any precise distance from the plant. Rather, its purpose is to point out that local conditions on

Long Island make a 10-mile EPZ inadequate. The ultimate decision on whether the EPZ is 10, 12 or more miles must rest with the Board after the presentation of evidence.

Contention 22 is based upon the local conditions existing on Long Island, including: the site-specific consequences of an accident at Shoreham; the demography, topography, governmental and social conditions on Long Island; LILCO's inherent inability to expand its emergency response beyond the proposed 10 mile EPZ on an "ad hoc" basis; the evacuation shadow phenomenon; and the need to avoid dividing jurisdictions and populated areas. Both LILCO and the NRC urge the Board to dismiss Contention 22 (except for Subpart D) as an impermissible attack on the NRC's emergency planning regulations. (Objections at 18-31; Staff Response at 13-15). Intervenors submit, however, that the NRC's emergency planning regulations permit this contention. Indeed, while the regulations provide that 10 miles is the normal size for an EPZ, that is not a precise measure of the EPZ for any particular site. Thus, Section 50.47(c) states that:

> [t]he 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 Section 50.47(c)(2). See also NUREG 0654, Section I.D.2. Therefore, the regulations permit Intervenors to attempt to prove that, under the site-specific conditions existing around Shoreham (such as winds, meteorology, road network), planning and preparedness are required beyond 10 miles.

With respect to Contention 22.A, the County's evidence will focus on a site-specific consequence analysis which takes into account these very local conditions, particularly the anticipated wind and site-specific topographic conditions existing on Long Island. The analysis makes use of a PRA conducted on behalf of LILCO and the NRC's own CRAC-2 code, and is made applicable to Shoreham by using site-specific input. It is precisely these site-specific data and analyses which Section 50.47(c) provides should be considered in defining the dimensions of the EPZ.

LILCO argues (Objections at 20) that the Board has already ruled twice in this case that a PRA should not be litigated. That argument, however, is irrelevant to Intervenors' contention. Intervenors are not attempting to litigate or question the validity of LILCO's PRA, or for that matter, any other PRA. In fact, the County has accepted the findings of LILCO's 1982 PRA (with minor adjustments), and applied the CRAC-2 code to it.10/ Thus, the Board's orders prohibiting litigation of a

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10/ Intervenors would be happy to use the generic NUREG-0396 source term data if LILCO would prefer, since it, in fact,

(Footnote cont'd next page)

PRA are irrelevant. Furthermore, the County is not arguing, as did former SOC Contentions 1 and 2, that a utility must perform a site-specific PRA and consequence analysis prior to divising its EPZ. However, where such a PRA and consequence analysis have been conducted, the site-specific information which result should not be ignored. Indeed, in Southern California Edison Co. (San Onofre Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163 (1982), the Licensing Board expressly admitted the testimony of an expert who had performed a site-specific analysis for the San Onofre plant.

> [S]uch [EPZ] boundaries could be drawn on the basis of the judgment of local emergency planning officials, unaided by expert studies. But we did not intend to preclude consideration of such studies, should an applicant choose to conduct them and make them available. In this case, the San Onofre plume EPZ boundary could have been established without Mr. Woodard's analytical efforts. But such efforts can be helpful and local officials are certainly not required to close their eyes to them.

Id. at 1183 (emphasis supplied). By the same token, the evidence that Intervenors intend to offer will be helpful to the Board to understand the local conditions on which the Shoreham

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(Footnote cont'd from previous page)

would document a need for even greater planning than under the County's consequence analysis.

EPZ should be established. None of the cases relied on by LILCO support its assertion that an Intervenor should not be permitted to proffer facts regarding local conditions which have an impact on the dimensions of the EPZ.

LILCO and the Staff also make much of the "generic" findings of the Task Force whose efforts culminated in NUREG 0396. (Objections at 21-23; Staff Response at 13). Yet, even LILCO acknowledges that the Task Force said that in the final analysis, the size and shape of the EPZ would be based on site-specific conditions. (Objections at 23; see also, NUREG 0396 at 14; NUREG 0654 at 11).

More importantly, it is noteworthy that one of the key assumptions upon which NUREG 0396, NUREG 0654 and the emergency planning regulations were based is missing in Shoreham situation. NUREG 0654 assumed that "detailed planning within 10 miles would provide a substantial base for expansion of response efforts in the event that this proved necessary." NUREG 0654 at 12; see also 45 Fed. Reg. 55,406 col. 2 (Aug. 19, 1982). Both the Staff and LILCO rely heavily on this finding in their objections to Contention 22. (Objections at 27-28; Staff response at 14). However, Intervenors specifically contest whether LILCO in fact has the ability to expand its response beyond 10 miles on an ad hoc basis.

The assumption in the regulations that there would be an ability to expand the emergency response on an "ad hoc" basis was clearly based upon the assumption that the emergency response would be implemented by State and local governments whose authority, infrastructures and resources extended beyond a 10 mile EPZ. Indeed, the title of NUREG 0396, "Planning Bases for the Development of State and Local Government Radiological Emergency Response Plans in Support of the Light Water Nuclear Power Plant" (emphasis added), suggests that this is so. However, in the present case, no State or local government has agreed to participate in emergency planning. LILCO cannot expand its response on an "ad hoc" basis in the same manner as a government because it lacks the infrastructure, authority, training and resources to do so. Thus, the generic findings of NUREG 0396 and NUREG 0654 cannot be applied blindly to the instant case since they are based on assumptions that do not exist under the present circumstances.

Likewise, though LILCO has cited a number of cases (Objections at 23-27) in support of its proposition that an EPZ must be 10 miles, they are irrelevant to the facts of this case. In none of those cases was the Board considering an offsite plan developed by a utility which would be implemented without the benefit of State or local government participation.

Indeed, no other case has ever considered such a plan. Thus, there is no existing case law under which the Intervenors can be denied the right to address their concerns about the size of the EPZ.

LILCO also objects to Contentions 22.A and 22.B on grounds that LILCO's inability to expand its response on an ad hoc basis is a "new idea" not raised in the June 23 Consolidation Contentions and that Intervenors should "not be allowed to raise it now." (Objections at 26, 30-31). This argument is wrong. The issue was raised explicitly in Town of Southampton draft Contention 2, filed on June 23, 1983. In the subsequent revision and consolidation process, the issue was placed in Revised Contentions 22.A and 22.B, and the separate Southampton contention was deleted.

Contention 22.B also asserts that local conditions on Long Island require a larger EPZ, focusing primarily on the demography, topography, land characteristics and roadway system on Long Island. (In contrast, Contention 22.A focuses largely on health consequences). As the contention states, the East End of Long Island as well as other areas have a high summer season population but a poor roadway network to handle that population, even under normal conditions. Long Island's configuration makes evacuation from the East End infeasible other

than by moving toward and, in many instances, through the EPZ. The lack of roads and resources to handle the population east of the EPZ as well as the geography of Long Island and the congestion resulting west of the EPZ, mean that evacuees from the East End and other areas may impede the evacuation of the EPZ and that ad hoc expansion of the response effort to areas beyond a 10 mile EPZ will not be possible Thus, the EPZ must be expanded to provide planning and preparedness as well as information and education for the population of the East End. Contrary to LILCO's Objections at 30, these concerns for the East End population are not redundant to other contentions. Other than the reference in Contention 16.G to a specific inadequacy in LILCO's public information brochure, no other contention addresses specifically the need to attempt to protect the East End population through advanced planning and preparedness.

The concerns raised in Contention 22.B relate to precisely the kind of local conditions which, under 10 CFR Section 50.47(c), justify adjustments to the EPZ. Indeed, the Board advised the parties last year that it was concerned with the plight of the East End. In its Order of March 15, 1982, the Board dismissed SOC Contentions 1 and 2 (discussed above), but added the following qualification:

> In addition, our 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 impact of persons outside and to the east of the EPZ choosing to evacuate and having to do so by coming through the EPZ. The Board indicated that whether or not contentions were filed on this issue, it would be pursued by the Board (Tr. 396-97).

Order, March 15, 1982 at 25. (Emphasis added). Thus, the Board has committed itself to evaluating the concerns of the East End. Contention 22.B is the vehicle by which the Board should evaluate the evidence pertinent to those concerns.

Finally, in Contention 22.C, Intervenors contend that the evacuation shadow phenomenon further justifies an EPZ larger than 10 miles. While the evacuation shadow phenomenon is discussed in more detail in Contention 23, the shadow phenomenon on Long Island should also be considered when determining the size of the Shoreham EPZ and thus is properly included in Contention 22.11/

Studies performed by both LILCO and the County confirm that in the event of an accident at Shoreham, many thousands of families will attempt to evacuate, although such action may not

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11/ The County expects that evidence on evacuation shadow would only need to be presented once although it would be relevant to several contentions.

be recommended or necessary. This voluntary evacuation will have adverse effects both inside and outside the EPZ. As noted above, the Board has already committed to investigate voluntary evacuation to the west by those living on the East End. However, the Board must not overlook the potential impact of voluntary evacuees' leaving from the more densely populated areas west of the EPZ. Such persons may congest the evacuation routes, thus causing queuing that could impede the evacuation of evacuees from the EPZ. The County is particularly concerned with long queues which are expected to develop just outside the EPZ along Sunrise Highway. These queues, which will be stopped or moving very slowly, will contain dense groupings of people. In the event that protective actions are required outside the EPZ, these people will be unable to take any protective action other than sit in their automobiles, which provide almost no protection. Ad hoc expansion of the emergency response, even if possible, would be too late to protect the people stuck in queues directly outside the EPZ. Advance planning and preparedness in the areas outside the present 10-mile EPZ are thus necessary to attempt to mitigate the effects of the shadow phenomenon.

F. Contention 23: The Evacuation Shadow Phenomenon

Contentions 23.A and 23.B. LILCO objects to Contentions 23.A and 23.B by arguing that LILCO has no obligation to "guarantee" that no persons will act contrary to protective action recommendations announced to the public. LILCO concludes, therefore, that the contentions go "beyond the legal requirements for emergency planning." (Objections at 31-32). LILCO has mischaracterized Contentions 23.A and 23.B. They do not suggest that LILCO is obligated by the regulations to "guarantee" that no one will act contrary to protective action recommendations. The legal bases for Contentions 23.A and 23.B is set forth in the contention proper (labeled simply "Contention 23" on page 47 of the Revised Contentions). See 10 CFR Sections 50.47(a)(1), 50.47(b)(10), 50.47(c)(2) and NUREG 0654 Section II.d. Section 50.47(a)(1) requires LILCO to demonstrate that the state of emergency preparedness provides "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." To determine the "adequacy" of proposed protective measures, one must go beyond a check-list approach to the 16 planning standards of Section 50.47(b) (see Southern California Edison Company (San Onofre), LBP-81-36, 14 NRC 691, 698-99 (1981)), and examine the likely result of a protective action

recommendation. Contentions 23.A and 23.B allege that under the LILCO Plan, the protective action recommendation of sheltering would not and could not be implemented, contrary to the requirement of Section 50.47(a)(1) and other regulatory references contained in those contentions, for the specific reasons set forth in the contentions. Thus, LILCO's objection does not address the true content of Contentions 23.A and 23.B.

