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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 MAY 21 A11:03

Before the Atomic Safety and Licensing Board

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

I. Introduction

On April 27, 1984, LILCO filed a motion for summary disposition on Contentions 16.E, J, K, L and M,^{1/} all of which pertain to the inadequacy of LILCO's public education brochure.^{2/} LILCO's Motion was accompanied by affidavits of Carol A. Clawson, Michael L. Miele and Edward B. Lieberman, as well as a Statement Of The Material Facts About Which LILCO Contends There Is No Genuine Issue To Be Heard On Contentions 16.E, J, K, L and M [hereinafter "Statement"]. This Response sets forth

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- 1/ LILCO's Motion For Summary Disposition Of Contentions 16.E, J, K, L and M (Public Information Brochure) (April 27, 1984) [hereinafter "Motion"].
 - 2/ Shoreham Nuclear Power Station: Public Emergency Procedures (Rev. 3).

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the basis for Suffolk County's opposition to LILCO's Motion. The County submits that the Motion should be denied because the admitted subparts of Contention 16 raise genuine issues of fact which remain in dispute. Annexed hereto is a Statement of Material Facts as to Which There Exist Genuine Issues to be Heard.

II. Discussion

Under 10 C.F.R. Section 2.749, the Board may grant a motion for summary disposition only if two conditions are met: first, "there is no genuine issue as to any material fact," and second, "the moving party is entitled to a decision as a matter of law." In this case, LILCO, as the proponent of the Motion, has the burden of demonstrating the absence of any genuine issue of material fact. Furthermore, this Board must view the record in the light most favorable to Suffolk County, which opposes the Motion. Dairyland Power Cooperative (LaCross Boiling Water Reactor), LPB-82-58, 16 NRC 512, 519 (1982); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977).

LILCO's Motion by and large fails to address the standards which must be applied to summary disposition motions under 10 C.F.R. Section 2.749. As will be discussed in greater detail

with respect to each of the subparts of Contention 16 at issue, LILCO's Motion simply ignores many of the factual issues contained in each subpart. And, many of the facts it asserts are not in dispute are irrelevant to the issues raised in Contention 16. For some subparts LILCO does not even purport to present facts not in dispute.

In lieu of focusing on the existence or absence of genuine issues of material fact, LILCO's Motion relies almost completely on a theory that the issues raised in Contention 16 are somehow different from other emergency planning issues and thus, in LILCO's view, are not "conducive" to a Board determination following an evidentiary hearings. LILCO concedes that it is appropriate for a Board to inquire into the accuracy and adequacy of the details of a public information brochure. Motion at 4-5. Indeed, a number of Boards have admitted contentions and held hearings concerning the contents of such brochures. See, e.g., 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). Nevertheless, LILCO asserts that the contents of LILCO's brochure do not raise factual issues that can be resolved by the Board upon consideration of testimony and cross-examination. Motion at 5. LILCO's reasons for this

strange assertion include the following: its belief that "the contention is wrong"; its opinion that the Board should adopt a "reasonable man" test which would inquire into whether members of the public would be "misled or otherwise induced by the brochure into making a less effective response to a radiological emergency"; its view that the facts at issue in Contention 16 involve "questions of judgment," and all the expert testimony in the world will hardly help the Board decide the issue"; and, its suggestion that "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." Motion at 5-6.

The premise of LILCO's Motion -- that summary disposition should be granted because the Board cannot rule on Contention 16 through the normal hearing process -- is flawed in several respects. First, its premise (that the factual issues raised in the contention are not resolvable by testimony and cross examination), its proposed "reasonable man test," and its proposal that the Board should sua sponte suggest changes in LILCO's brochure that LILCO can then accept or reject, have absolutely no precedent or basis in the NRC regulations or caselaw. LILCO

fails to state any authority to support its suggestion that summary disposition should be granted on an admitted contention -- even though there are factual issues in dispute -- because those issues involve "questions of judgment." Indeed, what LILCO appears to be suggesting is directly contrary to the NRC regulations, which provide for the submission of testimony, a hearing, and the submission of proposed findings prior to any Board rulings on a contention or suggestions as to how an applicant's submitted plan should be modified or revised.

