

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'83 JUN 10 A10:42

Before the Atomic Safety and Licensing Board

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

NSC's RESPONSE TO LILCO'S MEMORANDUM OF SERVICE
OF SUPPLEMENTAL EMERGENCY PLANNING INFORMATION

Under date of May 26, 1983, LILCO filed five emergency plans, purportedly to comply with the Licensing Board's Memorandum and Order denying Suffolk County's Motion to Terminate the Shoreham Operating Licensing Proceeding, LBP-83-22, April 20, 1983 (Order). The Order held that LILCO is entitled to the opportunity to demonstrate that it ". . . is capable of providing that degree of off-site emergency preparedness necessary to entitle it to a full power license without the cooperation of Suffolk County (the County)" (Order, p.2), a proposition which LILCO has persistently urged on the Board. The Order therefore allowed LILCO to present a utility-sponsored plan that would provide reasonable assurance that the public's health and safety will not be endangered by a radiological emergency at Shoreham.

LILCO's May 26, 1983 submission is fatally flawed. It simply violates the Order. Instead of a utility plan, LILCO has filed five "plans", all which, it has the effrontery to state, should require contentions from the Intervenors (LILCO Memorandum, p.2, fn. 3). It has variously entitled these "plans": the LILCO-

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County "plan", the LILCO-State "plan", the LILCO-FEMA "plan", the LILCO-NRC "plan", and the LILCO "transition plan". Despite its disclaimer, LILCO necessarily invites the Intervenors to pick and choose among the "plans", an invitation which NSC declines.

None of these "plans", with the possible exception of the "transition plan", meets the criteria of the Order. We repeat that the Order authorizes LILCO to submit a utility plan, i.e., one that could be implemented by LILCO personnel and facilities. It is hard to believe, but seemingly it is true, that LILCO seriously suggests that NSC and the other Intervenors should submit contentions on the LILCO-County "plan" when the County has repeatedly stated, as the Order recognizes, that it will not participate in any emergency planning. LILCO applies this outlandish suggestion not only to the LILCO-County "plan", the plan which LILCO refers to as "central" to determining the feasibility of emergency preparedness on Long Island (LILCO's Memorandum, p.3), but also to the "transition plan" (LILCO's Memorandum, p.11, fn. 8) which purports to "incorporate" County personnel after an emergency has occurred. It is hard to think of a more fruitless, time-wasting endeavor for NSC and the Intervenors than to devote time, effort and expense to the contention drafting process ordered by the Board for a plan that blandly "incorporates" avowed and permanent non-participants.

The other "plans" suffer from the same infirmity. One searches in vain in either the LILCO-State, LILCO-FEMA, or LILCO-NRC "plans" for a guarantee that any of these agencies have either the authority or capability to place personnel or facilities at

the disposal of LILCO in case of a radiological emergency. There is not the hint of an offer of cooperation by either the State, FEMA or NRC in the procedures "volunteered" for them by LILCO. One must conclude that LILCO does not have even the minimum assurances from any of these agencies that the cooperation fantasized by LILCO will materialize. These plans are chimeras unworthy of further attention. NSC and the other Intervenors should not be required to draft contentions for plans that have not the slightest chance of materializing.

LILCO's submission also violates Section 109 of the NRC Authorization Act for fiscal year 1980 and Section 5 of the 1982/83 NRC Authorization Act.

Section 109(b)(1)(B)(II) authorizes NRC to issue an operating license in the absence of a State or local plan when it determines that

. . . there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned, . . .*

None of the "plans" satisfy this statutory requirement of being either a State, or a local, or a utility plan. They are LILCO's bastardized offspring which require the participation and cooperation, as yet not secured and, in the case of the County, unsecurable, of other agencies or governments.

The disjunctive, in Clause II may not be ignored. Had

*The Board has found that Section 5 of the 1982/83 NRC Authorization Act ". . . does not undo the Commission's implementation of Section 109 through 10 CFR §50.47(c)(1), which we have found to be the case." [Footnote omitted] (Order, p. 42-43).

Congress intended to authorize hybrids, it could have said so quite easily. The reason for the disjunctive is not hard to find. Congress recognized, although LILCO apparently cannot, that no utility could enforce the cooperation or participation of State or local government or federal or state agencies in a radiological emergency plan. It therefore allowed a utility to promulgate a plan which relied on its own resources and personnel and to try to prove that the plan could reasonably assure the safety and health of the residents of the area. It did not authorize a utility to draft a plan which relied on co-opting the resources, thus far not tendered, of other agencies or governments.

It is possible that the "transition plan" may meet the statutory criteria and the Order. However, as matters now stand, NSC and the Intervenors require clarification by this Board of the status of the "plan" filed by LILCO.* NSC requests the Board to direct LILCO to state which of its "plans" it contends meets the Order, failing which the Board should summarily reject all the "plans" as not in compliance with the Order and authorize LILCO, if it is so minded, to submit a plan that meets the standards of the Order. If that is done, it will be possible to focus on the plan which complies with the Order. In that connection, NSC respectfully requests that the time to submit draft contentions be appropriately extended.

*NSC and the other Intervenors conferred in Washington, D.C. on June 2, 1983 on LILCO's submission.

ADDENDUM

NSC notes, with astonishment, that it seems to have vanished from this proceeding if LILCO's Memorandum is to be credited. LILCO's concentration on predictions of the County's response, to the exclusion of the other Intervenors, is disconcerting, especially given the history, known to LILCO, of NSC's active participation in both on-site and off-site emergency planning. One hopes that it is not of a piece with the exclusion of NSC, SOC, and the town of Southampton from the May, 1983, conference call which established a filing schedule.

Respectfully submitted,

June 8, 1983

Ralph Shapiro
Attorney for NSC

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CERTIFICATE OF SERVICE

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LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power station, Unit 1)
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SECRETARY
OF SERVICE
BRANCH

I, secretary to Ralph Shapiro, hereby certify that copies of NSC's Response to LILCO's Memorandum of Service of Supplemental Emergency Planning Information were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by Federal Express.

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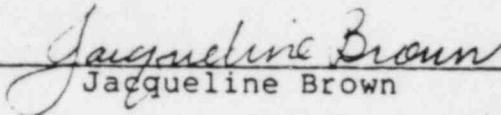
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