The Staff objects to Contention 23.A but its reasons are obscure. The Staff states that because Contention 23.A asserts that sheltering is "not an 'adequate' protective measure," the Contention "raises a factor which need not be considered for sheltering for compliance with the regulations." (See Staff Response at 16). In light of the plain words of Section 50.47 (a)(1), the County does not understand the Staff's objection and it should be rejected. The Staff objects to Contention 23.B for the same reason as it objects to Contention 23.A, and in addition asserts that the contention is "speculative." The Staff merely takes issues with the factual assertion contained in that contention, which is not a proper admissibility objection.

Contention 23.C. The Staff does not object to Contention 23.C. LILCO, however, asserts a lack of specificity objection to this contention because according to LILCO, the contention

does not say why it is a problem that LILCO's Plan expects to evacuate small groups within a 10 mile EPZ and fails to take into account that persons in other sectors will evacuate as well. (Objections at 32-33). LILCO asserts, however, that if the County had in mind the effect of this unrealistic expectation on evacuation time estimates, it would be redundant to Contention 23.D and therefore inadmissible. LILCO is correct that Intervenors did not list in Contention 23.C every single impact of the unworkability of LILCO's area by area evacuation plan. Clearly, to have done so would have done nothing but generate redundancy and repetition objections, which in the July 26 revision of the contentions the Intervenors were attempting to avoid. Contention 23.C, however, does not become inadmissible for lack of specificity based upon its lack of a listing of all impacts of the deficiency identified in that contention. There is no question that the parties are on notice of what is intended to be litigated in Contention 23.C. The contention is brief because its point is simple: LILCO's failure to account adequately for the evacuation shadow phenomenon in its Plan makes the area by area evacuation contemplated in that Plan unworkable. It meets the specificity requirements and should be admitted. Moreover, contrary to LILCO's suggestion, insofar as one of the impacts of that unworkability is

the effect on evacuation time estimates, Contention 23.C is not redundant to Contention 24.D. The latter addresses the impact, on evacuation time estimates, of voluntary evacuation by persons outside the 10 mile EPZ; the former addresses voluntary evacuation by persons in zones within the EPZ.

Contention 23.D. Neither LILCO nor the Staff objects to Contention 23.D.

Contention 23.E. LILCO objects to the third sentence of Contention 23.E. The sentence reads: "Many evacuees who need relocation services will not use the relocation centers proposed by LILCO because they will observe a large number of voluntary evacuees from the area near the centers leaving the area." The basis of LILCO's objection is that "it is not a legal requirement that people be encouraged to use relocation centers." This totally misses the point. The sentence objected to contains one of the reasons for the conclusion contained in Contention 23.E -- i.e., that LILCO's designated relocation centers, in fact, will not provide necessary services to evacuees, and thus LILCO does not comply with NUREG 0654, Sections II.J.10.g and h. The contention does not say that LILCO is obligated to encourage evacuees to use relocation centers. Rather, Contention 23.E says that LILCO fails to comply with NUREG 0654 because relocation services will not be

provided under the LILCO Plan. The third sentence sets forth one reason for that conclusion, and it is not objectionable.

The Staff asserts that Contention 23.E is redundant to Contention 74, and that there is not a sufficiently drawn "nexus" between the location of LILCO's relocation centers and the evacuation shadow phenomenon. Contrary to the Staff's assertion, Contention 74, while relating to relocation centers, does not set forth the same issue as Contention 23.E. Unlike Contention 74, Contention 23.E deals with the effect of the evacuation shadow phenomenon upon LILCO's compliance with specifically stated regulations. Furthermore, a fair reading of Contention 23.E demonstrates that there is ample discussion of the "nexus" between the evacuation shadow phenomenon and the relocation center. Therefore, the Staff states no legitimate objection to Contention 23.E.

Contention 23.F. The Staff asserts no objection to Contention 23.F. LILCO objects to this contention on the basis of lack of specificity. Contention 23.F alleges that there is no assurance that relocation centers designated under the LILCO Plan will accommodate or provide necessary services and facilities for the number of persons likely to require them, because LILCO fails to take into account the large number of voluntary evacuees who will increase substantially the demand

for relocation services. LILCO's lack of specificity objection rests solely on LILCO's assertion that Intervenors have an obligation to specify how many evacuees they think would require shelter. No such obligation exists, and LILCO provides no legal authority for its assertion that one does exist.12/ The contention clearly puts the parties on notice of the issue which Intervenors wish to litigate; it meets the specificity requirement and therefore should be admitted.

Contention 23.G. The Staff has no objection to Contention 23.G; LILCO asserts that it is redundant either to Contention 24 (Lack of Agreements) or to Contention 25 (Role Conflict). Again, LILCO has mischaracterized the issue set forth in Contention 23.G. The issue is that personnel relied upon by LILCO to staff relocation centers will be unable to perform those functions, as a result of traffic congestion and other effects of voluntary evacuation. An agreement with volunteer workers, the issue addressed in Contention 24, has no effect upon the issue raised in Contention 23.G. Neither does the existence or nonexistence of role conflict which is addressed in Contention

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12/ Based upon the evacuation studies performed by LILCO and the County, it is clear that many thousands of families will evacuate voluntarily and, thus, that LILCO's three centers are grossly inadequate.

25. Clearly, Contention 23.G is admissible and LILCO's objections are without foundation.

Contention 23.H. The Staff asserts no objection to Contention 23.H, although LILCO asserts its "County's own doing" objection to that contention. LILCO's objection must fail for the reasons set forth in part I.A of the General Response section above relating to this objection. Contention 23.H has nothing to do with the County's participation or nonparticipation in emergency planning. It raises a specific deficiency and inadequacy in the LILCO Plan -- its failure to account adequately for the evacuation shadow phenomenon by providing sufficient perimeter control. LILCO's "County's own doing" objection should be rejected.

G. Contention 24: LILCO's Lack of Agreements with Organizations and Personnel Relied Upon in the Plan

LILCO begins its discussion of this contention by noting its objection to footnote 7 contained on page 5 of the Revised Contentions. LILCO's objection is not well taken. First, it ignores the plain words of Contention 24 proper (identified as "Contention 24" and set forth on page 55 of the Revised Contentions), which makes clear that the contention is not limited solely to the lack of existing agreements with the various entities listed in the subparts of the contention. Rather, the

contention addresses LILCO's failure "to obtain agreements from the organizations or individuals relied upon which indicate their commitment to and capability of either performing the functions assigned to them, or providing the facilities expected from them in the LILCO Plan." (emphasis added). Thus, footnote 7 merely sets forth what is obvious from a reading of Contention 24: if LILCO were to obtain an agreement of some sort from any of the entities identified in the subparts of Contention 24, such an agreement may or may not meet the regulatory requirement that agreements must indicate not only a commitment from an entity, but also its willingness and capability of providing the specific services expected from it. Thus, if a subsequent agreement were to be obtained by LILCO, litigation of the adequacy of that agreement would be within the scope of existing Contention 24. Accordingly, LILCO's suggestion that "should LILCO provide letters of agreement with the organizations listed, these contentions would be the subject of a summary disposition motion based on the letters" (Objections at 36), is in error.

Contention 24.A. LILCO asserts a lack of legal requirement objection to this contention; the Staff asserts no objection. LILCO's objection is "there is no legal requirement that [language noting an organization's promise to follow

LILCO's command and control directives] be included in letters of agreement." (Objections at 36). This objection must fail. The central point of Contention 24.A is stated in the last sentence of that contention:

> In the absence of agreements from support organizations and individuals which indicate the willingness and ability of their members or of the individuals to follow the LILCO Plan and command and control directives of local employees, there can be no assurance that any aspect of the LILCO Plan can or will be implemented.

The regulatory basis for this allegation is stated at the beginning of Contention 24 (on page 55 of the Revised Contentions). LILCO's objection is based on a mischaracterization of the contention, and it is not a proper admissibility objection for the reasons set forth in part I.B of the General Response section above.

Contention 24.B. The Staff does not object to this contention. LILCO asserts a lack of basis objection by referencing a purported letter of agreement with the Department of Energy, which is attached to its Objections. This objection constitutes a dispute with the factual assertion contained in Contention 24.B. It is an improper admissibility objection and should be rejected.13/

13/ Moreover, on the basis of a brief review, it appears clear that the referenced agreement with the Department of Ener-

(Footnote cont'd next page)

Contention 24.C. LILCO objects to Contention 24.C on three grounds, none of which contest the issue raised in the contention. Contention 24.C alleges that duly authorized officers capable of facilitating traffic flow are necessary during an evacuation, and that because LILCO lacks agreements with any entity to provide such duly authorized officers, LILCO's Plan cannot be implemented and its evacuation time estimates are inaccurate. LILCO argues that this contention is redundant to Contentions 1-10 which challenge LILCO's legal authority. LILCO is incorrect. Contention 24.C does not deal with whether LILCO lacks authority to perform a function; rather, it asserts that the Plan has no provision for any duly authorized officers to perform the traffic facilitation functions because there are no agreements with non-LILCO authorized entities. LILCO's redundancy objections should be rejected.

LILCO also asserts a "County's own doing" objection to Contention 24.C, asserting that the County has refused to allow its police to participate in emergency planning, and that it is

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(Footnote cont'd from previous page)

gy does not satisfy the regulatory requirements set forth in Contention 24 proper. If LILCO believes it does, it can so argue in testimony or in a summary disposition motion.

"inconceivable" that in an emergency County police would not participate. For the reasons set forth in part I.A of the General Response section and with respect to Contentions 1-10 and 15 above, these objections are inappropriate and should be rejected.

The Staff objects to Contention 24.C on the ground that it is redundant to Contentions 1, 65.B and 65.C. For the reasons set forth immediately above, the redundancy objection concerning Contention 1 is without basis. Because Contentions 65.B and 65.C deal with evacuation time estimates, which are not discussed in Contention 24.C, those redundancy objections also must fail. The Staff also asserts that Contention 24.C "amounts to little more than a contention that the LILCO Plan cannot work without Suffolk County cooperation," and concludes that the Licensing Board's April, 20, 1983 Order prohibits such a contention. (See Staff Response at 18.) As discussed in part I.A of the General Response section above, this Staff version of the "County's own doing" objection should be rejected. Contrary to the Staff's assertion, Contention 24.C is not "premised solely on the absence of a Suffolk County approved [evacuation] plan." Rather, Contention 24.C identifies a specific deficiency in the LILCO Transition Plan which is the proper subject of litigation in this proceeding.

Contention 24.D. Neither LILCO nor the Staff objects to this contention.