Second, LILCO's premise is totally irrelevant to the issue presented to the Board in a summary disposition motion -- that is, whether genuine issues of material fact exist with respect to the contentions in question. Even LILCO concedes that there is a central fact in dispute with respect to Contention 16: it states that "the main reason" there are no "litigable" issues of fact (to use LILCO's terminology) is that "the contention is wrong." Motion at 5. Clearly, in asserting that the contention as a whole is "wrong," LILCO admits that there exists a factual dispute. Moreover, LILCO concedes that "the words of the brochure say what they say," but, contrary to the allegation in the contention, LILCO asserts that the conceded deficiencies "don't matter." See Motion at 5. The thrust of Contention 16 is that the words in the brochure do matter

because they render the brochure inaccurate, misleading, not credible, and in violation of the regulations. LILCO admits its disagreement with that allegation -- thus conceding the existence of a factual dispute -- but nonetheless submits that summary disposition should be granted because, in its view that "dispute" cannot be resolved by the Board based on a factual record compiled through the normal process of testimony and hearing. LILCO's argument simply side steps the requirement that there be no genuine issues of fact in dispute before summary disposition may be granted. The existence of that requirement, and LILCO's concession that there are facts in dispute, requires that LILCO's Motion be denied.

Third, LILCO offers no support, explanation or legal authority for its bald assertion that in its view expert testimony would not be useful to the Board in ruling on Contention 16 and determining the adequacy and accuracy of LILCO's brochure. Such testimony has in fact been heard by Boards in other cases. See, e.g., Waterford, supra; Big Rock Point Plant, supra. Since the point of Contention 16 is that LILCO's brochure is incomplete, misleading, not credible, or otherwise inadequate for purposes of educating the public, expert testimony concerning the effect of misleading or incomplete information, what constitutes incomplete, misleading or incredible information,

and related matters would clearly be pertinent. Indeed, the regulations do not contemplate the presentation of facts necessary to rule on admitted contentions by any other means, except by stipulation. The purpose of these proceedings is not, as LILCO appears to suggest, for the Board to look at a contention, and determine in a vacuum -- i.e., without any factual record -- whether it is right or wrong. The Board's rulings must be "based on the whole record and supported by reliable, probative, and substantial evidence." 10 C.F.R. § 2.760. Moreover, under § 2.743(a), the parties "have the right" to present evidence and conduct such cross-examination "as may be required for full and true disclosure of the facts." LILCO's unilateral opinion that a hearing and cross-examination would not be useful does not change the rules of this proceeding.

Fourth, LILCO's suggestion that summary disposition is appropriate because LILCO is willing to revise its brochure if the Board judges that all or part of the brochure is inadequate, (LILCO Motion at 5-6, 14, 18) is also without precedent, contrary to the NRC regulations, and irrelevant. The only version of LILCO's brochure presently before this Board is Revision 3. Admitted Contention 16 alleges that specific portions of that brochure are defective and in violation of regulations. The only issue properly before this Board is whether the

Contention is correct, given the Plan that has been submitted to the Board by LILCO. The Board must make that determination, either in a summary fashion or after a full hearing, based on the evidence placed before it by the parties. LILCO's expressed willingness to revise its brochure in the future if so directed by the Board has no bearing whatsoever on the Board's ruling on the existing Contention 16. If LILCO wishes to revise its brochure in the future, it may. However, the mere fact that revisions may or may not be made in the future does not justify or authorize this Board to grant summary disposition on an admitted contention as to which there exist facts in dispute.

For all these reasons, LILCO's Motion should be denied. We discuss below several additional reasons that summary disposition is not appropriate with respect to the subparts of Contention 16. on which LILCO has moved for summary disposition.

A. Contention 16.E

Contention 16.E states:

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 C.F.R. Section 50.47(b)(7), 10 C.F.R. Part

50, Appendix E, Section IV.D.2, and NUREG 0654, Sections II.G.1 and 2. In particular:

* * *

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.

