UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

In the Matter of	Docket No. 50-322-OL
LONG ISLAND LIGHTING COMPANY	ASLBP No. 81-462-01 CA
(Shoreham Nuclear Power Station, Unit 1)	September 7, 1982

SUPPLEMENTAL PREHEARING CONFERENCE ORDER
(Phase I -- Emergency Planning)

Background

On June 22, 1982, intervenors Suffolk County (County), the Shoreham Opponents Coalition (SOC) and the North Shore Committee Against Nuclear and Thermal Pollution (NSC) filed the first version of their emergency planning contentions based on LILCO's plan with the Board. Pursuant to our direction, this was a consolidated filing which represented the joint efforts of intervenors and which had been drafted with the benefit

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of consultation with both LILCO and the NRC Staff. Also pursuant to our direction, LILCO and the Staff filed their objections to these contentions on the same date the contentions were themselves filed.

We did not rule on the admissibility of intervenors' contentions at that time, choosing instead to permit intervenors to revise, consolidate and better particularize their contentions in light of those comments which they had received. Thereafter, on July 6, 1982, intervenors filed their "First Amended Consolidated Emergency Planning Contentions." These contentions were also drafted with the benefit of consultation with both LILCO and the NRC Staff so as to permit those parties to respond promptly to intervenors' filing. On July 20, 1982, a day-long prehearing conference was held to discuss this version of intervenors' contentions, as well as several subsidiary matters.

On July 27, 1982, the Board issued a prehearing conference order ruling on intervenors' July 6, 1982 statement of contentions. Pursuant to that order, certain contentions were admitted, one was wholly denied admission, and consideration of others was deemed more appropriate during Phase II of our emergency planning proceedings, which will primarily relate to Suffolk County's emergency planning efforts. We deferred ruling at that time on certain matters which we believed to be

"susceptible to settlement"[1/] and also requested that some of the contentions be rewritten and further particularized so as to correct certain deficiencies observed by the Board. The intervenors were directed to file revised consolidated contentions on August 20, 1982. Draft copies of these revised contentions were to be provided to all parties on an informal basis some days prior to this time so as to aid them in preparing their responses, which were due by August 24, 1982.

Subsequently, in response to intervenors' petition for reconsideration, the Board reversed its earlier ruling wholly denying admission of the one contention so treated and permitted intervenors an opportunity to provide further particularization of this contention as a part of their August 20 filing.

1/ Our July 27, 1982 order stated:

> "Matters deemed "susceptible to settlement" are those proposed contentions which the Board believes should be subject to speedy resolution based upon the exchange of certain readily ascertainable information and/or negotiation among the parties. These contentions are neither being admitted nor denied admission at this time; they are being held in abeyance based upon the Board's belief that the results of informal negotiation on these matters would be preferable to their formal consideration by us. We have indicated which contentions in this category should be settled as part of Phase I, and which ones can be settled on a more extended schedule." (Order at 5.)
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> The Staff's August 24, 1982 "Objections to Phase One Consolidated Emergency Planning Contentions" appears to erroneously conclude that those matters described in our July 27 order as being "susceptible to settlement" were admitted by that order.

Pursuant to our July 27 order, intervenors timely filed their "Phase One Consolidated Emergency Planning Contentions" and LILCO timely filed its objections to intervenors' contentions on August 24. The NRC Staff did not file its response until the following day.2/

As part of its objections, LILCO notes that this is the third formulation of intervenors' contentions received by the Board and requests that we dismiss contentions lacking adequate bases or particularization at this time, rather than permitting intervenors to submit these contentions a fourth time. In support of this proposition, LILCO asserts that intervenors have done little towards refining the contentions in the last two months, either in providing the additional particularity and bases requested by our July 27, 1982 order, or in making any substantive attempt to respond to LILCO's settlement offers.