Contention 24.E. LILCO asserts a lack of legal requirement objection to a portion of this contention; the Staff asserts no objection. Contention 24.E relates to LILCO's lack of agreements with school districts, which are relied upon in the LILCO Plan for implementation of protective actions for school children (i.e., early dismissals, sheltering, and evacuation). LILCO's objection consists merely of an assertion that "contrary to the intervenors' contention, NUREG 0654 Section II.C.4 does not require that LILCO obtain agreements with school districts for implementing their early dismissal programs . . . ." (Objections at 38). LILCO's objection should be overruled because it ignores the other regulatory bases for Contentions 24.E, which are stated on page 55 of the Revised Contentions. In addition, the objection should be rejected for the reasons set forth in part I.B of the General Response section above. Finally, the key matter addressed in Contention 24.E is that LILCO's Plan presumes that the school districts will carry out actions described in the Plan, but there is no evidence that the districts agree to do so. Thus, the contention fundamentally contests whether the Plan will be implemented, a matter which clearly is proper for litigation.

Contention 24.F. Neither LILCO nor the Staff objects to this contention.

Contention 24.G and 24.K. LILCO and the Staff object to one sentence contained in Contention 24.G. That sentence reads: "In addition, there is no assurance the ambulances will be available to transport contaminated injured persons, or persons injured during an evacuation to hospitals for treatment, as is required by 10 CFR Section 50.47(b)(12)." The objections are based on the Commission's recent decision in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-83-10, 17 NRC ____, (April 4, 1983). LILCO, but not the Staff, makes a similar objection to the last sentence of contention 24.K. However, a careful reading of San Onofre reveals that it is not controlling in this case.

In San Onofre, the Commission was concerned with burdening applicants and offsite authorities with the need to construct or dedicate medical facilities such as hospitals for use in a radiological emergency. Thus, the Commission stated:

> It was never the intent of the regulation to require directly or indirectly that state and local governments adopt extraordinary measures, such as construction of additional hospitals or recruitment of substantial additional medical personnel, just to deal with nuclear plant accidents.
>
> * * *

> Accordingly, emergency plans should include a listing of those local and regional medical facilities which have the capabilities to provide appropriate diagnosis and treatment for radiation exposure. No contractual arrangements or special training programs are necessary and no additional hospitals or other facilities need be constructed. No extraordinary measures are required of state and local governments. Diagnosis and treatment could take place at most existing medical facilities.

Id., slip op. 8, 12 (footnote omitted). In the referenced portions of Contentions 24.G and 24.K, however, Intervenors do not raise the need for more hospitals or other such facilities; rather, these contentions address whether it will be possible to transport people injured as a result of the accident or the evacuation to such facilities. This is a significant concern, particularly in light of the fact that despite the limited number of ambulances available, LILCO expects to use them to evacuate hospitals, nursing homes and handicapped people at home. Thus, the objection of LILCO and the Staff should be rejected.

Contention 24.H. Neither LILCO nor the Staff objects to this contention.

Contention 24.I. Neither LILCO nor the Staff objects to this contention.

Contention 24.J. The Staff does not object to this contention; however, LILCO asserts a lack of legal requirement objection. Its objection, in reality, is a challenge to the factual assertions contained in Contention 24.J. The contention asserts that the LILCO Plan relies upon specifically identified special facilities, nursery schools, and their employees, to perform several functions under the LILCO Plan, and that without agreements indicating their willingness and capability of performing such functions, the Plan cannot be implemented. LILCO, without explanation, asserts that the Plan does not rely upon such institutions and then asserts that letters of agreement are therefore not required. This is not a proper admissibility objection; a dispute as to the merits of the contention is properly addressed in the context of a summary disposition motion or at the hearing.

Contention 24.L. Neither LILCO nor the Staff objects to this contention.

Contention 24.M. The Staff does not object to this contention; however, LILCO asserts a lack of legal requirement objection. Contention 24.M addresses LILCO's lack of agreements with school bus drivers relied upon for implementation of early school dismissals. LILCO asserts "there is no legal requirement that LILCO obtain agreements with bus drivers"

(Objections at 41) and cites Louisiana Power & Light Co. (Waterford Steam Electric Station), Order (November 3, 1982), slip op. 71, and Memorandum and Order (December 14, 1982), slip op. 3-7. LILCO, however, has seriously mischaracterized these decisions. As the Board stated:

> The Board agrees with Applicant that the regulations do not require agreements for drivers; however, neither do they preclude such a requirement. 10 CFR § 50.47(a)(1) requires a finding that there is reasonable assurance that adequate protective measures can and will be taken, and adequate protective measures include a means for evacuating special populations. (See Findings 59 and 60, LBP 82-100, 16 NRC ___ (1982). The argument that a commitment of vehicles by itself satisfies this regulatory requirement is frivolous and specious; a vehicle without a driver is not a "means for evacuation."

Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), Memorandum and Order (Dec. 14, 1982), slip op. at 3. Thus, the need for drivers and agreements for these services is clear and is an issue properly before this Board.

Contention 24.N. Neither LILCO nor the Staff objects to this contention.

Contention 24.O. The Staff does not object to this contention; however, LILCO asserts its "County's own doing" objection. Contention 24.O claims that one of the relocation centers relied upon in the LILCO Plan -- that is, the Suffolk

County Community College, identified as the relocation center for the children in the Shoreham-Wading River School District and for 8 of the 19 LILCO EPZ zones -- cannot be relied upon in the absence of an agreement with Suffolk County for the use of such facility as a relocation center. The Contention also notes that pursuant to Suffolk County Resolutions 456-1982 and 111-1983, that facility is not available for use in implementing the LILCO Plan. LILCO must accept the fact that this facility is not available for LILCO's use. The fact that the unavailability may be the result of actions by the Suffolk County Legislature does not render the contention that the LILCO Plan is inadequate and cannot be implemented inadmissible. Indeed, under LILCO's argument, the Board is asked to pretend that a designated relocation center is available when, in fact, it is not. The Board, of course, cannot ignore factual misstatements contained in the LILCO Plan. LILCO's objection should be rejected.

Contention 24.P. The Staff does not object to this contention; LILCO states that the contention is without basis and references a purported letter of agreement with the American Red Cross which is attached to the LILCO Objections. For the reasons stated above with respect to the similar objection to Contention 24.B, this dispute with the factual assertion in a

contention is not an appropriate admissibility objection and should be rejected.

Contention 24.Q. LILCO asserts that this contention lacks basis. Contention 24.Q states that the LILCO Plan appears to rely upon local law enforcement agencies to provide security in evacuated areas, citing particular portions of the Plan. LILCO's "objection" states: "While LILCO's plan does not rely upon local authorities to implement it, the plan does assume that local authorities will continue to function in their day-to-day, non-emergency capacities." (Objections at 42). It is not clear whether LILCO agrees or disagrees with the statements made in the contention; in any event, LILCO fails to state a legitimate lack of basis objection because the County specifically contests the LILCO assumption that local authorities will respond to a Shoreham emergency. LILCO also asserts that "it is inconceivable that in an actual emergency the County would not respond." This is not a cognizable objection and should be rejected out of hand. See part I.A of the General Response section above.

The Staff objects to Contention 24.Q and suggests that it is redundant to Contention 53.A. The Staff is incorrect. Contention 24.Q addresses the fact that LILCO has no agreement with any local law enforcement agencies to provide security in

evacuated areas, whereas Contention 53.A alleges that the Plan fails to provide for any security patrols in evacuated areas. The Staff's "pure speculation" objection to Contention 24.Q is also incorrect. The fact that Suffolk County police will not perform functions under the LILCO Plan is not speculative at all; it is a fact established as a matter of law. See County Resolutions 456-1982 and 111-1983. Moreover, it is not speculative to state that LILCO has no agreements with any other local law enforcement agencies to perform functions under the LILCO Plan. There is no evidence that any such agreements exist.

The Staff's final argument on this contention is difficult to understand and, in any event, appears to have no basis whatsoever. The Staff states:

> It is a given in this proceeding that Suffolk County will not perform any evacuation functions. However, this contention would extend the County's non-participation beyond that premise. The County in effect is arguing in this contention that the LILCO Plan is insufficient because the County will do anything (or not do anything) to ensure that the Plan is insufficient. Under such terms, litigation of the issue would serve no reasonable purpose. The Board has held that it will entertain no contentions in this proceeding "premised solely on the absence of a Suffolk County approved [evacuation] plan." LBP-83-22, at 62.

(Staff Response at 20). The Staff's recognition of this proceeding's premise that Suffolk County will not participate in emergency planning functions is correct; the remainder of the Staff's argument, however, is not. First, contrary to the Staff's assertion, Contention 24.Q does not "extend" the County's non-participation. It states merely that LILCO does not have agreements with any local law enforcement agencies (including the County) to provide security in evacuated areas. Providing security in evacuated areas is an emergency planning function, which, as the Staff recognizes, the County is prohibited by law from performing. Contention 24.Q adds nothing new to the fact of County's non-participation in emergency planning; it merely raises the additional issue that LILCO has no agreements with any other police departments to provide security services. Second, the Staff's argument that litigation of the issue will "serve no reasonable purpose" is nonsensical. The question of whether LILCO's Plan can be implemented (including the Plan's recognition that security in evacuated areas is essential) is the central purpose of this proceeding. LILCO's lack of agreements with police departments, as asserted in Contention 24.Q, results in a lack of assurance that the Plan can be implemented, since without such agreements, security in evacuated areas will not be provided. Finally, the

Staff's reference to the April 20, 1983 Board Order has no relevance to Contention 24.Q. Contrary to the Staff's suggestion, the contention is not "premised solely on the absence of a Suffolk County approved [evacuation] plan." The Staff's objection to Contention 24.Q should be rejected.

Contention 24.R. The Staff asserts a lack of basis objection to this contention, which ignores the contents of Contention 24.R. The contention clearly states that an agreement with the State of Connecticut, under which that State agrees to plan for, recommend or implement protective actions for the portions of the ingestion exposure pathway EPZ that are in Connecticut, is necessary because: (a) the ingestion exposure pathway EPZ includes portions of the State of Connecticut; and (b) in the absence of such an agreement, protective actions for the entire ingestion exposure pathway EPZ cannot and will not be implemented. The Staff's objection must be rejected.

LILCO objects to Contention 24.R by asserting that "there is no legal requirement that the 50 mile ingestion pathway EPZ be administered by the local emergency plan. Rather, this area is addressed by the State." (Objections at 42). LILCO makes the same objection to Contentions 78-83, and the County's response to both is set forth in the discussion of those contentions.

Contention 24.S. Neither LILCO nor the Staff objects to this contention.

