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LILCO, April 27, 1984
RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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| In the Matter of |) | |
| |) | |
| LONG ISLAND LIGHTING COMPANY |) | Docket No. 50-322-OL-3 |
| |) | (Emergency Planning |
| (Shoreham Nuclear Power Station, |) | Proceeding) |
| Unit 1) |) | |

LILCO'S MOTION FOR SUMMARY DISPOSITION
OF CONTENTIONS 16.E, J, K, L, AND M
(PUBLIC INFORMATION BROCHURE)

LILCO hereby moves, pursuant to 10 C.F.R. § 2.749, for summary disposition of Phase II emergency planning Contentions 16.E, J, K, L, and M, which have to do with LILCO's public information brochure. Attached to this motion is an "Annex" listing the material facts about which LILCO contends there is no genuine issue to be heard. Also attached is the current version (Rev. 3) of the brochure; Suffolk County's letter of April 12, 1984, which was attached to "LILCO's Report on Settlement Negotiations" of April 18, 1984; supporting affidavits of Carol Clawson, Edward Lieberman, and Michael Miele; and a recent article from the newsletter "Keeping Current."

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I. Summary Disposition

The applicable law on summary disposition has been set out in the Board's Order Ruling on LILCO's Motions for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49, dated April 20, 1984.

II. Contention and Legal Standards

Contention 16 reads as follows:

Contention 16. LILCO has drafted a public education brochure entitled "Emergency Procedures: Shoreham Nuclear Power Station." The content of LILCO's public information brochure is misleading and incomplete and thus this aspect of the public information program fails to comply with 10 CFR Section 50.47(b)(7), 10 CFR Part 50, Appendix E, Section IV.D.2, and NUREG 0654, Sections II.G.1 and 2.

The legal standards cited in Contention 16 are the following:

10 C.F.R. § 50.47(b)(7)

Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

10 C.F.R. Part 50,
Appendix E, IV.D.2

Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency. Signs or other measures shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs.

NUREG-0654, II.G.1

Each organization shall provide a coordinated periodic (at least annually) dissemination of information to the public regarding how they will be notified and what their actions should be in an emergency. This information shall include, but not necessarily be limited to:

- a. educational information on radiation;
- b. contact for additional information;
- c. protective measures, e.g., evacuation routes and relocation centers, sheltering, respiratory protection, radioprotective drugs; and
- d. special needs of the handicapped.

Means for accomplishing this dissemination may include, but are not necessarily limited to:

information in the telephone book; periodic information in utility bills; posting in public areas; and publications distributed on an annual basis.

NUREG-0654, II.G.2

The public information program shall provide the permanent and transient adult population within the plume exposure EPZ an adequate opportunity to become aware of the information annually. The programs should include provision for written material that is likely to be available in a residence during an emergency. Updated information shall be disseminated at least annually. Signs or other measures (e.g., decals, posted notices or other means, placed in hotels, motels, gasoline stations and phone booths) shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an emergency or accident occurs. Such notices should refer the transient to the telephone directory or other source of local emergency information and guide the visitor to appropriate radio and television frequencies.

Specific subparts of the contention are set out below.

III. Basis for Summary Disposition

Licensing boards have on occasion reviewed public information brochures in exhaustive detail. See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-83-27, 17 NRC 949 (1983); Consumers Power Co. (Big Rock

Point Plant), LBP-82-60, 16 NRC 540 (1982). Even if the Board focuses so intensely on the five deficiencies in the LILCO brochure alleged in Contention 16, it will be unable to find a litigable issue of fact.

The main reason is that the contention is wrong, as this motion will show. But even if the contention were correct in some respect, it would not call for a hearing, because the contents of the brochure do not raise factual issues that can be resolved by testimony and cross-examination. The words of the brochure say what they say; there can be no dispute about that. The issues raised by the intervenors in this case, as in so many others, are whether the brochure is inaccurate, misleading, or disingenuous in certain respects. Even if the brochure is less than perfect in some respect, the next question is whether the deficiency matters -- that is, whether a member of the public would be misled or otherwise induced by the brochure into making a less effective response to a radiological emergency. These are questions of judgment, requiring a sort of "reasonable man" test, and all the expert testimony in the world will hardly help the Board decide.