LILCO argues that in neither adequately particularizing the contentions nor engaging in settlement talks in response to our prehearing conference order, intervenors have not met their obligations

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2/ As we have previously noted, filings requested by the Board to be filed by a certain date should be received by the Board by that date. If the requested filing date falls on a day when the Board is at hearings, the pleading should be in the Board's hands at the hearing location by that date. Otherwise, filings should be received at the Board's Bethesda offices on the date requested. In this regard, the parties are requested to make every effort to serve such filings by 3:00 pm on the scheduled date so as to enable the Board to consider them promptly.

to this Board. Relying on Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 16 NRC ___ (June 17, 1982), LILCO asserts that the appropriate sanction for intervenors' failure to adequately respond to the Board's order is to deny admission of their contentions.

In its August 30, 1982 response to LILCO's and the NRC Staff's objections, which was permitted by the Board, the County takes issue with LILCO's suggestion that the County has been dilatory in pursuing settlement, noting that all of its emergency planning attorneys were involved in taking depositions during the period in which LILCO was proposing settlement agreements. The County states that LILCO was well aware of how its attorneys were otherwise occupied, and questions LILCO's motives, first, in writing these settlement proposals which it knew could not be acted upon, and second, in moving to strike intervenors' contentions on the basis of their asserted refusal to negotiate. The County does not address that portion of LILCO's objections which suggests that intervenors have not adequately responded to this Board's request that certain contentions be further particularized.

Even if we were to accept everything which LILCO has asserted as being true, we do not believe Byron to require that we dismiss intervenors' contentions. Indeed, we believe both the facts and the

equities of this proceeding to be distinguishable from those in the Byron decision.

In Byron, the Appeal Board reversed a licensing board ruling dismissing all of an intervenors' contentions as a sanction for its total failure to comply with a discovery order, concluding that while the dismissal of contentions can be an appropriate sanction for the failure of a party to comply with a Board order, dismissal of all of the intervenor's contentions was too harsh a sanction in the circumstances of that proceeding. We do not believe that the intervenors' conduct in this proceeding in failing to further particularize certain contentions or even, arguendo, to pursue settlement negotiations, when taken by itself, warrants the out-of-hand dismissal of intervenors' proposed contentions. We find a sharp contrast between an intervenor's refusal to provide information requested by another party on discovery, even after a licensing board order compelling its disclosure, and the asserted failure of intervenors on this case to take advantage of an additional opportunity to narrow and particularize their contentions.

Pursuant to 10 CFR §2.707, this Board is empowered, on the failure of a party to comply with any prehearing conference order, to "make such orders in regard to the failure as are just." We believe the just result in this case, where intervenors have not fully availed themselves of an opportunity to further particularize their contentions, is to

simply rule on intervenors' contentions as they now stand, dismissing those proposed contentions which lack adequate bases and specificity.

The rulings which follow therefore reflect the Board's final rulings on the admissibility of Phase I contentions. Contentions which are rejected are dismissed with prejudice. Comments included in the parties' August 30, 1982 filings are addressed insofar as they raise matters not addressed in their previous filings.

We continue to note the possibility that we may defer some aspects of the litigation of admitted Phase I contentions to Phase II after receiving the testimony on Phase II Contentions. (July 27 Order, at 22.)

EP1: LILCO's Failure To Account For The Specific Conditions Existing on Long Island

Not admissible.

Our July 27 order denied admission of this contention because it lacked particularization and was overly broad. Thereafter, in response to intervenors' petition for reconsideration, we orally reversed this ruling and ordered that intervenors further particularize this contention as a part of their August 20 filing. Tr. 8902-8904.

LILCO objects to this revised contention as being overly broad and lacking particularity and bases. LILCO's specific objections to specific portions of EP1 are discussed below.

The Staff also objects to this revised contention as being overly broad and lacking particularization. Moreover, the Staff objects to this contention because it believes that intervenors seek to litigate the social and behavioral characteristics of the local population which allegedly may present some impediment to effective emergency planning, without detailing with any basis or particularity how or why the range of planning standards provided by the regulations, as addressed in LILCO's emergency plan, do not adequately consider this matter.