Contention 24.T. LILCO and the Staff assert several objections to this contention. The contention states that although LILCO relies upon the U.S. Coast Guard to provide public notification services for the public on the waters in a 10-mile EPZ, LILCO has no agreement with the Coast Guard to perform such functions. LILCO and the Staff assert a Phase I objection to this contention. LILCO argues, first, that the issued raised in Contention 24.T is covered in a Phase I settlement agreement (see Objections at 43, and Attachment 4 thereto). As can be seen from a review of LILCO's Attachment 4, however, the referenced settlement agreement has nothing to do with the Coast Guard's providing public notification services in the event of an emergency.14/

Second, LILCO argues that Phase I Contention EP 11.C deals with notification of the Coast Guard by commercial telephone. That issue has nothing to do with the issue raised in Contention 24.T. Third, LILCO argues that the Phase I se lement

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14/ It is also interesting to note in passing, that the settlement agreement indicates that the U.S. Coast Guard's maximum response time will be four hours. (See page 3 of Attachment 4 to Objections).

agreement which is Attachment 5 to the LILCO Objections "indicates that initial notification of the public was a Phase I issue." (Objections at 43). As can be seen by a review of the referenced Attachment 5, it deals with the effect of weather on sirens, and has nothing to do with the current LILCO Plan's reliance upon the U.S. Coast Guard to provide notification services on the waters of the Long Island Sound.

The issue of notification by the Coast Guard of persons on the waters of the Sound was not capable of being litigated in Phase I, contrary to the assertion of LILCO and the Staff, because at the time of the Phase I litigation, LILCO's on-site plan assumed that the Suffolk County Police Department Marine Bureau would perform such notification function. See Radiological Emergency Evacuation Plan for the Shoreham Nuclear Power Station at IV-6. There was no reliance upon the U.S. Coast Guard for that function in 1982, and thus the issue could not have been litigated then. The Phase I objection to Contention 24.T should be rejected out of hand.

LILCO also asserts a lack of basis objection to Contention 24.T by referring to a purported agreement with the Coast Guard which is contained in Revision 1 of the Plan and attached to LILCO's Objections. This raises a factual issue, not a proper lack of basis objection. Thus, for the reasons stated with

respect to Contentions 24.B and 24.P above, this objection should be overruled. Likewise, the Staff's lack of basis objection has no foundation; the basis for this contention is set forth in detail in the contention itself. The Staff merely asserts a bald objection without specifying what sort of basis it believes is lacking. Finally, the Staff claims that there is no legal basis for assuming that an agreement with the Coast Guard is necessary. In this assertion, the Staff is clearly wrong. The plan assigns the responsibility of notifying persons on the waters within the EPZ to the Coast Guard. Under 10 CFR Sections 50.47(b)(1) and (b)(3) and NUREG 0654 Sections A.3 and C.4, an agreement with the Coast Guard is plainly required.

Contention 24.U. The Staff does not object to this contention; however, LILCO asserts a lack of legal requirement objection. Contention 24.U states that the LILCO Plan's provisions for recovery and reentry rely upon the appointment of individuals from FEMA and DOE to the "Recovery Action Committee." However, because LILCO has no agreement with either organization to provide such personnel, there is no assurance that the proposed recovery and reentry provisions can or will be implemented, contrary to the requirements of NUREG 0654 Section II.M. Contention 24 proper (on page 55 of the Revised

Contentions) sets forth additional regulatory bases for this contention. LILCO "objects" by flatly asserting "there is no legal requirement that recovery and reentry provisions include agreements with specific agencies providing for individuals to participate." (Objections at 44). LILCO thus ignores the point of Contention 24.U and all the regulatory authority cited by Intervenors in support of that point -- i.e., that the recovery and reentry portion of the LILCO Plan cannot and will not be implemented in the absence of such agreements. LILCO's objection must fail for the reasons set forth in part I.B of the General Response above. LILCO also makes its "inconceivability" objection to Contention 24.U by referencing its objections to Contentions 84 through 91. That objection is discussed in the context of those later contentions.

H. Contention 25: Role Conflict of Emergency Workers

LILCO has no objection to any part of Contention 25. The Staff objects only to a portion of Contention 25.A, asserting that it is "inappropriate to require development of a detailed [Emergency Worker Tracker System] prior to hearing." (Staff Response at 22). The Staff's objection is without basis.

Contention 25.A alleges that the LILCO employees relied upon to perform emergency services under the LILCO Plan will not report promptly for duty because they will experience role

conflict. The contention also observes that LILCO's so-called Emergency Worker Tracker System, which has not been developed yet, cannot be relied upon to eliminate role conflict contrary to LILCO's assertion in the Plan. Thus, the Contention cannot possibly be construed as "requiring" the development of the System prior to hearing, as suggested by the Staff. For that reason alone, the Staff's objection to the reference to the Emergency Worker Tracker System should be rejected.

Moreover, the Staff's reliance upon Louisiana Power & Light Company (Waterford Station, Unit 3), ALAB-732, 17 NRC ____ (June 29, 1983), is misplaced. In Waterford, Intervenors argued on appeal that the Licensing Board had improperly made predictive findings on the adequacy of Applicant's implementing procedures despite the fact that the procedures had not been finalized. The Appeal Board ruled that it was not necessary that final implementing procedures be available in time for Board hearings because licensing hearings should not "become bogged down" with litigation about such details. However, in the present case the Emergency Worker Tracker System -- if it ever comes into being -- is not just a "mere detail" in an implementing procedure. According to LILCO, it will be a system which, LILCO asserts, will eliminate the problem of role conflict for LILCO workers. That System, therefore, is properly the subject of litigation before the Board.

I. Contention 26: Notification of Emergency Response Personnel

Contention 26.A. Neither LILCO nor the Staff objects to this contention.

Contention 26.B. Both LILCO and the Staff assert a Phase I objection to this concention. Contrary to their assertions, however, the issue raised in Contention 26.B was not capable of litigation during Phase I. Contention 26.B addresses the effect upon the implementability of the LILCO Plan, of LILCO's reliance upon commercial telephones for almost all notification of offsite response personnel. While it is true that certain Phase I contentions related to telephone lines, and, in fact, some even related to the possibility of overload of such lines, the issues raised in Contention 26.B examine the possibility of overload in a context that is totally different from that involved during Phase I.

The LILCO Transition Plan requires massive use of commercial telephone lines, not only to notify practically all offsite response personnel, but also to contact schools, hospitals, special facilities, and handicapped persons. Such heavy telephone use was not a possible issue during the litigation of Phase I, since at that time it was not known that the offsite emergency plan would place so much reliance upon

commercial telephones. In addition, as noted in Contention 26.B, given the heavy reliance upon commercial telephones under the LILCO Plan, the impact of telephone unavailability is very different from the impact which was capable of being litigated during Phase I. While during Phase I, telephone unavailability may have affected LILCO's ability to contact certain "first line" authorities from the LILCO control room, Contention 26.B addresses the impact of telephone unavailability on LILCO's ability: (a) to marshal practically its entire offsite response force; and (b) to notify almost all major institutions within the EPZ and handicapped persons. Thus, the Phase I objection to Contention 26.B should be rejected.

Contention 26.C. LILCO does not object to this contention, and in fact recognizes that the Phase I objection it had raised to the previous version of the contention (i.e., prior to the reorganization and consolidation reflected in the Revised Contentions), no longer applies to Contention 26.C. (See Objections at 45, n.11). Inexplicably, however, the Staff continues to raise a Phase I objection to this contention. There are no Phase I issues involved in Contention 26.C and the Staff's objection should be rejected. The Staff's lack of basis objection is also without merit; the basis for Contention 26.C is stated in the contention. See Revised Contentions at 82.

Contention 26.D. LILCO does not object to this contention; the Staff asserts a lack of basis and lack of specificity objection which is without merit. First, the Staff characterizes what it identifies as an "implication" of the contention as "vague." (See Staff Response at 24). Contention 26.D is not vague; whether or not some implication read into it by the Staff is vague, is irrelevant. Second, the Staff cites one factual assertion contained in the Contention -- that some emergency response personnel, such as LILCO employees who are on the job, may not be reachable by telephone -- and asserts that it lacks basis. This is not a proper admissibility objection for the reasons noted in part I.C of the General Response action above. Finally, the Staff asserts that Contention 26.D "raises a concern which exceeds the ability and requirements for emergency planning." This objection is apparently based on the Staff's assertion that "the intervenors have the burden of pleading a specific proposal, and basis for the proposal, which could solve the alleged problem better than the means chosen by LILCO." (Staff Response at 24). There is no such burden imposed on intervenors, and the Staff cites no legal authority for its assertion that one exists. The contention as written meets the basis and specificity requirements and should be admitted.

Contention 26.E. LILCO does not object to this contention; the Staff incorrectly asserts that it is redundant to Contention 26.B. Contention 26.B deals with the issue of commercial telephone overload whereas Contention 26.D deals with the practicality, in terms of timing and physical access to telephones, of LILCO's reliance upon telephones for notification of workers. The Staff's reassertion of its objections to Contention 26.B as applicable to Contention 26.E is therefore without merit.

The Staff's lack of basis objection is similarly without merit. The specific basis for the assertion that verification of messages is necessary is plainly set forth in the contention -- that is, NUREG 0654, Section II.E.1. The Staff's reiteration of its objections to Contention 26.D as applicable to Contention 26.E must be rejected for the reasons stated above with respect to Contention 26.D. Finally, the Staff's assertion that Contention 26.E is redundant to Contention 27.F is incorrect. Contention 27.F deals with mobilization of emergency workers; Contention 26.E deals with notification of such workers.

J. Contention 27: Mobilization of Emergency Response Personnel

Neither LILCO nor the Staff objects to this contention.

K. Contentions 28-34: Communications Among Emergency Response Personnel

Contention 28. The Staff does not object to this contention. LILCO challenges the factual assertion contained in Contention 28 (that the lack of radio or dedicated telephone links between LILCO and federal agencies fails to comply with NUREG 0654, Section II.F.1.c). Such a dispute on the merits of a contention does not constitute a proper admissibility objection. See part I.C of the General Response section above.

Contention 29. Neither LILCO nor the Staff objects to this contention.

Contention 30. Neither LILCO nor the Staff objects to this contention.

Contention 31. LILCO does not object to this contention. The Staff raises a lack of basis objection which is merely a statement of the Staff's disagreement with the factual assertions contained in the contention. (See Staff Response at 25-26). As such, the objection is not a proper admissibility objection and therefore should be overruled.

Contention 32. The Staff does not object to this contention. LILCO objects to its admissibility, although the basis of LILCO's objection is unclear. Contention 32 states that the

lack of direct communication between field personnel and EOC response coordinators will result in a delay in the implementation of emergency actions. The regulatory requirements upon which this contention is based are set forth in the Preamble to Contentions 28-34 (page 88 of the Revised Contentions). LILCO asserts that Contention 32 should not be admitted "because there is no legal requirement that direct communications exist between the EOC and emergency response personnel." (Objections at 46). Whether there is a requirement that there be direct communications per se is not the point of Contention 32; rather, the point is that the lack of direct communications will result in delaying implementation of emergency actions, in violation of the cited regulatory requirements. Accordingly, LILCO's lack of legal requirement objection must be rejected. LILCO also states that the contention lacks specificity, although no basis for that assertion is stated and thus the County cannot make any particular response. Contention 32 should be admitted.