In support of its motion for summary disposition of Contention 16.E, LILCO first asserts that the brochure is adequate because: (1) the brochure discusses radiation from man-made sources (watches, TVs, etc.) as well as natural sources; (2) the brochure discusses the low level of radiation released at TMI; and (3) the brochure compares the low levels of radiation emitted from normally operating plants with other low level sources. (LILCO Motion at 7; LILCO Statement at para. 1). Suffolk County does not dispute the fact that certain natural and man-made sources of low-level radiation, as well as the very low levels of radiation released during the TMI accident, are discussed in LILCO's brochure. Indeed, the Contention acknowledges that the brochure discusses natural and low levels of radiation. However, that fact -- which, indeed, is not in

dispute -- is irrelevant to the issue raised in Contention 16.E: whether the brochure adequately discusses the magnitude and health effects of doses resulting from exposure to a severe accident, such as an accident requiring evacuation, and whether the brochure's discussion of radiation and health effects renders the brochure incredible. Clearly, paragraph 1 of LILCO's statement and the brochure's discussion of natural and low level radiation doses, does not eliminate the factual issues presented in Contention 16.E.

LILCO next asserts that the failure to discuss the health effects of the amounts of radiation that could be released during an accident is proper, and summary disposition of Contention 16 is appropriate, because of the following so-called "facts": (1) "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 activities of the commercial nuclear power industry"; (2) "even if these high doses did occur; they would not change the protective actions that would be taken"; and (3) "a discussion in the brochure of high doses of radiation might give people an unrealistic idea of the radiation exposure that would most likely be encountered in a severe accident." LILCO Motion at 7-8; Statement at paragraphs 2-4. In the County's view, these "statements" in reality demonstrate the factual dispute that exists between the parties.

First, although the first so-called "fact" is contained in Mr. Miele's Affidavit, LILCO states no source authority, or basis for the second or third "facts," or for LILCO's assertion that they are not "in dispute." They are unattributed, unsupported, bold conclusory assertions -- they cannot form the basis for summary disposition.

Second, Mr. Miele's assertion, even if assumed to be true, is irrelevant, and does not eliminate the issues raised in Contention 16.E. The probability of a particular dose, or of the need for an evacuation order, has nothing to do with the regulatory requirements concerning public information materials. The assertion that because there is a low probability of a high dose justifies not discussing such doses also is contrary to logic and without basis in NRC regulations or guidelines.

The NRC's emergency planning regulations require planning and preparedness for a radiological emergency. 10 C.F.R. Section 50.47 and Part 50, Appendix E. Public information and education about such emergencies and the nature of radiation is a specific requirement under 10 C.F.R. Section 50.47(b)(7), Part 50, Appendix E, IV.D.2, and NUREG 0654, Section II.G.1. None of these regulations or guidelines restricts the information to be supplied only to events which have occurred at nuclear power plants in the past or to doses below a certain

level. Indeed, NUREG 0654 calls for planning, including public information, to cover an entire spectrum of possible accidents, not just those releasing low levels of radiation. NUREG 0654, Section I.D.1. Thus, the fact that the public has never been exposed in the past to doses high enough to require evacuation, does not eliminate the regulatory requirement that the public be provided with information about such doses and their associated health effects. By LILCO's logic, there would be no necessity for its plan to cover a 10-mile evacuation or ingestion pathway protective actions because they have never been ordered at other plants in the past. Clearly, LILCO's so-called "undisputed fact" in paragraph 2 of its Statement is irrelevant.

Third, LILCO's assertion that summary disposition is appropriate because a discussion of high dose levels might give people an unrealistic idea of what they would likely encounter in a severe accident (Statement, para. 2), is also wrong. To the contrary, this so-called "undisputed fact," without identified source or basis, does nothing but directly contradict the allegations in the Contention, and thus demonstrates that summary disposition is inappropriate. As stated in Contention 16.E, it is precisely LILCO's failure to disclose the facts about radiation doses that could occur during a severe accident which could give the public an unrealistic view of the hazard

they would face during a severe accident. As the Contention states, LILCO's failure to inform the public of what could occur in the event of a severe accident renders LILCO's brochure not credible. Clearly, there exists a factual dispute on this matter which must be resolved by the Board after hearing the evidence presented by the parties. There is simply no basis at this point for a finding that LILCO, rather than Intervenor, are correct. LILCO's assertion without any stated basis, that the opposite of an allegation in a contention is, in its view, "not in dispute," does not authorize this Board to grant summary disposition under § 2.749.3/

LILCO's assertion that various statements in its brochure "should adequately advise the public that radiation, and nuclear plant accidents, can be hazardous" (Motion at 9), also fails to justify the granting of summary disposition. First, this assertion is, like the so-called "facts" in paragraphs 3 and 4 of the Statement, apparently the opinion of LILCO's counsel; it