Unlike some of the issues raised by other contentions, the contents of the brochure can be changed at will, and LILCO is willing to revise the brochure if that would eliminate issues from litigation (provided, of course, that the revisions are reasonable and not counterproductive of good emergency

planning). In particular, if the Board judges that some word or sentence in the brochure violates the standards set forth in the regulations, guidelines, or caselaw, it can merely say so, and it will then be up to LILCO either to revise the brochure accordingly or to ask for Appeal Board review at the appropriate time.

A. Contention 16.E

Contention 16.E reads as follows:

- E. The LILCO brochure's discussion of radiation effects is limited to natural sources and very low levels of radiation. It does not adequately address the magnitude of doses that the public might receive during a severe accident, such as one requiring EPZ evacuation, nor the health-threatening consequences related to such releases. Such inadequate disclosure of essential facts renders the brochure incredible.

It is de rigueur in NRC cases for intervenors to argue that the emergency planning brochure inadequately describes the hazards of radiation. All that the regulations and guidelines say, however, is that "general information as to the nature and effects of radiation" (10 C.F.R. Part 50, App. E, IV.D.2) and "educational information on radiation" (NUREG-0654, II.G.1) must be provided. The LILCO brochure, particularly at pages 14-16, meets these standards.

Since Contention 16.E was written, the brochure (Rev. 3, attached to this motion) has been revised to include discussions of radiation from both man-made and natural sources (brochure pp. 14-16). The brochure now discusses radiation doses received offsite from the Three Mile Island accident. The seriousness of radiation exposure is discussed by comparing the amount received from normal operations of nuclear plants with amounts received from other radiation sources (Annex ¶1).

The brochure states (brochure p. 16) that "[w]e know that radiation can be hazardous at high levels." The effects of high-level radiation are not discussed in detail, however, for several reasons. First, the dose levels requiring evacuation (5 rem or more) are extremely unlikely to occur and have never been experienced by the public as a result of commercial nuclear power industry activities (Annex ¶2 and Affidavit of Michael L. Miele). Second, a more detailed discussion of doses that are extremely unlikely ever to occur may give people an unrealistic idea of what they could be more likely to encounter in a radiological emergency (Annex ¶4). Finally, it is unlikely that being told about the health effects of high-level radiation would help people function appropriately in an emergency. Whether the projected dose were 5 rem or 50 rem, evacuation would take place in the same way (Annex ¶3).

In addition, the effects of radiation have been discussed in the Spring 1984 issue of "Keeping Current"

(attached), a newsletter distributed by LILCO to residents of the ten-mile EPZ.

The intervenors contend that omitting a discussion of the effects of high-level doses of radiation makes the brochure unbelievable. Their theory apparently is that, since everyone knows that radiation can be dangerous, a failure to say so in the brochure would make people think the brochure is unreliable and cause them to disregard the advice it contains.^{1/}

A similar issue has been raised in other proceedings. The Big Rock Point board resolved it thus:

The most important change in the pamphlet agreed to by applicant is that information at the top of page 18 should be revised. As written, that section merely reassures Big Rock's neighbors that plausible accidents could lead only to minimal doses. Such an unmitigated reassurance might, however, have led people to disregard evacuation warnings. After all, why respond when no harm could come to one anyway? As a result of the Board's discussion with applicant's witness on this point (Tr. 1311-15), applicant has agreed to modify the section by adding the following language:

^{1/} It may be that what Suffolk County wants to litigate under 16.E is the whole BEIR III issue of the effects of low-level ionizing radiation. One of its consultants is Dr. Radford, who has well-known views on that issue. If that is indeed the County's aim, it is inappropriate. It would be an extravagant misuse of resources to litigate the BEIR III controversy in the context of an emergency planning brochure. Moreover, Contention 16.E simply does not give fair notice that it involves the BEIR III issue. Nor is it apparent why addressing this scientific controversy in the emergency brochure would contribute to a better emergency response.

However, prudent emergency preparedness includes planning for less likely 'worst case' accidents in which larger, even life-threatening doses of radiation might be released within the five-mile EPZ.

. . . We find this change acceptable.

Consumers Power Co. (Big Rock Point Plant), LBP-82-60, 16 NRC 540, 546 (1982).

But there is no such "unmitigated reassurance" in the LILCO brochure. The following statements in the brochure should adequately advise the public that radiation, and nuclear plant accidents, can be hazardous:

Still, it is possible that the Shoreham Station could release hazardous material into the air.