Contention 33. Contention 33 alleges that the Plan fails to comply with NUREG 0654, Section II.F.1(d), because it fails to demonstrate that there will be adequate means of communication between the Shoreham facility and BNL field monitoring teams. LILCO objects to this contention by merely asserting,

without explanation or even reference to the explicit requirement cited in the contention, that "communications between the Shoreham facility and DOE field monitoring teams is not required." (Objections at 47). This bald "objection" is without merit. LILCO also asserts that "this information would be relayed via the EOC." (Objections at 47). This purported "objection" in reality is a challenge to the merits of Contention 33. Accordingly, it is properly raised in a summary disposition motion or at the hearing, not in the context of a ruling on admissibility.

The Staff makes a Phase I objection to Contention 33 which has no merit. The Phase I contentions referenced by the Staff addressed the onsite organization's ability to notify the "first line of authorities" of an accident, and the adequacy of the LILCO dose assessment model. Contention 33 should be admitted.

Contention 34. The Staff does not object to this contention. LILCO makes a "no legal requirement" objection based upon its mischaracterization of the contents of the contention and its apparent disregard of the legal requirements set forth in the Preamble to Contentions 28-34. (See page 88 of the Revised Contentions.)

Contention 34 alleges that the LILCO Plan fails to ensure that there will be adequate communications among emergency response personnel for three specific reasons. The lack of such communications results in non-compliance with the regulatory requirements dealing with communications among emergency workers which are set forth on page 88 of the Revised Contentions. LILCO's assertion that Contention 34 should not be admitted "because there is no legal requirement that direct communications among the EOC and emergency response personnel be established" (Objections at 47), fails to address the issue raised in Contention 34 -- that is, that inadequate communications will result in delayed implementation of emergency actions, and non-compliance with specific regulatory requirements. LILCO's objection should be overruled for the reasons stated here and in part I.B of the General Response section above.

L. Contentions 35-44: Training of Emergency Workers

LILCO objects to all the training contentions as "lacking basis" because "the LERO training materials have not yet been developed and the County has not yet reviewed them." (Objections at 47). This is a specious objection which should be rejected out of hand.15/ Contentions 35-44 are based on

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15/ LILCO suggests that after training materials become available, the County should be required to submit any conten-

(Footnote cont'd next page)

the LILCO Plan as it now exists. They identify problems with the contents of the Plan, as well as inadequacies arising out of the Plan's failure to include certain things. Intervenors cannot be penalized -- by having contentions ruled inadmissible -- because at this time they are unable to be more specific in discussing inadequacies due to LILCO's failure to complete and/or produce materials referenced in its own Plan. LILCO's general objection should be rejected. LILCO and the Staff also raise specific objections to particular training contentions, which are discussed below.

Contention 35. LILCO does not object to this contention; the Staff asserts a lack of basis and lack of specificity objection. Contention 35 sets forth with specificity its basis. See Revised Contentions at 95. The Staff's objection appears to ignore the contents of the contention and it should be rejected.

(Footnote cont'd from previous page)

tions which it has within one week. (Objections at 47). If the Board agrees that training contentions should be held in abeyance, the County stresses that far more than one week must be allowed for review of the materials when they finally become available, given the need for copying materials and transmission to consultants, review by and consultation with consultants, and the actual preparation of contentions.

Contention 36. The Staff objects to Contention 36 because, in the Staff's view, it addresses unimportant "details." (See Staff Response at 27). The "detail" which the Staff asserts would improperly "bog down" the hearings is LILCO's failure to develop training manuals, lesson plans, training courses and performance standards. The Staff asserts that "there is no basis for the Intervenors' assertion that the[se] details must be examined for 'assurance' that there will be adequate training." (Id.) The Staff's argument is specious. Its suggestion that this Board can make a determination as to the adequacy of proposed training under a first-of-its-kind utility offsite plan, when there is essentially no indication of what the training will be, is preposterous. This "objection" should be rejected.16/

LILCO objects only to part D of Contention 36. That portion of the contention alleges that because lesson plans and specific training objectives are not set forth in the LILCO Plan, the Plan fails to demonstrate that proposed training can or will be effectively implemented. LILCO's assertion that there is no legal requirement that lesson plans and specific

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16/ The Staff's citation of the Waterford opinion is inapposite. See discussion of its objection to Contention 25.A above.

training objectives be set forth in the offsite plan is beside the point, and it ignores the regulatory requirements, which specifically require adequate training of response personnel, upon which Contention 36.D is based. Such requirements are set forth in the Preamble to Contentions 35-44 at page 94 of the Revised Contentions. LILCO's objection simply fails to address the issue raised in Contention 36 -- that no finding of adequacy or implementability of the proposed LILCO training is possible in the absence of the referenced materials. LILCO's objection should be rejected.

Contention 37. LILCO does not object to this contention. The Staff's assertion that it is redundant to Contention 24.S (which deals with the lack of agreements) is incorrect. Contention 37 directly addresses two issues: LILCO has failed to provide training to emergency workers; and the workers to whom LILCO apparently intends, in the future, to provide training are not identified in the Plan. This has nothing to do with the lack of agreements issue addressed in Contention 24.S. Therefore, the Staff's objection should be rejected.

Contention 38. Neither LILCO nor the Staff objects to this contention.

Contention 39. The Staff does not object to this contention; LILCO objects to subpart A. Contention 39.A sets forth the reason that LILCO's Plan fails to deal effectively with the problem of attrition of LILCO personnel. LILCO asserts that the regulatory requirements cited in Contention 39.A "do not require that LILCO make satisfactory completion of emergency response training a prerequisite to the hiring of personnel," and, further, that portions of the Plan, in LILCO's opinion, "accomplish what the contention seeks." (Objections at 48). The lack of legal requirement objection must fail because it ignores the point of Contention 39, stated in the second sentence of the contention: "LILCO cannot demonstrate that adequate numbers of trained support organization personnel will be available to respond to an emergency . . . and thus cannot demonstrate compliance with 10 CFR Sections 50.47(a)(1) and 50.47(b)(15), 10 CFR Part 50, Appendix E, Section IV.F and NUREG 0654, Section II.O.1." LILCO's second assertion is merely a dispute on the merits of the contention, and does not constitute an appropriate admissibility objection. See part I.C of the General Response section above.

Contention 40. Neither LILCO nor the Staff objects to this contention.

Contention 41. Neither LILCO nor the Staff objects to this contention.

Contention 42. LILCO asserts a lack of legal requirement objection to Contention 42. Contention 42 alleges that if workers are not properly motivated, training will be ineffective to ensure adequate emergency response. The contention explains that such motivation will be lacking in LILCO emergency workers because, not being residents of Suffolk County, they will lack a sense of the territorial imperative which is a principal motivating factor for emergency personnel. LILCO asserts that the regulations do not require workers to be residents of the County or to have a sense of territorial imperative. LILCO's objection mischaracterizes the allegation in Contention 42, and thus fails to address the issue raised in the contention: LILCO has failed to demonstrate that its training program will produce workers with the motivation necessary to perform emergency functions, and therefore there is not assurance that its Plan can or will be implemented. LILCO's objection should be rejected.

The Staff asserts a lack of basis objection to Contention 42, because, in its view, the contention is "unclear" and "without any support or explanation." (Staff Response at 28) As noted above, contrary to the Staff's assertion, the

contention states its basis with specificity. The County is prepared to present direc. testimony in support of the assertions in the contention. Th Staff also asserts that Contention 42 is redundant to Contentions 12 and 43. See discussion below of Contention 43. Contention 42 should be admitted.

Contention 43. LILCO and the Staff both assert a redundancy to Contenti-n 43, noting that it is in some respects similar to Contention 12. It is true that both Contentions 12 and 43 relate to LILCO emergency personnel's lack of familiarity with conditions in the EPZ, and the resulting inability to perform emergency functions effectively. The focus of the two contentions, however, is very different, and the matters are discussed in two separate contentions in response to the request of the Board, LILCO and the Staf: that the contentions be organized according to subject matter. This was one instance where a limited amount of repetition w.s unavoidable. Contention 12 focuses on the inability of LILCO personnel to exercise properly command and control functions, as a result of their lack of familiarity with conditions in the EPZ. Contention 43, on the other hand, focuses on the LILCO Plan's failure to provide training to overcome the personnel's lack of familiarity. The contentions are not "redundant." The repetition of explanatory material involved in the two contentions does not

justify the suggestion that one or the other be denied admission.17/

LILCO also asserts a lack of basis objection to Contention 43. Its objection, however, is no different from its general objection to all the training contentions (i.e., that LERO training materials are not yet complete, so contentions concerning their inadequacy lack basis), and a dispute with the factual assertion contained in Contention 43 (i.e., that, according to LILCO, "most of the LERO emergency response personnel live on Long Island"). (See Objections at 49). These objections should be rejected for the reasons stated in response to the general objection (see initial discussion in response to training objections above), and in part I.C of the General Response section above. The Staff's lack of basis objection to Contention 43 must fail for the same reasons. Finally, LILCO's lack of specificity objection to Contention 43 must fail for the reasons stated previously with respect to Contention 12.

17/ Contrary to the Staff's suggestion in its objection to Contention 42, neither Contention 12 nor Contention 43 deals with the motivation of emergency workers, which is the focus of Contention 42.

Contention 44. LILCO does not object to this contention. The Staff objects to subparts A, B and C on the basis that they are too detailed. The Staff asserts the same argument here as it did with respect to Contention 36. It is without merit with respect to Contention 44 for the reasons stated with respect to Contention 36.

M. Contentions 45-51: Accident and Dose Assessment and Projection

Contentions 45 and 46. The Staff does not object to these contentions. LILCO objects by referring to a purported letter of agreement between DOE and LILCO, which is Attachment 2 to the Objections, and by asserting that "it is unnecessary that DOE designate now the names of people who might respond in the event of an emergency that may take place years hence or that may never happen." (Objections at 50). Either LILCO's objection rests on a total mischaracterization of Contentions 45 and 46, or it is merely intended to apply to a portion of those contentions. It certainly fails to address the bulk of Contention 46, which discusses the lack of assurance that BNL is capable of providing prompt or 24-hour services, or of augmenting initial staffing; it also does not address the portion of Contention 45 which states that the Plan fails to identify by title or qualification (as well as by name) the BNL and/or

FRMAP personnel who are expected to perform offsite accident and dose assessment functions. In addition, the LILCO objection constitutes nothing more than LILCO's disagreement with Intervenors' interpretation of the regulations which are cited in Contentions 45 and 46. Such a disagreement, like LILCO's assertion that, in its view, a referenced letter of agreement eliminates a problem identified in the contentions, are properly the subject of a summary disposition motion. They are not appropriate admissibility objections. Contentions 45 and 46 should be admitted.

Contention 47. LILCO and the Staff assert that a portion of Contention 47 could have been litigated during Phase I, but neither objection identifies clearly the portion of the contention to which it relates. In fact, none of Contention 47 could have been litigated during Phase I.