3/ LILCO's footnote 1 on page 8 of the Motion should be disregarded in its entirety. In that footnote, LILCO creates a strawman ("it may be that . . . Suffolk County wants to litigate . . . the whole BEIR III issue. . . .") and then knocks it down. LILCO's speculation as to the County's intentions is inappropriate and irrelevant. The County will submit testimony relevant to Contention 16.E. If, after such testimony has been filed, LILCO believes it is beyond the scope of Contention 16.E, it can at that time file a Motion to Strike.

is not attributed to any source in the record or elsewhere. It cannot be taken by the Board as an "undisputed" fact. Second, this assertion once again highlights the existence of a factual dispute. Contention 16.E alleges that the discussion in the brochure is inadequate; LILCO's counsel asserts that it is adequate. Clearly, the parties must submit their respective evidence on this matter to the Board so the facts can be evaluated and a ruling made. There is no basis here for summary disposition.

Finally, LILCO attempts to support its argument in favor of summary disposition of Contention 16.E with citations to a number of cases which have upheld the adequacy of various applicants' brochures. Motion at 10-14. LILCO fails to point out, however, that in none of those cases was the issue decided on a motion for summary disposition. Those cases once again highlight the flaws in LILCO's argument that issues regarding public information brochures do not lend themselves to testimony and hearings; in each case cited by LILCO, the board heard evidence on the merits of the particular brochures at issue. Only after having heard the testimony offered by the parties did those boards rule on the contentions before them. Clearly, the same procedure is necessary in this case. The Board cannot make a finding on Contention 16.E based on the existing factual

record identified by LILCO in its Motion: it consists only of Mr. Miele's Affidavit, which is not relevant to the issues in Contention 16.E in any event. There is no basis for summary disposition of Contention 16.E.

B. Contention 16.J

Contention 16.J reads as follows:^{4/}

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.

LILCO admits that the present version of the brochure does not list the radio stations that are participating in LILCO's emergency broadcast system. In support of its Motion, however, LILCO offers an affidavit by Carol Clawson, a LILCO employee, which states that such stations will be listed in the brochure before it is mailed out, and that LILCO has agreements with many radio stations to participate in the broadcast system LILCO proposes to set up. Statement at paragraphs 5-8 and Clawson Affidavit.

^{4/} In the interest of brevity, the main portion of Contention 16, set forth above with subpart E, will not be repeated here or with any of the other subparts discussed below. However, all of the subparts of Contention 16 must be read in conjunction with the main contention.

LILCO's statement of an intention to revise its brochure in the future is not proper ground for granting summary disposition. Indeed, since LILCO admits that the version of the brochure presently before the Board contains no listing of radio stations, summary disposition should be granted in favor of Intervenor. If the brochure is in the future revised to include a listing of stations that are in fact part of LILCO's radio system, then LILCO may at that time move for summary disposition.

In addition, Contention 16.J presents an issue of fact that LILCO has failed to address in its Motion. Although Ms. Clawson mentions in her Affidavit agreements with various radio stations, the contents of those agreements have been mischaracterized. A review of the letters of agreement between LILCO and the radio stations (a sample letter of agreement is Attachment 1 to the Statement of Material Facts as to Which There Exist Genuine Issues to Be Heard), reveals that actual participation in the system LILCO proposes to create is left to the discretion of the individual station management at the time of an actual emergency. See LILCO Direct Testimony on Contention 20, Attachments 5-12, ff. Tr. 5254; see also Tr. 5315. This fact, which is already in evidence, indicates that the mere existence of LILCO's letters of agreement does not assure

that any stations will actually participate in the LILCO broadcast system during an emergency. Thus, LILCO's "facts" set forth in paragraphs 5-8 of its Statement do not resolve the issue raised in Contention 16.J. Even if LILCO has a letter of agreement, a statement in the brochure that a station with which LILCO has such an agreement is a participant in LILCO's radio system could be inaccurate.

C. Contentions 16.K and 16.L

Contentions 16.K and 16.L both concern the LILCO brochure's description of the traffic conditions likely to prevail during a radiological emergency. They 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.

