

9/23/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board ⁸³ SEP 26 A11:30

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-322-OL-3
(Emergency Planning)

SUFFOLK COUNTY MOTION TO COMPEL
PRODUCTION OF LERO DIRECTORS TO BE DEPOSED

On September 13, 1983, the County informed LILCO's counsel of its desire to depose Joseph Acker, John Gummingsall, and Andrew Wofford on September 21 and 22. Each of these gentlemen has been designated by LILCO as the Director of the Local Emergency Response Organization ("LERO") -- that is, the very person who, during a radiological emergency, "assumes the responsibility for protecting the health and safety of residents and transients" within the EPZs. LILCO Transition Plan at 2.1-1.

On September 19, 1983, LILCO's counsel informed the County that LILCO will not voluntarily produce these gentlemen to be deposed. The basis for LILCO's position is, according to conversations with counsel, LILCO's belief that the depositions of these gentlemen -- the very people who would direct the LERO which is on trial before this

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Board -- would not produce relevant or material information or lead to the discovery of relevant information. LILCO's position leaves us incredulous, because it would deny to the County, and ultimately the Board, crucial information about LERO which can be disclosed only by those persons who have undertaken to be LERO's Directors. By this Motion, the County requests the Board to compel LILCO to produce the LERO directors for deposition.^{1/} In the interest of time, this Motion is being filed prior to LILCO's filing of a motion for a protective order, which we understand is forthcoming. The parties have agreed that they will be prepared to discuss this matter at the conference of counsel that is scheduled for Monday, September 26, 1983.

DISCUSSION

In the deposition notices (copies of which are attached hereto as a convenience for the Board) and in correspondence and discussions with LILCO's counsel, the County stated that the subject matters upon which Messrs. Acker, Gummersall, and Wofford would be deposed would be their own duties and

^{1/} The County has been informed orally by LILCO counsel that Mr. Gummersall has now been deleted as a LERO Director because he intends to retire in the near future. A replacement has not yet been identified by LILCO. The County will want to depose that replacement when he/she is designated. The County has decided not to pursue the deposition of Mr. Gummersall since he now will have no role under the LILCO Plan.

responsibilities as Directors of LERO and any other participation they may have had or will have in the preparation or implementation of the LILCO Plan.^{2/ 3/} According to OPIP 2.1.1 of the LILCO Plan, "Organization Implementation," the responsibilities of the Director of LERO are:

- a. Overall direction of the response activities of the LERO.
- b. Decision to notify the general public.
- c. Decision to implement protective actions for the general public.
- d. Identification and acquisition of additional federal resources.
- e. Providing updated information to state and local officials.
- f. Authorizing LERO personnel radiation exposures in excess of the PAGs.

2/ During the deposition of John Weismantle and through document discovery, the County has learned that Mr. Acker has apparently had considerable involvement in the process of determining which LILCO employees would be LERO workers, the LERO orientation of LILCO workers, and the training of LERO workers, and other prerequisites to Plan implementation by LERO, all of which are clearly relevant to admitted contentions. Without the requested discovery, the County cannot determine the extent of Mr. Acker's participation in these processes or that of the other Directors, if any.

3/ The County has also been recently informed by LILCO counsel that Mr. Wofford may be a LILCO witness in this proceeding, although we have not yet been told the subject matter of his anticipated testimony. Thus, Mr. Wofford, like Mr. Acker, may also have knowledge of relevant information in addition to that directly related to his position as Director of LERO.

OPIP 2.1.1 at page 5. In addition, the Plan itself states:

The Director of Local Response is responsible for ensuring the allocation and direction of response personnel and equipment to mitigate the offsite consequences of an incident

The Director of Local Response assumes command of the Local Emergency Operations Center, upon activation, and directs the overall LERO response activities from this center. The decision to notify and implement protective actions for the general public is solely the responsibility of the Director of Local Response.

Plan at 2.1-1 and 2.1-2.

The County submits that there is no person more relevant to the issue of whether the LILCO Plan can and will be implemented in the event of an emergency than the persons who would, under the LILCO Plan, be responsible for making the decisions as to how the public health and safety are to be protected. Moreover, as the above excerpts from the Plan and Procedures evidence, the LERO Director is the central figure in the proposed LERO implementation of actions that are the subject of several admitted contentions (including, but not limited to, those on Command and Control, Protective Actions and Public Notification).

LILCO's position that the Directors of LERO -- upon whom LILCO itself relies for the implementation of its Plan -- are irrelevant to this litigation is at best illogical. Since LILCO says that the Directors of its LERO are "irrelevant" to this proceeding, LILCO is also saying that its offsite plan is itself irrelevant. Indeed, such a LILCO

position proves the County's contention that the LILCO Plan is but a paper "plan" which will not and cannot ever be implemented to protect the public.

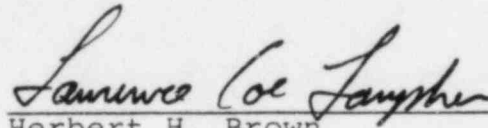
Finally, LILCO counsel has indicated that it believes deposing more than one of the LERO Directors would provide merely "cumulative" information, and we understand that LILCO will take the position that the County should be permitted to take only one of the designated LERO Directors. This LILCO position is incorrect. The County has not noticed these depositions for the purpose of having the LERO Directors recite what the Plan says they are to do; if that was the purpose, then it would not be necessary to depose any of them. Rather, a crucial purpose of these depositions is to ascertain from each of the actual individuals who will be "solely responsible" for the decisions concerning notification of the public and implementation of protective actions during an emergency, how that person has been trained and/or will actually perform his assigned duties, and what each of the Directors knows about how the Plan will be implemented. There is thus no basis for arbitrarily limiting the County's right to discovery on these matters to only one of the three individuals.

In view of the critical role which LERO Directors have in the implementation of the LILCO Plan and the obvious relevance their personal knowledge has to this proceeding,

the County requests that LILCO be compelled to produce these persons for depositions.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Lawrence Coe Lanpher", is written over a horizontal line.

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September 23, 1983