Contention 47 deals with the offsite dose assessment and projection which, under the LILCO Plan, will be performed by BNL personnel. It alleges that the dose projections to be used by the LERO Director in making protective action recommendations will be too low because neither the information to be used by BNL in making dose projections, nor the projections themselves, will under the LILCO Plan and procedures take into account isotopes other than noble gases and iodines. LILCO

asserts that because Phase I Contention EP 14 concerned the adequacy of the methods and equipment identified in LILCO's onsite plan for use by LILCO in making dose assessments and projections, "to the extent DOE personnel use the same information as LILCO field teams," Contention 47 could have been litigated in Phase I. Clearly, at the time of the Phase I litigation, the extent to which offsite personnel would use LILCO's onsite methods or information in making dose projections could not have been determined, much less litigated. At that time it was not known that BNL or DOE personnel would be performing the offsite assessment and projection functions or that they would do so according to the procedures that only came into existence in May 1983 when the LILCO offsite Plan was released. LILCO's Phase I objection is thus without merit and should be rejected. The Staff's Phase I objection is ever more vague than LILCO's and should be rejected for the same reasons.

The Staff also asserts a lack of regulatory basis objection to Contention 47 which should be rejected because it ignores the regulatory references contained in the Contention -- that is, NUREG 0654, Sections II.E.4.f and II.I.10, and Table 3. The Staff's references to EPA PAGs and FEMA findings are irrelevant.

Contention 48. The Staff does not object to this contention; LILCO asserts a lack of basis objection. LILCO's objection is based solely upon the alleged contents of Revision 1 to the Plan; the LILCO lack of basis objection thus constitutes a disagreement with the factual assertion set forth in Contention 48. It is an improper admissibility objection and should be rejected. See part I.C of the General Response section above.

Contention 49. Neither LILCO nor the Staff objects to this contention.

Contention 50. LILCO does not object to this contention. The Staff asserts a Phase I objection which has no basis since Phase I dealt with onsite matters whereas Contention 50 deals with offsite dose calculation and dose projections to be performed by the offsite response organization.

Contention 51. Neither LILCO nor the Staff objects to this contention.

N. Contention 52: Emergency Operations Center

The Staff asserts a Phase I objection to this contention. However, the Phase I issue referenced by the Staff concerned the LILCO onsite Emergency Operations Facility; Contention 52 deals with the offsite Emergency Operations Center. The Staff's objection thus has no merit.

LILCO asserts a lack of basis objection to Contention 52, similar to its general objection to all the training contentions. Contention 52 alleges that because the EOC has not been established, LILCO fails to meet specific regulatory requirements. LILCO asserts, in response, merely that its Plan provides that an EOC "will be" established. (See Objections at 51). The objection simply ignores the fact stated in the contention -- that the EOC has not been established -- and merely restates what gave rise to the contention in the first place -- that LILCO intends, in the future, to establish an EOC. LILCO's objection is not an objection at all, and it should be rejected.

O. Contention 53: Security During a Radiological Emergency

Contention 53.A. LILCO objects to this contention by stating that there is no legal requirement "that security be provided within an evacuated area." (Objections at 52). LILCO thus ignores the regulatory requirements cited in the contention and in subpart A. As stated in the contention, without security in evacuated areas the Plan cannot be implemented, in violation of 10 CFR Section 50.47(a)(1), among others. LILCO's no legal requirement objection thus ignores the real point of contention 53.A. In addition, Contention 53.A also includes

the fact that the LILCO Plan fails to provide a mechanism for implementing an action which the Plan itself recognizes as necessary -- i.e., "security patrols to prevent vandalism or theft in vacated neighborhoods." Clearly, Intervenors have a right to contest unsupported factual statements in LILCO's own plan; LILCO's lack of legal requirement objection is merely a means to try and avoid confronting the fact that the Plan cannot be implemented.

LILCO also asserts a "County's own doing" objection to this contention and the Staff asserts its variation of that argument. (See part I.A of the General Response section above). LILCO's assertion (see Objections at 52), that "because the County can provide access control around evacuated areas if it chooses," the contention is not admissible, fails to address the issue presented in Contention 53.A: that is, that LILCO's own Plan fails to provide for adequate access control around evacuated areas. The "County's own doing" objection should be overruled. The Staff's objection should be rejected for the reasons set forth above with respect to its identical objection to Contention 24.Q.

Contention 53.B. The Staff does not object to contention 53.B. LILCO asserts objections similar to those asserted with respect to Contention 53.A. First, LILCO disputes Intervenors'

assertion that LILCO's failure to provide for security at areas identified in Contention 53.B results in LILCO's non-compliance with identified regulatory requirements. LILCO merely asserts that there is no legal requirement for such security. Such an unexplained and unsupported statement does not support a ruling that Contention 53.B is inadmissible, in the face of the specific regulatory bases for the contention that are stated by Intervenors. In addition, LILCO argues that because "the County can remedy the deficiency complained of by providing security if it wishes to do so" (Objections at 53), Contention 53.B should not be admitted. This LILCO argument should be rejected for the reasons that the "County's own doing" argument asserted with respect to Contention 53.A should be rejected.

P. Contention 54: Medical and Public Health Support

The Staff objects to this contention supposedly on the basis of lack of specificity, although the substance of its objection indicates that it believes the contention is redundant. Certainly, the contention meets the specificity requirement. Moreover, the issue presented in Contention 54 -- that ambulances will not be able to respond where needed to provide medical services for contaminated injured individuals -- is not addressed in any other contention, including those referenced in Contention 54. The fact that the reasons for this

deficiency are related to issues addressed in other contentions is not a basis for a ruling that Contention 54 is inadmissible. The Staff's objection to Contention 54 should be rejected.

LILCO objects to Contention 54 on the same basis that it objects to one sentence in each of Contentions 24.G and 24.K; that is, that the NRC's recent decision in Southern California Edison Co. (San Onofre Generating Station, Units 2 and 3), CLI-83-10, 17 NRC _____, slip op. at 11 (April 4, 1983) makes the issue non-litigable.18/ Contention 54 alleges that ambulances may not be able to respond promptly where needed during an evacuation due to traffic congestion and their involvement in other evacuation tasks. Contrary to LILCO's assertion, however, the San Onofre case is not controlling here. Contention 54 does not assert that LILCO must make arrangements for medical facilities such as hospitals which, under San Onofre, is not required. See also the County's response to LILCO and Staff objections to Contentions 24.G and K above. Rather, it states that those ambulances on which LILCO intends to rely will not be able to respond promptly due to circumstances which

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18/ The County notes that Contention 54 is derived from part C of the July 7 Contention 77. Although LILCO objected to Parts A and B of Contention 77 in its July 8 objections, it did not object to Part C.

will be created by an evacuation. These are problems which must be cured in order to comply with 10 CFR Sections 50.47(b)(8) and (b)(12). Therefore, Contention 54 is admissible.

Q. Contentions 55-59: Notification to the Public

Contention 55. LILCO does not object to this contention; the Staff asserts that the contention is redundant to Contention 26. The Staff is incorrect. The issue raised in Contention 26 is notification of emergency workers; the issue raised in Contention 55 is notification to the public. The Staff's objection thus should be rejected.

Contention 56. LILCO does not object to this contention. The Staff, however, asserts a Phase I objection and a lack of basis objection. The Phase I objection is without merit. Contention 56 addresses the workability of LILCO's proposal to drive vehicles with loudspeakers through the EPZ to alert the public should sirens fail. This proposal first appeared in the LILCO Transition Plan, and clearly was not capable of litigation during Phase I.

The Staff's lack of basis objection is similarly without merit since it amounts to nothing more than a disagreement with the conclusion stated in Contention 56 that LILCO's proposal is impractical, unworkable, and will not provide notification

within 45 minutes. Such a dispute with the merits of a factual assertion contained in a contention does not constitute a legitimate admissibility objection. Moreover, the Staff's comment that Contention 56 "seems to focus on an abstract concept of 'perfect' emergency preparedness and response which is beyond the scope of this litigation," ignores both the concrete factual contents of Contention 56, and the regulatory bases set forth in the contention. (See Revised Contentions at 116.) The Staff's objections should be rejected.

Contention 57. The Staff does not object to Contention 57; LILCO, however, raises objections to three portions of that contention. First, LILCO argues that the portion of Contention 57 stating that contrary to the assertion contained in the LILCO Plan, tone alert radios will not provide special facilities with advance alerting or preparation time, is "outside the legal requirements." (See Objections at 53). The referenced observation in Contention 57 goes to the implementability of the LILCO Plan. The Plan asserts that tone alert radios will provide special facilities with advance preparation time, but also indicates, based upon the method of activation of tone alert radios, that special facilities will receive notification at the same time as the rest of the public. Thus, the objected to portion of Contention 57 merely

states that LILCO's Plan will not do what LILCO says it will do, and therefore, the Plan will not be implemented. Clearly, the County has a right to contest factual inaccuracies in LILCO's Plan.

LILCO also asserts a lack of basis objection to other portions of Contention 57. Thus, LILCO asserts that the contention should not be admitted "because the intervenors have not stated why signals from other stations would not activate the tone alerts," and "because WALK radio has access to AM frequency 24 hours a day," citing an attachment to the Objections. (See Objections at 53-54). Clearly, such "objections" by LILCO are merely a disagreement with the factual assertions contained in Contention 57, and therefore do not constitute a proper admissibility objection. See Part I.C of the General Response section above.

Contention 58. Neither LILCO nor the Staff objects to this contention.

Contention 59. Both LILCO and the Staff cross-reference their objections to Contention 24.T in objecting to Contention 59. See the County's response to objections to Contention 24.T for a response.

R. Contentions 60-77: Protective Actions

Contention 60. Neither LILCO nor the Staff objects to this contention.

Contention 61. LILCO does not object to Contentions 61.B, C, D or E, but does object to parts A, F, G, H, and I. LILCO's objection to these portions of Contention 61 is not an admissibility objection; rather, it is an argument by LILCO that, in its view, certain of the conclusions contained in the contention are inaccurate. Contention 61 alleges that contrary to the requirement of 10 CFR Section 50.47(a)(1), a protective action recommendation of sheltering would not or could not be implemented because a substantial number of people advised to shelter will be unable to do so for five specified reasons. It further alleges that contrary to the requirement of 10 CFR Section 50.47(a)(1), sheltering is not an adequate protective action because LILCO's Plan provides no assurance that sheltering would result in any significant dose savings for four specified reasons. LILCO's "objection" consists of the following:

> (1) there is no indication that where evacuation is feasible and would result in lower doses, LILCO would order sheltering instead of evacuation, and (2) if sheltering is the only feasible protective action given the circumstances of a particular accident, or recommendation to shelter would constitute adequate protective measures [sic].

(Objections at 54-55). LILCO's "objection" does not set forth any basis for ruling that any part of Contention 61 is not admissible; it is merely a statement that LILCO believes Intervenors' allegations are inaccurate. This LILCO position may properly be raised in the context of a summary disposition motion or in testimony. Contentions 61.A, F, G, H and I should be admitted.