There are clearly facts in dispute regarding these contentions. Indeed, LILCO was unable to include in its attached

Statement even one fact not in dispute with respect to subparts K and L. The reason is simple. The parties clearly disagree on the traffic conditions that will exist during an evacuation and the effect of traffic on whether LILCO's recommended routes will be either "easy" to traverse or the "fastest and safest way out" of the EPZ. As LILCO correctly notes, these matters are discussed in other testimony already submitted by the parties on other contentions.

Significantly, however, Contentions 16.K and L also raise a separate issue which, in fact, is the point of these contentions; the referenced characterizations in LILCO's brochure make the brochure inaccurate, misleading and not credible. In its Motion LILCO simply ignores that issue, which is plainly raised in Contention 16.K and L. Clearly, there exist issues of material fact concerning the accuracy and credibility of the brochure which must be resolved by this Board with respect to each of these contentions. There is no basis for summary disposition.

LILCO's assertion that the statements in its brochure are designed to encourage use of LILCO's recommended evacuation routes (Motion at 17) is inapposite.^{5/} LILCO's intentions in

^{5/} LILCO's Motion at 17 makes unwarranted, baseless, and inappropriate assertions concerning the intervenors'

(Footnote cont'd next page)

drafting its brochure are not at issue here. The credibility of the brochure, its effectiveness as a public information tool, and its impact upon the implementation of the LILCO Plan are the issues presented in Contention 16. LILCO's Motion ignores those issues; however, in ruling on Contention 16 the Board must address them. It cannot do so without the submission of evidence by the parties. LILCO has failed to establish any basis for summary disposition.

Finally, LILCO's statement that it "would rather" the Board grant it summary disposition and "order" it to change its brochure "than expend resources litigating" Contentions 16.K and L, almost defies response. It is no surprise that LILCO would prefer not to litigate contentions; its suggestion, however, that the Board could or would, sua sponte and without hearing any evidence on the brochure, order changes in the brochure at some future date, either after having granted LILCO summary disposition, or in lieu of such a ruling, is simply preposterous. There is no provision in the NRC regulations for

(Footnote cont'd from previous page)

preferences and motives. The County hereby reiterates both its belief that such personal attacks and ascriptions of motives are improper, and its request that this Board instruct LILCO counsel to refrain from making such gratuitous, irrelevant and unwarranted comments in the future.

using such a procedure to rule on admitted contentions. LILCO admits there are facts in dispute; evidence must be submitted and evaluated by the Board before subparts K or L of Contention 16 can be ruled upon.

D. Contention 16.M

Contention 16.M, which concerns the brochure's statements about "pathfinder" signs, is set forth below:

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.

LILCO admits that the Contention is correct in stating that the pathfinder signs at issue have not been installed. Motion at 18-19. Yet, LILCO asserts, that "does not raise a litigable issue of fact" because LILCO intends to install about 1000 signs prior to the distribution of the brochure. Statement at para. 9.

As noted above, however, LILCO's intention to do something in the future is an insufficient basis for granting a motion for summary disposition, as is its statement that "there is simply no reason to think" that if LILCO were unable to install the signs, reference to the signs would not be omitted from the brochure. Contention 16.M deals with the brochure that LILCO has submitted to the Board as the basis for its issuance of license. LILCO admits that the Contention is correct in stating that the referenced portions of the brochure are false. LILCO's suggestion that this Board should ignore the contents of the brochure submitted by LILCO, and rule, in effect, that an admittedly accurate statement in the contention is false (by granting summary disposition in favor of LILCO) should be rejected out of hand. Given the facts now before the Board, upon which its rulings must be based, summary disposition on Contention 16.M could only be granted in favor of intervenors. Statements of "intentions" here not even made by LILCO, do not constitute evidence or facts in the record upon which the Board could rule on Contention 16.M.

Furthermore, LILCO's assertion that Contention 16.M is "a duplicate" of Contention 3 is simply wrong. Contention 3 does not address in any way the accuracy or credibility of LILCO's brochure. Similarly, Contention 16 does not mention LILCO's legal authority.