Suffolk County, in its August 30, 1982 response to LILCO's and the Staff's objections, asserts that the breadth of EP1 mirrors the breadth of the flaws in LILCO's plan. It states that it is not possible to cite a particular page or paragraph which is the "smoking gun" in LILCO's plan, since LILCO's error is more in what it left out of its plan than what it put in. The County also asserts that EP1 has defined with particularity the local conditions that LILCO has ignored and explains the impact of their absence upon emergency planning for Shoreham. In its opinion, "[a]ny further particularity would change EP1 from a contention to a detailed brief, which is not required under any rules of pleading."

Intervenors' contention EP1 is set forth below in its entirety. For clarity of discussion, the Board has denominated the paragraphs with the letters A, B, C and D. The matters set forth in the third paragraph (Paragraph "C") are numbered consecutively (1) - (7). Intervenors' original numbering of the local conditions which LILCO is alleged to have not taken into account (Paragraph "D") has been retained.

EP1: LILCO's Failure To Account For the Specific Conditions Existing On Long Island

(A) The Board should rule that LILCO's plan as a whole is inadequate under 10 CFR 50.47(a)(1), (a)(2) and (b), in that it does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, nor does the plan provide reasonable assurance that it is capable of being implemented.

(B) The basis for this contention is that the LILCO emergency plan cannot "provide reasonable assurance that adequate protective measures can and will be taken" and cannot provide reasonable assurance that it is "capable of being implemented" unless the plan has accounted for local conditions in the vicinity which directly affect whether adequate protective measures."can and will be taken" and whether the plan is "capable of being implemented."

(C) In developing its emergency plan, (1) LILCO has not determined the types and sizes of radiological releases to be expected from possible accidents at the Shoreham plant; (2) it has not determined the physical dispersion of such radiological releases on Long Island and proximate areas; (3) it has not determined the populations at risk from such radiological releases; (4) it has not determined the likely reactions of such populations to notification that they are at risk; (5) it has not determined what protective actions should be recommended from such notified populations", (6) it has not determined who should give such notification and how that should be done; (7) and it has not determined what type of education is required for such populations (and for Long Island populations not significantly at risk from radiation) and when and how to provide that education.

(D) Specifically, the local conditions which LILCO has not taken into account are the following:

1. Local demographic, socio-economic and social and behavioral characteristics of the population affected by a radiological emergency, including:

   i. Where people live;

   ii. Where people work;

   iii. Whether the officials or organizations which will inform Long Island residents of an accident at the Shoreham plant are credible sources of information;

   iv. The educational level and nuclear-related knowledge and predispositions of the residents of Long Island, so as to tailor education and notification programs to their needs.

   v. How the residents of Long Island will respond to notification of a radiological emergency, particularly whether they will obey instructions to take a specific protective action or whether they will attempt to flee and, if so, how families separated by work or school will seek to unite or depart individually.

   vi. How the location and perception of location of the residents in Long Island (including the East End) would affect their reactions to a radiological emergency.

   vii. Whether role conflicts will reduce the size and reliability of emergency workers who would be required during an accident at the Shoreham plant.

2. What physical access and ease of access people actually have to roads, bridges, transportation facilities and other means of egress.

3. The types of materials of which local houses and other buildings are constructed and the extent to which those materials would affect the health consequences of a radioactive release in the event that sheltering is the recommended protective action.

In paragraphs (A) and (B), intervenors track the general language of 10 CFR §50.47(a)(1) and (a)(2) in alleging that LILCO's overall plan is inadequate, in that it does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and in that it does not provide reasonable assurance that it is capable of being implemented. The basis for intervenors' contention is stated to be that the plan cannot provide these assurances unless the plan has accounted for certain local conditions in the vicinity. The specific local conditions which LILCO is alleged to have not taken account of are set forth in paragraph (D). Paragraph (C) sets forth certain matters which it is alleged that LILCO has not determined in developing its emergency plan.