The Staff makes several comments concerning Contention 61, none of which rise to the level of an admissibility objection. First, the Staff asserts that the contention fails to specify "the circumstances of the 'emergency' it refers to" in the concluding sentence of the contention. (Staff Response at 33). Reading the entire contention reveals that the referenced "emergency" is one at the Shoreham plant that involves the release of radiation.19/ The Staff's comment is silly; it is clear that Contention 61 meets the specificity requirements of 10 CFR Section 2.714. The Staff also asserts that Contention 61 is "a broad challenge to the Commission's regulations," and that "Intervenors misconstrue the purpose of sheltering and the regulations," apparently based upon the reference in the

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19/ Footnote 15 in Contention 61 also cross-references (rather than repeating) the discussion in Contention 22 concerning the site-specific consequences of an accident at Shoreham.

contention to the Section 50.47(a)(1) requirement that a plan must provide for "adequate" protective actions. (See Staff Response at 33). These oblique comments by the Staff are not explained, and appear to have no basis whatsoever. The Staff's objections to Contention 61 should be overruled. See also the County's response to objections to Contention 23 above.

Contention 62. LILCO objects to Contention 62 by asserting, without explanation or citation, that "there is no requirement that the general public be monitored after sheltering from a passing plume. Consequently, this contention alleging the contrary should not be admitted." (See Objections at 55). First, LILCO's "objection" mischaracterizes Contention 62. As a review of that contention makes clear, it contains much more than a bare allegation that the public should be monitored after sheltering, as LILCO suggests. (See Revised Contentions at 124-25). Furthermore, Contention 62 sets forth particular legal requirements which, in the view of Intervenors, are violated by LILCO's failure to provide for relocation of sheltered persons or monitoring of sheltered persons, both of which are likely to be necessary after plume passage, as stated in the contention. LILCO's naked assertion of "no legal requirement" is not sufficient basis to rule that Contention 62 is inadmissible, given the legal bases and factual explanations

provided in Contention 62 for the conclusions it contains. The Staff's similar objection to Contention 62 should be overruled for the same reasons.

Contention 63. Neither LILCO nor the Staff objects to this contention.

Contention 64. The Staff does not object to this contention; LILCO asserts a Phase I objection. Contention 64 deals with the need to evacuate at least a radius of five to seven miles around the plant, as opposed to only one or two of LILCO's 19 zones, if any evacuation is ordered, in order to account for the rapidly shifting wind conditions on Long Island. LILCO characterizes this contention as being "really a challenge to the methods used to make protective action recommendations," and asserts that "as such" it was capable of being litigated in Phase I. (See Objections at 55). LILCO's characterization and its conclusion drawn from it are incorrect. The plain words of Contention 64 indicate that it addresses the question of how LILCO's offsite Plan will be implemented. As noted in the contention, the Plan contemplates the possibility that evacuation of only certain of LILCO's 19 zones would be recommended. The contention sets forth Intervenors' belief that if accident conditions are such that any evacuation is to be ordered, the area to be evacuated should include at least

the five to seven mile radius around the plant. The contention also explains the basis for that belief. The contention does not challenge "the methods used" to make protective action recommendations; it challenges the fact that LILCO's Plan contemplates the possibility of a certain protective action recommendation which Intervenors believe would be incorrect. The issue raised in Contention 64 could not have been litigated in Phase I, since at that time neither the methods of implementing an evacuation order, nor the offsite zone configuration of the EPZ, had been determined. Nor, at that time, were those matters to be determined by LILCO. Such matters are clearly offsite issues that were not a part of, and could not have been litigated during, Phase I. LILCO's objection should be rejected.

Contention 65. LILCO objects to subparts G and H of Contention 65; the Staff objects to portions of subparts C and F.

The Staff states that, in its view, part 2 of Contention 65.C "appears to be speculative and lacking in basis." (Staff Response at 34). The basis for the contention is set forth with specificity in the contention (see Revised Contentions at 131-32), and the Staff's objection is without merit. The Staff also states that part 4 of Contention 65.C "is vague, provides no examples, and should not be admitted for lack of

specificity." (Id.) Contrary to the Staff's erroneous observation, part 4 does contain an explanation of the problem, which is the fact that "LILCO's prescribed routes direct motorists to travel contrary to their perceptions of the most expeditious way out of the EPZ," and provides one specific example. The Staff's objections to part 4 are also without merit.

The Staff objects to Contention 65.F by asserting, without explanation, that the factual assertions in the contention are "generalized, speculative, and lacking in basis." (Staff Response at 34). The Staff's characterization of the contents of Contention 65.F is incorrect and does not support the suggestion that the contention should not be admitted.

LILCO objects to Contention 65.G by referring to an attachment to its Objections and asserting that the contention lacks basis. This objection is merely a disagreement with the factual assertion set forth in Contention 65.G, and for the reasons set forth in part II.C of the General Response section above, is not an appropriate admissibility objection.

LILCO asserts a lack of specificity objection to Contention 65.H, "because the intervenors have not stated the number of route spotters it [sic] thinks is required to cover the evacuation routes." (See Objections at 57). Intervenors are

under no obligation to include such information in their contention; the contention as written clearly puts all parties on notice of the issue which Intervenors intend to litigate and therefore meets the specificity requirement. LILCO also asserts a "County's own doing" objection to Contention 65.H, stating that "if the County believes that policemen are required for route spotters, the County can remedy the deficiency by providing policemen." (Id.) This objection fails to address the allegation set forth in Contention 65.H -- that is, that LILCO's evacuation time estimates are inaccurate (and, accordingly, its Plan cannot be implemented), because LILCO's route spotters will be unable to perform their functions effectively. This LILCO objection should be rejected.

Contention 66. The Staff does not object to any portion of Contention 66. LILCO objects to portions of subparts A, C, D, and E, but does not object to parts B or F.

LILCO asserts a lack of specificity objection to the first sentence of Contention 66.A. That sentence reads: "LILCO does not have an adequate number of tow trucks to enable LILCO personnel to remove all potential road obstructions, nor does the Plan specify the number of such vehicles at its disposal." The basis for LILCO's objection is that Intervenors "have not defined what in their view would be an 'adequate number of tow

trucks.'" (Objections at 57). As noted above, there is no obligation for Intervenors to provide such information in contentions. Contention 65.A puts the parties on notice of the issue which Intervenors intend to litigate. It meets the specificity requirement (see part I.D of General Response section above), and LILCO's objection should be rejected.

LILCO objects to Contention 66.C by disagreeing with the factual assertion contained therein. Contention 66.C asserts that the LILCO Plan makes no provision for the evacuation of persons whose cars break down or are in accidents. LILCO asserts, in its Objections, that "common sense suggests that those persons would simply ride with other evacuees." (Objections at 58). What LILCO's counsel's common sense suggests is irrelevant to the admissibility of Contention 66.C. LILCO's objection to this contention is merely a disagreement with the facts asserted in that contention and therefore is not a proper admissibility objection. See part I.C of the General Response section above.

LILCO objects to Contention 66.D, which states that the LILCO Plan fails to comply with NUREG 0654, Section II.J.10.k, because, according to LILCO, "NUREG 0654, Section II.J.10.k does not require snow removal." (Objections at 58). This objection is without merit. The referenced section of NUREG 0654 states:

10. The organization's plans to implement protective measures for the plume exposure pathway shall include:

* * *

k. Identification of and means for dealing with potential impediments (e.g., seasonal impassability of roads) to use of evacuation routes, and contingency measures;

Clearly, the presence of snow on roads is included in the concept of "seasonal impassability of roads." LILCO's objection to Contention 66.D should be rejected.

LILCO's objection to Contention 66.E amounts to a dispute with the facts asserted in that contention. As such, it is not an appropriate lack of basis objection to the admissibility of the contention.

Contention 67. Neither LILCO nor the Staff objects to this contention.

Contention 68. Neither LILCO nor the Staff objects to this contention.

Contention 69. Neither LILCO nor the Staff object to parts C, D, or E of Contention 69. They both object, however, to Contention 69.A and the Staff objects to Contention 69.B. LILCO asserts that portions of Contention 69.A request relief not required by emergency planning regulations. In this objection, LILCO mischaracterizes Contention 69.A and ignores

the regulatory bases set forth in the contention proper (page 164 of the Revised Contentions) and the explanation of the contention that is set forth in subpart A itself. Contention 69.A alleges that under the LILCO Plan, there is no assurance that schools relied upon to make an early dismissal decision (which is necessary in order for any protective actions to be taken with respect to children; see the final sentence of Contention 69), will be able to, or will make the appropriate decision for two reasons. Those reasons are the Plan's failure to provide (1) for transmission to the schools of information necessary to permit an informed decision, and (2) indemnification for school authorities in the event that their decision with respect to an early dismissal results in injury to children. LILCO's objection to this contention fails to address the point of the contention -- that protective actions with respect to school children will not be implemented under the LILCO Plan. The "no legal requirement" objection is without merit for the reasons set forth in part I.B of the General Response above, and it should be rejected. The Staff makes a similar objection to this contention, which should also be rejected.

The Staff also objects to Contention 69.B by asserting that the contention lacks basis. The bases for the contention are set forth in the contention and its preamble (see Revised

Contentions at 143 and 144-45). The Staff's objection is without merit.

Contention 70. Neither LILCO nor the Staff objects to this contention.

Contention 71.A. LILCO and the Staff object to the mention in Contention 71.A of the lack of indemnification of school authorities. This objection should be rejected for the reasons stated above in discussing the objections to Contention 69.A. The Staff also raises redundancy objections to portions of Contention 71.A. Those objections are not well taken. The other contentions referenced by the Staff (Contentions 24.F and 69.A) address LILCO's lack of agreements, dealing with bus companies and early dismissals of schools, respectively. Contention 71.A, however, deals with the evacuation of schools. The Staff also raises a lack of basis objection to the portion of Contention 71.A which notes the Plan's failure to provide for supervision of children at schools. The Staff's lack of basis objection should be rejected because it merely is a statement of the Staff's disagreement with the factual assertions contained in Contention 71.A. See part I.C of the General Response section above.

Contention 71.B. Neither the Staff nor LILCO objects to this contention.

Contention 72.A. Neither the Staff nor LILCO objects to this contention.

Contention 72.B. LILCO does not object to this contention; the Staff asserts redundancy objections to three of the four subparts. The Staff's redundancy objections are not well taken. In every case, the other contentions referenced by the Staff (Contentions 24.H, 72.A, and 24.G), while dealing with related issues, in fact focus on issues different from those discussed in Contention 72.B.

Contention 73.A. LILCO asserts no objection to this contention. The Staff, while it appears to agree with the factual assertion contained in that contention, asserts that it lacks legal basis and should not be admitted, citing Southern California Edison Co. (San Onofre Generating Station, Units 2 & 3), ALAB-717, 19 NRC ____ (March 4, 1983). The case, however, does not support the Staff's objection. Indeed, in that case, the Appeal Board made it a licensing condition that the applicant take measures beyond a return-postage postcard to identify handicapped persons requiring assistance. Id., slip op. at 53-54. The Staff's objection should be rejected.