-- brochure p. 2

A serious accident at Shoreham could result in the release of radioactive materials into the air

. . . .

If a serious accident occurs which results in the release of radiation into the air, you may be asked to take protective actions.

-- brochure p. 4

[A general emergency] is the most severe of accident classifications. It involves possible fuel core damage. Radioactive releases could result which may require people living within 10 miles of the plant to take protective actions.

-- brochure p. 5

We know that radiation can be hazardous at high levels.

-- brochure p. 16

Most boards, moreover, have declined to fine-tune brochures in order to call more attention to radiation hazards.

The Waterford board said this:

Finally, we do not agree that the section underplays the radiation hazards. Unlike in the Consumers Power Company case, supra, where the brochure merely reassured the public "that plausible accidents could lead only to minimal doses," here the section warns the reader that, if the amount of radiation in the air is large, he must protect himself from it, and that, if there is a severe accident at Waterford 3, an emergency will be declared and he will be asked to take certain protective actions.

In sum, we conclude that the educational information on radiation set forth in the brochure adequately informs the public about the nature of radiation and complies with criterion II.G.1.a of NUREG-0654.

Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-83-27, 17 NRC 949, 962 (1983) (footnote omitted).^{2/}

^{2/} The educational information in the Shoreham brochure is similar to the brochure information in Louisiana Power and Light Co., supra. The Shoreham brochure warns the public that "four classes of emergency have been established," that the general emergency is the "most severe," and that "[r]adioactive releases could result which may require people . . . to take protective action" (brochure p. 5).

In the Zimmer case the licensing board likewise refused to order the brochure changed:

We agree that the availability of more information on radiation hazards would be helpful. However, we do not impose a license condition with respect to this matter.

Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549, 1574 (1982), aff'd with certain modifications, ALAB-727, 17 NRC 760 (1983).

Intervenors in the Three Mile Island Unit 1 restart proceeding also questioned the adequacy of the public education programs. Apparently they wanted a "detailed program on the health effects of ionizing radiation." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1522 (1981), aff'd subject to a condition, ALAB-697, 16 NRC 1265 (1982). The licensing board said this:

The Board has reviewed the county brochures and PEMA pamphlet and finds their design and content acceptable for their intended purpose.^{182/} We believe that the counties and PEMA may wish to improve and update some portions of these brochures. (For example, see Tr. 19,421 (Smith)). We conclude, however, that the primary purpose of these brochures is not to give a course in radiation biology, but to inform the public what to listen for and what to do in case of an emergency at TMI-1.

^{182/} We believe that the analogy of ionizing radiation to sunlight is not unduly strained in the context of the entire PEMA brochure and is acceptable.

See Tr. 19,413-19,421 (Pawlowski, Adler). The analogy is not perfect, and arguably could be improved. See e.g., Tr. 19,421 (Smith). However, this is a minor matter and is not an important improvement. We therefore do not require such a change.

14 NRC at 1525. The Commonwealth's brochure had been revised by the time of appeal, so the intervenors' criticisms on appeal were somewhat muted. The Appeal Board rejected the remaining criticisms, taking the approach that educational material must be judged in its entirety:^{3/}

The [intervenors] also argue that several specific instances of lack of candor remain in the new pamphlet to render it inadequate. Again, we must disagree. We doubt that unanimous agreement on every sentence of every brochure could ever be obtained. Such agreement is not required. Educational material must be judged in its entirety. We have examined the revised brochure and, in our view, it is fully adequate.

16 NRC at 1274 (footnotes omitted).

In deciding whether there is a litigable issue, LILCO believes the Board should keep in mind the standards for judging emergency brochures, as articulated in the cases cited

3/ Cf. South Carolina Electric Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-82-57, 16 NRC 477, 490-91 (1982), where, in response to contentions that the brochure "understated the possible effects of radiation on people," the board found that "[n]one of the criticisms negated the brochure's fulfillment of the requirements of NUREG-0654 and 10 CFR § 50.47" (id. 490) and that "public education regarding the characteristics and consequences of nuclear accidents is not necessary for the emergency preparedness plan to function effectively; nor is the Applicant's emergency information brochure sufficiently flawed to impair its usefulness." Id. 491.