With respect to the local conditions enumerated in paragraph (D), we note that intervenors allege that LILCO's overall plan is inadequate for having not taken account of these local conditions; not that LILCO's plan has failed to take account of these local conditions in formulating specific referenced portions of its plan, or even that LILCO's plan is inadequate in that these conditions must be considered in making the determinations which paragraph (C) alleges have not been made.

Accordingly, intervenors appear to desire to litigate each and every aspect of LILCO's plan. Such an overly broad contention surely fails to state any basis to believe that <u>every</u> aspect to LILCO's plan is inadequate, even if we were to assume, <u>arguendo</u>, that LILCO never

considered any of the local conditions set forth in paragraph (D) in developing its plan. Nor do we believe that a contention that would simply seek to litigate every paragraph of LILCO's plan, plus certain determinations which are alleged to not have been made in the formulation of that plan, can be stated to provide adequate particularization. Such a contention runs afoul of the requirements of 10 CFR §2.714 that intervenors set forth those matters which they seek to litigate "with reasonable basis and specificity". This power of the Commission to require that intervenors make such a threshold showing prior to the admission of a contention has been upheld by the Federal Courts. See BPI v. Atomic Energy Commission, 502 F.2d 424, 428-429 (D.C. Cir. 1973). Intervenors have not met this standard here.

We agree with the intervenors' assertion that the Commission's rules of practice do not require that a contention be in the form of a detailed brief. We believe, however, that a contention alleging an entire plan to be inadequate, in that it fails to consider certain matters, should be required to specify in some way each portion of the plan alleged to be inadequate. For example, this Board finds it unclear how LILCO's plans for post-accident monitoring of the ingestion exposure pathway would be changed by the "local conditions" referenced in the intervenors' contention. We are not saying this is impossible, but without an adequately particularized contention, setting forth how the "local conditions" referenced in EP1 are alleged to affect every aspect of LILCO's plan, we are left to speculate how LILCO's alleged failure to

consider these local factors is supposed to render each aspect of its plan inadequate. If intervenors assert that they know how each aspect of the emergency plan is made inadequate by LILCO's failure to consider certain local conditions, it is their obligation to put these matters forward for litigation, not hold back and assert that to require such information would impose a burdensome pleading requirement. This lack of specificity is exacerbated by the fact that paragraph "D" is a list of broad categories of local contentions, not specific conditions alleged to exist locally.

We believe that intervenors should not be given yet another opportunity to particularize this contention. As we noted in the preamble to this order, this is intervenors' third attempt to state properly particularized contentions. Our July 27, 1982 order denied admission to their July 6, 1982 version of this contention as being overly broad and lacking in basis and specificity. In response to intervenors' motion for reconsideration, which set forth a new version of EP1 which is almost identical to the version now before us, we permitted intervenors the opportunity to file a revised version of EP1 as a part of their August 20, 1982 filing. We indicated at that time, however, that while we believed the version of EP1 included in their motion for reconsideration to be a step in the right direction, we still believed this contention to require additional particularization. In light of all of the opportunities which intervenors have had to state a litigable version of this contention, and their continuing failure to do

so, we do not believe it would prove fruitful to permit intervenors yet another opportunity to particularize this contention.

We address the Staff's and LILCO's specific objections to specific portions of paragraphs (C) and (D) below.

(C) Matters Which LILCO Is Alleged To Have Not Determined

LILCO objects to certain of the matters set forth in this paragraph as being redundant to other contentions and/or as being Phase II matters.

We believe that items (1), types and sizes of expected radiological releases, (2), physical dispersion of such releases, (3), populations at risk, and (5), protective action recommendations, are all matters which will be heard with respect to either EP5, Protective Action Recommendations or EP23, Accident Assessment and Dose Assessment Models. Accordingly, we find these matters redundant and inadmissible.