Contention 73.B. The Staff does not object to this contention; LILCO objects to part 2 of the contention as being "beyond the regulations." (Objections at 61). That portion of Contention 73.B alleges that the LILCO Plan fails to provide for assisting handicapped individuals in the preparation necessary prior to evacuation, and therefore asserts that an evacuation of handicapped persons could not be accomplished, in violation of several regulatory requirements set forth in the contention proper (see page 152 of the Revised Contentions). LILCO's assertion that there is no legal requirement for providing the particular type of assistance mentioned in part 2 of Contention 73.B ignores the point of the contention -- that is, that LILCO's proposed evacuation of handicapped persons, which is required by the regulations, cannot be implemented. LILCO's objection should be rejected.

Contention 74. Both LILCO and the Staff object to the third sentence of this contention. It reads: "In addition, many evacuees who need relocation services will not use the relocation centers proposed by LILCO because they will perceive those centers as being too close to the plant (e.g., only 13 miles)." The argument that it is not a legal requirement that people be encouraged to use relocation centers is not a basis for ruling Contention 74 inadmissible. See response to objections to Contention 23.E above.

Contention 75. The Staff objects to this contention, asserting that it is redundant to Contention 23.F. The Staff is incorrect. Contention 23.F deals with the effect upon relocation centers, of LILCO's failure to take into account the evacuation shadow phenomenon, which is a separate issue from that presented in Contention 75.

LILCO asserts a lack of basis objection to Contention 75. The contention asserts that because the Plan provides no estimates of the number of evacuees who may require shelter in relocation centers, and fails to demonstrate that the facilities have adequate space and services for the anticipated number of evacuees, there is no assurance that the relocation centers will be sufficient as required by NUREG 0654, Sections II.J.10.g and J.12. LILCO's objection is based upon its statement that "the Intervenors have given no reason to think that the number of relocation centers provided in the LERO Plan is insufficient." (See Objections at 62) This objection ignores the plain words contained in Contention 75 and its preamble, which state with specificity the basis for the assertion of regulatory noncompliance. (See Revised Contentions at 153-54 and 175.) LILCO's objection amounts to an argument that Intervenors must provide the underlying bases for the factual assertions which form the basis of a contention, which goes to the

merits of the contention, and is not a proper admissibility objection. See part I.C of the General Response section above. The objections to Contention 75 should be rejected.

Contention 76. The Staff states that this contention is redundant to Contention 16.I, and cross-references its objections to that contention. Contention 16.I addresses a deficiency in LILCO's public education brochure, whereas Contention 76 identifies, as a deficiency in the Plan, LILCO's failure to provide monitoring or decontamination facilities other than at the five relocation centers. The contentions are not redundant.

LILCO objects to Contention 76 by stating: "Contrary to this contention, there is no legal requirement that monitoring or decontamination be provided for evacuees who leave the EPZ but choose not to go to relocation centers." (Objections at 62). LILCO's objection ignores the allegation, in Contention 76, that "[i]n order to provide adequate protection to the public as required by 10 CFR Sections 50.47(a)(1) and 50.47(b)(10) LILCO must provide a means for monitoring and decontaminating all evacuees," particularly in light of the TMI experience which indicated that many evacuees will bypass relocation centers in favor of destinations more distant from the radiological hazard. LILCO's objection should be rejected.

Contention 77. Neither the Staff nor LILCO objects to this contention.

S. Contentions 78-83: Food, Water and Livestock Control

LILCO asserts a general objection to Contentions 78-83. In essence, the objection is that, according to LILCO, the 50 mile ingestion exposure pathway EPZ need not be covered by a local emergency plan because this matter is addressed by the state. (See Objections at 62). LILCO also references in this objection, a page from what purports to be a New York State plan. As noted above, LILCO asserts essentially the same objection to Contention 24.R. In the context of this case, LILCO is wrong.

First, there is no State emergency plan for Shoreham before this Board. Therefore, the inadequacies in preparedness with respect to the ingestion exposure pathway, which are identified in Contentions 24.R and 78-83, cannot be asserted with respect to any State plan. Second, the LILCO Transition Plan purports to be one capable of compensating for the lack of governmental participation in emergency planning. Thus, the LILCO Plan and procedures purport to address the ingestion exposure pathway as well as all other elements of emergency planning that are identified in the regulations. At LILCO's

request the parties are preparing to litigate the adequacy of the LILCO Plan. Now that Intervenors have identified specific inadequacies in the Plan's consideration of ingestion pathway matters, LILCO cannot properly complaint that such contentions are improper.

Finally, the regulations require that protective actions for the ingestion exposure pathway be developed, and that the state of offsite preparedness provide reasonable assurance that adequate protective actions can and will be taken in the event of an emergency. See e.g., 10 CFR Sections 50.47(a)(1), (b)(10), (c)(2). If LILCO's Plan as to these matters were to be ignored, as LILCO appears to suggest, a finding of non-compliance with those regulatory requirements would be the unadvoidable result. LILCO cannot have it both ways. Its Plan either addresses all regulatory requirements (including those relating to the ingestion exposure pathway), and contentions as to all such mattes are therefore appropriate; or, it does not address ingestion exposure pathway issues, in which case, since there is no other offsite plan before the Board, there can be no finding of compliance with the regulations relating to such issues. LILCO's general objection to Contentions 78-83 and its objection to Contention 24.R should be rejected. The Staff's objections to Contentions 24.R, 79, 81, 82 and 83 are

essentially the same as LILCO's general objection, and should be rejected for the reasons set forth above.

Other than its general objection to Contentions 78-83 discussed above, LILCO comments only on Contention 79. With respect to that contention, LILCO states that it is the same as Contention 24.R and should be consolidated with it. LILCO is correct that the two contentions discuss related matters; Contention 24.R addresses the lack of agreement between LILCO and the State of Connecticut under which the State of Connecticut would administer the portion of the ingestion exposure pathway EPZ contained in that state, while Contention 79 notes that the LILCO Plan fails to provide for protective actions for the Connecticut portion of the ingestion exposure pathway EPZ. Although related, the issues were separated in response to the request of the Board and the parties; although Contention 24.R may be viewed as something of a "subset" of Contention 79, in fact the two present separate issues. In any event, the relationship between the contentions does not justify the dismissal of either one. The Staff's redundancy objection to Contention 79 is the same as that of LILCO, and should also be rejected.

T. Contentions 84-91: Recovery and Reentry

LILCO objects generally to Contentions 84-91 on the basis that "detailed plans of the sort the intervenors suggest in

Contentions 84-91 are not required by the regulations." (Objections at 63). As noted above, this objection is also referenced in LILCO's objections to Contention 24.U.

In treating Contentions 84-91 as a unit, LILCO ignores the fact that the individual contentions in the Recovery and Reentry group are very different. Some discuss in more detail than others the recovery and reentry plans proposed by LILCO. It cannot be said, however, that all 8 contentions suggest that "detailed" plans are necessary, as LILCO implies by its objection. Moreover, each of the Recovery and Reentry contentions focuses primarily on the implementability of the provisions contained in the LILCO Plan. Clearly such contentions have well-defined regulatory bases that are cited in the contentions -- i.e., 10 CFR Sections 50.47(b)(13), 50.47 (a)(1), and NUREG 0654 Section II.M. LILCO's blanket objection fails to address the actual content of the recovery and reentry contentions, and should be rejected. LILCO also objects to two of the individual Recovery and Reentry contentions.

Contentions 84 and 87. LILCO objects to Contentions 84 and 87. Contention 84 quotes LILCO's own Plan which states "the initiation of recovery and implementation of reentry is a non-utility decisionmaking process," and alleges that under the Plan recovery and reentry cannot be initiated or implemented

because no "non-utility entity" with necessary authority has been identified by LILCO. Contention 87 cites the LILCO Plan provisions for appointment of various individuals to a "Recovery Action Committee" and identifies several specific deficiencies and inadequacies in the Plan related to the composition and responsibilites of that Committee. The conclusion of Contention 87 is that the LILCO Plan fails to comply with NUREG 0654, Sections II.M.2 and several subsections of Section 50.47. LILCO's objection to both these contentions is based upon its assertion that "it is inconceivable that following an emergency at Shoreham . . . federal, state and local authorities will not be involved" in recovery and reentry. (Objections at 63 and 64). For the reasons noted in part I.A of the General Response section above, this assertion by LILCO does not constitute a cognizable admissibility objection. It fails to address the allegations set forth in Contentions 84 and 87 -- that is, that the LILCO Plan fails to comply with the regulatory requirements related to recovery and reentry, and cannot be implemented.

The Staff objects to Contention 84 on the basis that, in its view, it is redundant to Contention 8. The Staff is incorrect. Contention 8 relates to LILCO's lack of authority to perform recovery and reentry procedures. Contention 84, on the

other hand, deals with LILCO's failure to identify a non-LILCO entity which has agreed, and is authorized, to perform recovery and reentry procedures. The contentions are different and the Staff's objection should be rejected. The Staff's objection to Contention 85 -- that it is not adequately specified and that it lacks basis to support a conclusion that detailed plans and procedures for recovery and reentry should be available (see Staff Response at 41) -- is not on point. Contention 85 does not discuss a need for detailed plans and procedures; it notes the fact that the LILCO Transition Plan merely states that a recovery and reentry plan "will be developed," and asserts that, contrary to Section 50.47(b)(13), even a general plan for recovery and reentry is not provided by LILCO. The Staff does not object to Contention 87.

Contention 86. LILCO suggests that Contention 86 is redundant of Contention 84 and that the two should be consolidated. (The Staff argues that Contention 86 is a restatement of Contention 85). The contentions in fact set forth different issues.

Contentions 88-91. The Staff does not object to Contention 88. It asserts a lack of legal requirement objection to Contentions 89-91, which essentially duplicates LILCO's general objections to Contentions 84-91. For the reasons stated above

in response to those general objections, the Staff's objections should be overruled.

U. Contention 92: State Emergency Plan

LILCO does not object to this contention. The Staff asserts that the contention is "premature" because it does not deal with the LILCO Transition Plan. The Staff's objection should be rejected for the reasons stated above in response to LILCO's objection to Contentions 78-83.

V. Contentions 93-97: Loss of Offsite Power and Bad Weather

SOC will respond to the objections to these contentions.

Respectfully submitted,

Dated: August 8, 1983
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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 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S RESPONSE TO LILCO'S OBJECTIONS TO INTERVENORS' REVISED EMERGENCY PLANNING CONTENTIONS AND TO NRC STAFF RESPONSE TO REVISED EMERGENCY PLANNING CONTENTIONS, dated August 8, 1983, have been served to the following this 8th day of August, 1983, by U.S. mail, first class, except as otherwise noted.

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DATED: August 8, 1983

* By Hand, August 8, 1983
** By Computer, August 8, 1983
*** By Hand, August 9, 1983