above. First, the brochure must be judged "in its entirety" (Waterford, 16 NRC at 1274); the question is whether the brochure, taken as a whole (especially pages 14-16), complies with the guidelines that it provide "general information as to the nature and effects of radiation" (Appendix E, IV.D.2) and "educational information on radiation" (NUREG-0654, II.G.1). Also, the brochure must "adequately [inform] the public about the nature of radiation" (Waterford, 17 NRC at 962), it must inform the public what to listen for and what to do (Three Mile Island, 14 NRC at 1525), and it must not be "sufficiently flawed to impair its usefulness" (Summer, 16 NRC at 491). The Board should keep in mind the primary purpose of the brochure, which is to "inform the public what to listen for and what to do" (Three Mile Island, 14 NRC at 1525) and "to prepare people to turn on their radio and television stations upon the activation of the sirens" (Waterford, 17 NRC at 960). What these standards suggest is that the emergency planners responsible for the brochure are allowed a certain amount of discretion; a mere disagreement by an intervenor over shades of meaning does not mean the brochure must be changed, nor does it raise a litigable issue of fact.

In short, LILCO does not believe that more information about radiation is needed even as a matter of prudence. Even less is it required to meet the guidelines of NUREG-0654 or the NRC regulations. But to some extent the question is a matter

of judgment. If the Board's judgment is different from LILCO's and it feels a substitution of its judgment is necessary to meet NRC regulations, then LILCO is willing to change the brochure. It is simply not worth using up hearing time to argue about it.

With respect to the remaining contentions (J, K, L, and M), Suffolk County has represented that the proposed language in its letter of April 12 is "the only means of stating the truth." For these contentions, then, the Board is faced with a clear choice between the reasonableness of the words chosen by LILCO and the reasonableness of the words that Suffolk County says are the only acceptable ones.

B. Contention 16.J

Contention 16.J reads as follows:

- J. The brochure does not describe what radio stations are participants in the EBS system. See FEMA Report at 6, citing non-compliance with NUREG-0654, Section II.G.2.

It is true that the present, pre-publication version of the brochure does not list the radio stations. But the published version will; the EBS stations will be listed in the brochure before it is mailed to the public (Annex 18 and Affidavit of Carol A. Clawson). In fact, the brochure (page 6), in its present form, states that the list of EBS Stations is "[t]o be completed prior to mailing to public" (Annex 17). There is simply no material issue to be heard.

LILCO has signed letters of agreement with most of the local radio stations (Annex ¶5). See Direct Testimony of Carol A. Clawson, Matthew C. Cordaro, and Charles A. Daverio on Phase II Emergency Planning Contention 20 (WALK Radio Broadcasting at Night) at 8, ff. Tr. 5254 and Clawson, Tr. 5253. These letters of agreement include a provision that the public information materials to be distributed by LILCO to the public will indicate that the radio station is participating in the EBS system (Annex ¶6). See Direct Testimony of Carol A. Clawson et al., supra, Attachments 4-12, ff. Tr. 5254. LILCO is discussing the local EBS arrangements with additional radio stations in Suffolk County and anticipates that several other stations will sign letters of agreement to participate in the Emergency Broadcast System. See id. 8, ff. Tr. 5254 (Annex ¶5). All of the radio stations with which LILCO presently has a signed letter of agreement or with which LILCO obtains a written agreement in the future will be listed in the final brochure that will be distributed to the public (Annex ¶ 8 and Affidavit of Carol A. Clawson). Contention 16.J, therefore, should be resolved summarily in LILCO's favor.

C. Contentions 16.K and L

Contentions 16.K and L read as follows:

K. The brochure states (at page 9) that "[y]ou will find it easy to get to your relocation center if you travel along the recommended route." This is a

mischaracterization of the facts. The suggestion that evacuation will be "easy" makes LILCO's brochure inaccurate, misleading and not credible.

L. The brochure states (at page 9) that the routes recommended to the evacuees will be the "safest and fastest way out of the emergency planning area." This statement is inaccurate, misleading, and renders the brochure not credible. Residents of the EPZ will know that the routes prescribed by LILCO are not the "fastest" way out of the zone.