Items (4), likely reactions of the population to notification, and (7), public education, are matters more appropriate for litigation during Phase II of these proceedings and thus inadmissible at this time.

We believe that portion of item (6) relating to who should notify the public lacks bases, as it is the responsibility of state and local government organizations to make such a notification, not LILCO. NUREG-0654, Item II.E.5. Insofar as that portion of Item (6) relating to how the public will be notified refers to the prompt notification system, we believe it to be redundant to EP2. If it refers to the system by which such information is to be disseminated to the public, this matter is the responsibility of state and local governments, and is therefore without basis. NUREG-0654, Item II.E.5. As we do not know what is being challenged by this portion of Item (6), we also believe it to lack particularity.

(D) Local Conditions

While it would seem that consideration of each of the broad categories of local conditions enumerated in paragraphs (D)(1) and (2) might be appropriate if they both specified the particular local circumstances and if they were tied to particular aspects of LILCO's plan which are alleged to be inadequate, no attempt has been made in this contention to do this. As we cannot litigate such matters in a vacuum, intervenors' failure to relate particular local conditions to alleged deficiencies in LILCO's plan precludes our finding these matters admissible. Depending on what is intended by the contention, it might be appropriate to consider such subjects in a contention with requisite specificity and bases, during Phase II.

As to paragraph (D)(3), we note that it is word-for-word the same as the paragraph numbered (5) in intervenors' July 6 version of EP1. As to this paragraph, we commented in our July 27, 1982 order that although we believed this paragraph to be better particularized than other portions of this contention, it was redundant to old EP5(D)(2), which we held inadmissible during Phase I. Upon re-examination of this issue, we believe this matter to also be redundant to the first sentence of the present EP5, insofar as it relates to the bases for the choice of recommended protective actions. This topic may therefore be litigated as part of EP5 during Phase I to the extent relevant to the bases for recommending sheltering as a protective action.

Accordingly, EP1 is denied admission in its entirety.

EP2: Prompt Notification System

A) Siren coverage constricted by bad weather.

Admitted in July 27, 1982 order.

B) Back-up power for system.

Admitted in July 27, 1982 order.

C) Gaps in siren coverage.

Formerly numbered EP2(D). Admitted in July 27, 1982 order.

D) Notification of large facilities by tone alert.

Not admitted.

In our July 27, 1982 order, we stated that we believed this contention, then numbered EP2(E), to be susceptible to settlement. We requested at that time that the parties conduct whatever investigation and informal exchanges of information necessary for them to narrow or resolve this matter as part of Phase I. The wording of this contention remains unchanged.

LILCO states that the County has made no effort to settle or narrow this contention. It objects to its admission as lacking bases and particularity. We agree. We also agree with Suffolk County's statement in its August 30 response that requiring the County to list in its contention every facility which it alleges will be notified by tone alert would serve no purpose.

We believe that this contention offers no bases for its apparent conclusion that large facilities in general do not possess adequate in-house paging or alerting capabilities and will not agree to bear notification responsibilities of their inhabitants in the event of an emergency at Shoreham requiring such notification. We further believe

that we have given intervenors ample time to particularize at which, if any, of the 126 large facilities referenced in their contention this situation exists. If, during Phase II, intervenors can identify a specific defect which exists in this secondary method of public notification of a particular facility, we will litigate such matters if stated with reasonable bases and specificity. We will not try to litigate a contention so unfocused as this one. The parties should attempt to resolve this matter through negotiation.

E) Verification Of Tone Alert System Operability

Not admitted.

We stated in our July 27, 1982 order that we believed this contention, then numbered EP2(F), to be susceptible to settlement. We made this ruling based upon the statement made by Suffolk County's counsel that LILCO had offered to test the tone alert system on a weekly basis, which he believed might moot this issue. (Tr. 7302.) LILCO states that the County has not discussed settlement or narrowing this issue since our order. The contention's wording remains unchanged.