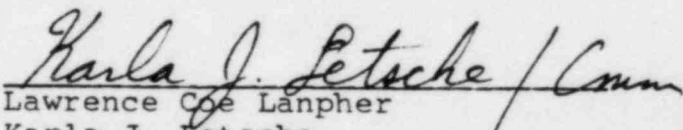
Finally, LILCO's discussion of "major roads" in the EPZ is irrelevant. The point of the allegation that "residents of the EPZ will know that such signs are not 'located on every major road' in the EPZ" is not to contest whatever LILCO may define to be "major" roads. The point is that because there are no signs installed, the public will immediately know that the referenced statement in the LILCO brochure is false, and will accordingly regard the brochure as not credible.

Conclusion

For the reasons stated above, LILCO's Motion For Summary Disposition Of Contentions 16.E, J, K, L and M should be denied.

Respectfully submitted,

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Dated: May 17, 1984

Suffolk County Statement of Material
Facts As To Which There Exists A
Genuine Issue To Be Heard Concerning Contention 16

Suffolk County contends there exist genuine issues in dispute concerning the following facts which are material to a ruling on Contention 16.

Contention 16.E

1. Whether LILCO's brochure adequately addresses the magnitude of doses the public might receive during a severe accident at Shoreham, such as an accident requiring evacuation.
2. Whether the failure to include such information renders LILCO's brochure not credible.
3. Whether LILCO's brochure adequately addresses the health consequences of the doses the public might receive during a severe accident at Shoreham, such as an accident requiring evacuation.
4. Whether the failure to include such information renders LILCO's brochure not credible.
5. Whether, as asserted in LILCO's Statement at paragraph 4, a discussion in the brochure of high doses of radiation might give people an "unrealistic" idea of the radiation exposure that would likely be encountered in a severe accident.

6. Whether, contrary to the assertion in LILCO's Statement at paragraph 3, the public's behavior during a radiological emergency would be different depending on the information given to it regarding the dose levels that may be experienced in the event of a radiological emergency at Shoreham.

Contention 16.J

7. The following fact is not in dispute: LILCO's agreements with the radio stations allegedly participating in its proposed broadcast system state that each station "shall use its full daytime facilities during nighttime hours . . . to broadcast emergency information when necessary, in the station's discretion, to the safety of life and property during an emergency at the Shoreham Nuclear Power Station" (emphasis added). See LILCO Direct Testimony on Contention 20, Attachments 5-12, ff. Tr. 5254; see also Attachment 1 to this Annex. Given this fact, the following issue is in dispute: Whether, contrary to LILCO's Statement at paragraphs 5-8, the existence of a letter of agreement with a radio station means that that station will be a participant in LILCO's broadcast system in the event of an actual emergency.

8. Whether, given the undisputed fact and the issue presented in issue no. 7 above, LILCO's brochure can provide an

accurate list of radio stations which will in fact participate in LILCO's broadcast system during an emergency.

9. Whether LILCO's failure to include such an accurate listing in its brochure renders the brochure not credible.

Contentions 16.K and 16.L

10. Whether the statement in LILCO's brochure at 9 that it will be "easy to get to your relocation center if you travel along the [LILCO's] recommended route" is accurate.

11. Whether the above statement renders LILCO's brochure not credible.

12. Whether the statement in LILCO's brochure at 9 that LILCO's recommended evacuation routes are the "fastest and safest way out of the emergency planning area" is accurate.

13. Whether the above statement renders LILCO's brochure not credible.

Contention 16.M

14. In light of the fact, admitted by LILCO, that there are no pathfinder signs installed anywhere in the EPZ, whether the statement in LILCO's brochure at 8 that pathfinder signs

"are located on every major roadway" in the EPZ and that the "signs will direct you along predesignated routes out of the zone" renders LILCO's brochure not credible.



LONG ISLAND LIGHTING COMPANY

175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

MATTHEW C. CORDARO, Ph.D.
VICE PRESIDENT

December 16, 1983

Mr. Lloyd Parker
General Manager
WLIX Radio
138 West Main Street
Bayshore, NY 11706

Dear Mr. Parker:

Recently, a member of LILCO's Public Affairs staff met with representatives of WLIX Radio to outline the station's participation in promptly notifying the Long Island community in the event of an emergency at the Shoreham Nuclear Power Station. The purpose of this letter is to formalize the agreement which was reached at that meeting.