Contentions 16.K and L challenge two sentences in the brochure relating to traffic issues not yet decided by this Licensing Board. The only substantive standards in the regulations and NUREG-0654 about what needs to be provided by way of traffic information is that the information must include such things as "the protective actions planned if an accident occurs" (10 C.F.R. Part 50, Appendix E, IV.D.2) and what the actions of the public "should be in an emergency" (NUREG-0654, II.G.1), including "protective measures, e.g., evacuation routes and relocation centers" (id.).

Missing from the contention is any suggestion as to why the intervenors believe changing the disputed sentences would make for a better emergency response. The two sentences are designed to encourage the use of recommended evacuation routes; apparently the intervenors would prefer to discourage use of these routes, presumably to make the emergency plan less effective. For this reason alone, Contentions 16.K and L should be resolved summarily in LILCO's favor.

Moreover, the two sentences accurately reflect the traffic aspects of the LILCO evacuation plan. They are "inaccurate" only if the intervenors are correct on the traffic issues, principally Contention 65. The Board has already heard the evidence on Contention 65, and LILCO believes the evidence amply supports the statements in the brochure. If the Board's initial decision on the traffic issues concludes that the facts are other than stated in the brochure, then that is the time to order a change in the brochure. At present, Contention 16.K and L should be summarily resolved in LILCO's favor, with the condition that the two sentences must be conformed, if necessary, to the Board's decision on traffic issues. This is the type of thing that can be safely left for post-hearing resolution by the NRC Staff.

Alternatively, with respect to 16.K, if the Board agrees with Suffolk County about the "easiness" of evacuation, it can simply order LILCO to delete the sentence addressed by Contention 16.K. LILCO would rather do that than expend resources litigating the sentence.

D. Contention 16.M

Contention 16.M reads as follows:

M. The brochure states (at page 9) that evacuees should "Follow the blue and white pathfinder signs which are located on every major road in the 10-mile emergency planning area. They will direct you out of the area." An almost

identical statement is on page 8 of the Brochure. These statements are false. No such pathfinder signs exist or have been installed. Moreover, residents of the EPZ will know that such signs are not "located on every major road" in the EPZ. The statements render the brochure not credible.

While it is true that the pathfinder signs have not yet been put up, this does not raise a litigable issue of fact. Approximately 1000 pathfinder signs will be installed by LILCO before the brochure is distributed to the public (Annex ¶9 and Affidavit of Edward B. Lieberman). Contention 16.M is nothing more than a duplicate of the "legal authority" Contention 3. But even if Contention 3 were correct, it would not raise a litigable issue about the brochure. If LILCO, for whatever reason, were unable to install the pathfinder signs, reference to the signs would be omitted from the brochure; there is simply no reason to think otherwise.

The intervenors contend further that the brochure will not be credible because "residents of the EPZ will know that such signs are not 'located on every major road' in the EPZ." The intervenors are incorrect. First, LILCO's traffic consultant KLD Associates has analyzed the road network in the EPZ and has identified all major roads (Annex ¶10 and Affidavit of Edward B. Lieberman). The pathfinder signs, of which there will be approximately 1000, will be located on every major road in the EPZ (Annex ¶¶9 and 11 and Affidavit of Edward B.

Lieberman). While it is true that people may differ somewhat in what they mean by a "major" road, it is unreasonable to think that residents of the EPZ, who will see the pathfinder signs on various roads and know they exist, will think that the brochure is incredible because of LILCO's definition of a major road.

E. Possible other issues

In its letter of April 12, 1984, Suffolk County suggests that the "main" Contention 16 raises issues in addition to those in the lettered subparts. The County proposes language under the main portion that addresses 16.F and 16.N, which were denied admission by the Board. Memorandum and Order Ruling on Suffolk County's Motion for Leave to File Modified Contentions 16 and 18 Concerning the LILCO Public Education Brochure, slip op. 4 (Mar. 9, 1984). The County adds that its proposals are "not complete with respect to the concerns raised in the 'main' part of the Contention."

The main part of the contention ends with "[i]n particular." The subparts specify the particular concerns. The main contention "is considered to be a preamble for the subcontentions" and is not admitted separately. Special Prehearing Conference Order, slip op. 6 (Aug. 19, 1983). The County may therefore not use the main part to raise issues in addition to subparts E, J, K, L, and M.

IV. Conclusion

Because the contents of the brochure do not raise factual issues that can be resolved by testimony and cross-examination, Contentions 16.E, J, K, L, and M should be resolved summarily in LILCO's favor.

Respectfully submitted,

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