In light of the comment made on the record by Suffolk County's counsel, it is unclear to us what specific issues Suffolk County still wishes to litigate, or if any basis for the intervenors' concerns still exists. We, therefore, deny this contention and direct that the parties

attempt to resolve this matter through negotiation. We would not entertain a contention on this issue during Phase II of these proceedings unless it reflects specific reasons why LILCO's proposal will not, as Counsel for the County earlier indicated it might, moot this issue.

EP3: Medical and Public Health Support

A) Failure to provide for adequate medical services.

(1) and (4) not admitted.

(2) and (3) admitted.

Our July 27, 1982 order concluded that this contention was not admissible as written, as we believed at least portions of this subpart to be susceptible to considerable specification, narrowing and factual resolution. We further requested that intervenors consider whether portions of this contention continue to be viable in light of the Appeal Board's July 16, 1982 decision in Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC ____, (slip. op. at 13-22).

The preamble to this subpart of intervenors' August 20, 1982 filing of contentions was slightly reworded, now including references to LILCO's plan and changing what were references to "contaminated"

individuals to "contaminated injured" individuals. The latter change was presumably prompted by the Appeal Board's San Onofre decision. A new subsection (1) has been added to this subpart. Original subsections (1)-(3) have been renumbered (2)-(4) and only slightly reworded.

LILCO and the Staff object to subsections (1) and (4), which refer to the alleged inability of Central Suffolk Hospital to accommodate the "large number of individuals" who are "likely" to require treatment in the event of a radiological emergency at Shoreham, as lacking bases and specificity and as being in conflict with the Appeal Board's San Onofre opinion. LILCO also objects to new subsection (1) as being redundant to subsection (4).

Pursuant to 10 CFR §50.47(b)(12), emergency response plans for nuclear power reactors must include arrangements for medical services for "contaminated injured" individuals. As interpreted by the Appeal Board in San Onofre:

> On its face, the regulation requires arrangements for medical services only for "contaminated injured" individuals, not for members of the general public who may have suffered radiation exposure or injury in a nuclear accident. The distinction between the two classes of people is not inadvertent. It is based upon a judgment as to their anticipated needs for emergency treatment....
>
> "Contaminated injured" is a distinct category encompassing potential patients whose traumatic (i.e., physical) injuries are complicated by radioactive contamination (slip op. at 16-17) (footnote omitted).

The Appeal Board also held that people who suffer radiation injury, without accompanying traumatic injury, are unlikely to need emergency treatment because the clinical course of radiation injury unfolds over time and is seldom, if ever, life-threatening (slip op. at 17-18).

> Thus, for a serious nuclear accident to result in the hospitalization of large numbers of people, not only must an already unlikely accident be severe, but also the emergency response to protect the public must be ineffectual (slip op. at 19-20) (footnote omitted).

The Appeal Board concluded that even then, hospitalization of the radiation injured would not be an emergency matter (slip op. at 20).

In subsection (1) of contention EP3(A), intervenors appear to attempt to frame a contention which addresses the standards of San Onofre for requiring consideration of the hospitalization of radiation injured persons. We do not believe this contention to be redundant to EP3(A)(4), as LILCO alleged, as that contention addresses "contaminated injured" persons. Intervenors' contention provides no bases, however, for their chain of conclusions that LILCO's plan would result in: (1) "an emergency response so ineffectual", that (2) "hundreds of thousands of people would be gridlocked in traffic jams for hours", resulting, (3) in the case of a "severe" radiological accident, in radiation injury to "more persons than Central Suffolk Hospital can accommodate". Accordingly, EP3(A)(1) is not admissible.