As used in this letter, the term "Common Program Control Station" refers to the radio station now broadcasting at 97.5 MHz, licensed to Patchogue, New York and known as WALK-FM. The term "LERO" refers to the Local Emergency Response Organization which has been established to implement an offsite emergency response in the event of an accident at the Shoreham Nuclear Power Station. This response shall include, but not be limited to, the activation of the Prompt Notification System (including the Emergency Broadcast System) and the implementation of protective actions for the public.

FIRST: WLIX agrees to cooperate with the Long Island Lighting Company and LERO in the development of an Emergency Broadcast System (EBS). The primary purpose of the said EBS shall be to convey information to members of the general public in the event of an emergency at the Shoreham Nuclear Power Station. WLIX also agrees to cooperate in the development of any procedures which shall be necessary to effectively carry out the purposes of the EBS.

SECOND: The Long Island Lighting Company agrees to provide, and WLIX agrees to install, a broadcast receiver, tuned to the frequency of the Common Program Control Station (CPCS), which is capable of being muted. The said receiver shall meet the requirements of EBS attention signal equipment as set forth in Chapter I, Subpart G of Title 47 of the Code of Federal Regulations. Equipment provided by LILCO under this paragraph shall be installed in such a way that it enables WLIX's staff, at normal duty locations, to be alerted instantaneously upon receipt of the attention signal and to immediately monitor the emergency programming on the CPCS. WLIX further agrees to insure that the equipment described in this paragraph is in functioning condition during all times that the station is in operation and to determine the cause of any failure to receive weekly transmission tests originated by the CPCS.

Mr. Lloyd Parker

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December 16, 1983

THIRD: It is understood that, when a decision to activate the Emergency Broadcast System is made, all information broadcast pursuant to such activation by the Common Program Control Station shall be rebroadcast over WLIX as soon as practicable.

FOURTH: WLIX shall use its full daytime facilities during nighttime hours, pursuant to 47 C.F.R. 73.1250(f), to broadcast emergency information when necessary, in the station's discretion, to the safety of life and property during an emergency at the Shoreham Nuclear Power Station.

FIFTH: WLIX understands the importance of educating the public, in advance, as to the operation of the Emergency Broadcast System and its participating stations. Accordingly, WLIX agrees to permit LILCO to use its call letters and frequency assignment and to reproduce its logo in educational materials which will be published in general circulation print media and/or distributed to addresses within 10 miles of the Shoreham Nuclear Power Station. Mention of WLIX in these materials shall indicate only that the station is participating in the Emergency Broadcast System and shall not be prepared in such a way as to suggest the station's endorsement of LILCO's activities or nuclear power. Nothing in this paragraph shall be construed to require WLIX to promote its own involvement in the EBS or to expend any funds for the purpose of public education.

SIXTH: Nothing in this agreement is intended to impose any restriction on WLIX's right to independently gather, produce, write or broadcast news and information regarding the Long Island Lighting Company, its facilities or operations.

SEVENTH: LILCO will bear all costs associated with the organization and operation of the system including all equipment and communication services.

EIGHTH: LILCO will be responsible for its negligent acts or omissions, and will defend, indemnify and hold WLIX, its officers, directors and employees harmless from and against all loss, damage, liability, suit, claim or judgment, for property damage (whether to your equipment or otherwise), and for bodily injury or death, arising out of or in any way connected with LILCO's negligent use of the emergency broadcast system pursuant to this agreement.

NINTH: The indemnity given to WLIX is no less favorable than that given to any other station participating in the system.

TENTH: WLIX's participation is terminable at will upon notice to LILCO.

If the foregoing comports with your understanding of our agreement, please countersign this letter and return it in the envelope provided. I appreciate your participation in the Emergency Broadcast System.

Very truly yours,

Matthew C. Cordaro
Matthew C. Cordaro, Ph.D.
Vice President

Lloyd Parker
Lloyd Parker
General Manager - WLIX Radio

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
)

LONG ISLAND LIGHTING COMPANY)

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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S RESPONSE TO LILCO'S MOTION FOR SUMMARY DISPOSITION OF CONTENTIONS 16.E, J, K, L AND M (PUBLIC INFORMATION BROCHURE) dated May 17, 1984, have been served to the following this 17th day of May 1984 by U.S. mail, first class, except as otherwise noted.

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Dated: May 17, 1984

* By Hand
By Federal Express