

LILCO, March 9, 1984

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-OL-3
) (Emergency Planning Proceeding)
(Shoreham Nuclear Power Station,)
Unit 1))

LILCO'S MOTION TO STRIKE PORTIONS OF THE
DIRECT TESTIMONY OF PHILIP B. HERR
ON CONTENTION 22.D -- INADEQUACY OF LILCO'S EPZ

Pursuant to 10 C.F.R. § 2.743(c), the Long Island Lighting Company (LILCO) moves to strike portions of the "Direct Testimony of Philip B. Herr on Behalf of Suffolk County Regarding Emergency Planning Contention 22.D -- Inadequacy of LILCO's EPZ." The basis for striking the testimony is that it is outside the scope of Contention 22.D and, thus, is not relevant and that it is cumulative and repetitious.

Contention 22.D reads as follows:

Contention 22.D. 10 CFR Section 50.47(c)(2) provides that two elements essential to defining the configuration of an EPZ are the location of local jurisdictional boundaries and demographic conditions. Thus, it is good emergency planning practice to include, if possible, the entire area of a local municipality within the boundaries of an EPZ. At a minimum, an EPZ should avoid dividing major population centers within a local municipality. See NUREG 0654, Section I.D.a.

LILCO's EPZ fails to meet the criteria of 10 CFR Section 50.47(c)(2) and NUREG 0654 because the proposed LILCO EPZ runs through and divides the villages of Port Jefferson and Terryville and the town of Riverhead. The EPZ should be extended to include all of Port Jefferson and Terryville and additional portions of Riverhead (those portions in the area 1-2 miles to the immediate east of the proposed EPZ which contain dense population and Riverhead's business district).

This contention, which concerns the configuration of the plume exposure pathway EPZ, speaks of "jurisdictional boundaries" and "demographic conditions," and says that an EPZ should "avoid dividing major population centers." The crux of the contention is that the EPZ should be extended "to include all of Port Jefferson and Terryville and additional portions of Riverhead (those portions in the area 1-2 miles to the immediate east of the proposed EPZ which contain dense population and Riverhead's business district)." In short, the only principles cited in the contention are that the boundary of an EPZ should (1) follow jurisdictional boundaries and (2) avoid dividing population centers.

By contrast, some of Professor Herr's testimony criticizes the Shoreham EPZ on other principles altogether and, therefore, is not fairly within the scope of Contention 22.D. The portion of Professor Herr's testimony that LILCO seeks to strike (page 13 and page 14, lines 1-6) raises two issues that are beyond the scope of Contention 22.D. First, the testimony discusses people from the East End attempting to enter the EPZ and thus attempts to

relitigate the "shadow phenomenon" issue of Contention 23. Second, the testimony raises the issue of whether the LILCO Transition Plan provides adequate measures for perimeter control and thereby attempts to relitigate Contention 23.H. In addition, the fact that these issues have already been litigated in Group I renders the testimony, which is the subject of this motion, cumulative and repetitious.

I. Shadow Phenomenon

In Professor Herr's testimony on Contention 22.D he states that:

Many people from the East End will seek to move westward during an evacuation and, of course, many may attempt to enter the EPZ on the way west. (See Testimony of Ziegler and Johnson on Contention 23 at 32-33).

Herr testimony at 13. The citation in the Herr testimony itself clearly demonstrates that the Herr testimony is cumulative and repetitive of other testimony, as well as outside the scope of Contention 22.D. The cited testimony states:

The County's survey revealed that in the event of a radiological emergency at Shoreham requiring evacuation of the 10-mile EPZ, approximately 46 percent of the people living east of the EPZ would attempt to evacuate. The vast majority stated that they would seek to go west, thus avoiding being "trapped" at the tip of the island. In order to do so, the East End evacuees would most likely be required to travel on the Long Island Expressway or the Sunrise Highway.

Testimony of Johnson and Ziegler on Contention 23, at 32-33. The

testimony of Peter A. Polk on Contention 23 contains similar language:

Of the persons east of the EPZ who indicated they would attempt to evacuate, the overwhelming majority stated that they would travel west. The only way for them to do so is to use routes (particularly the Long Island Expressway and the Sunrise Highway) passing through or along the edge of the EPZ

Polk testimony at 3-4. Finally, Professor Herr himself testified on Contention 23 about the "shadow phenomenon" at the East End. He stated that:

Should an accident result in interdiction of an area just larger than 10 mile radius, the East End of Long Island would be isolated, with all east-west routes cut off. For many people, the spectre of that occurrence looms large. As a result, there is special concern by and for the East Enders who, therefore, may be motivated to attempt evacuation without orders.

Herr Testimony on Contentions 65 and 23.D, at 51-52.

As the above quoted passages clearly demonstrate, the Herr testimony, which is at issue in this motion, is outside the scope of Contention 22.D and, therefore, should be stricken as irrelevant. The issue raised by the testimony on Contention 22.D was litigated as part of the Group I issue called "shadow phenomenon" and the current testimony should be stricken as cumulative and repetitious.

II. Perimeter Control

Professor Herr's testimony on pages 13 and 14 that concerns perimeter control likewise is outside the scope of Contention 22.D, cumulative, and repetitive. The testimony states, in essence, that there are an inadequate number of manned traffic control points to effectively control traffic at the EPZ boundary. This is precisely what the testimony of Inspector Roberts et al. testified about with respect to Contention 23.H. A comparison of Professor Herr's testimony on Contention 22.D with that of Inspector Roberts et al. on Contention 23.H demonstrates that they discuss the same issue. Professor Herr's testimony states:

To be completely effective at all in discouraging the entry of traffic into the EPZ, there must be information at each entry point about the risks of proceeding further. Once informed, there must also be a reasonable way for drivers who do not wish to proceed to change direction. The way the EPZ is presently configured, however, there are about 15 streets which enter it north of the Peconic in the Riverhead area. Yet, LILCO calls for only four of those points to be manned. Moving the EPZ boundary eastward at Riverhead so it does not cut through the center of a complex traffic pattern, would reduce substantially the number of cross streets entering the EPZ.

Herr testimony at 13. The testimony of Inspector Roberts et al. states:

The LILCO Plan fails to provide adequate measures to control access into the EPZ from the East End of Long Island or from Long Island Sound. . . . Moreover, it would be necessary to provide roadblocks or other traffic control measures at many more than this single location in order to reroute westbound traffic from the East End south toward the Sunrise Highway. Attachment 12 to this testimony sets forth other locations that would have to be manned. [Attachment 12 lists nine additional traffic control posts that Suffolk County alleged would have to be manned to prevent westbound traffic from traveling west towards the EPZ.]

Roberts et al., at 76.

While Suffolk County's testimony on Contention 23.H dealt solely with perimeter access at the East End, and Professor Harris' testimony on Contention 22.D also includes a discussion of perimeter access from the west end in the area of Port Jefferson, it is clear that the issue of perimeter access is one that could and with respect to the East End was raised in connection with Contention 23.H. The issue of and testimony on perimeter access was fairly raised by Contention 23.H. The County should not be permitted to relitigate this issue in the guise of Contention 22.D. Testimony concerning perimeter access is outside the scope of Contention 22.D and, therefore, should be denied admission as irrelevant. Moreover, the fact that the County has already filed testimony on perimeter control makes Professor Herr's testimony on that subject in connection with Contention 22.D cumulative and repetitious.

Conclusion

For the reasons stated above, LILCO moves this Board to strike the testimony which is the subject of this Motion as unduly repetitious, cumulative and irrelevant.

Respectfully submitted,

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DATED: March 9, 1984