EP3(A)(4) also lacks bases and specificity as intervenors' contention does not state any reason for its conclusion that "many contaminated injured persons...are likely to require treatment in the event of a radiological emergency." Indeed the San Onofre decision held that on that record, "relatively few people [1 to 25] are expected to be both contaminated and traumatically injured in a nuclear-accident" (slip op. at 18). This contention does not provide us with any basis for concluding that a nuclear accident at Shoreham would result in more contaminated injured persons than Central Suffolk County Hospital can accommodate. Therefore, EP3(A)(4) is not admissible.

LILCO also objects to subsections (2) and (3) as lacking both bases and particularity and because subsection (3) refers to "contaminated individuals," not "contaminated injured individuals." We believe both of these contentions to provide adequate bases and particularity. They are therefore admitted. EP3(A)(3) is amended to refer to "contaminated injured individuals." We believe, however, that these contentions may be susceptible of settlement before the litigation of Phase I issues.

B) Transportation Of Contaminated Injured Individuals - Traffic Congestion

This contention was admitted by our July 27, 1982 order. At that time, we instructed intervenors to consider consolidating this

contention with EP(6)(B) and EP(9)(D). We also reserved the possibility that this contention might be heard during Phase II. Intervenors chose not to consolidate this contention. However, they did amend it by updating their reference to LILCO's current revision of its emergency plan. Intervenors also reworded this contention, which had previously referred to the "conveyance of contaminated individuals," to refer to the "conveyance of those persons who would require hospitalization for radiation injury and/or of contaminated injured individuals".

LILCO objects to intervenors' amendment of this contention and argues that it should be filed for litigation as originally worded. LILCO further asserts that this contention should be consolidated with original contentions EP6(B) and EP9(D), and that these matters should be heard during Phase I.

In light of the San Onofre decision discussed above, we are amending the wording of intervenors' contention EP3(B) as originally admitted to refer to the "conveyance of contaminated injured individuals", and omitting intervenors' new language discussing radiation injured individuals. We are also permitting intervenors' update of its reference to LILCO's plan.

We note that, in response to this Board's July 27, 1982 order for consolidation, intervenors have apparently dropped old contention EP9(D), recognizing it to be redundant to EP6(D). We will not order

that EP3(B) be consolidated with EP6(B); however, we do direct that these two contentions be tried in the same time frame during Phase I.

C) Lack Of Up-To-Date Agreements For Emergency Services

Not admitted.

In our July 27, 1982 order, we described the existence of up-to-date agreements with off-site support organizations as being a readily ascertainable fact which we believed proper for stipulation or negotiation as a part of Phase I. We further directed that this "susceptible for settlement" matter be consolidated with similar contentions regarding agreements with support organizations. In response to our order, intervenors consolidated old EP(3)(C) with old EP6(C).

LILCO objects to the admission of this contention as lacking adequate particularization. We agree, and find that portions of the contention also lack bases.

While we still believe the existence or non-existence of such contracts to be a readily ascertainable fact, we must admit that we cannot discern from intervenors' contention whether intervenors, by their allegations of the lack of "up-to-date agreements" are seeking to allege that such contracts have expired, have been repudiated, or now

contain factual inaccuracies or some other defect making them invalid. Nor does intervenors' assertion that the agreements with Wading River Fire Department and Central Suffolk Hospital "do not provide reasonable assurance that those organizations have the capacity to deliver and will deliver necessary medical services in the event of a radiological emergency" apprise this Board whether intervenors seek to litigate the lack of needed equipment, personnel or training, problems with the availability of equipment, personnel or other resources for which no bases are presented, or simply that the agreements themselves are lacking in detail. Additionally, intervenors do not specify with which "other local fire, ambulance or other such off-site organizations" it is alleging LILCO has not yet obtained agreements for services. Accordingly, EP3(C) is not admitted.

EP3(D)/EP18: Medical And Public Health Facilities Support

As noted in the August 25, 1982 letter from the Counsel for NSC, these two contentions are identical and EP18 has been withdrawn.

Not admitted.

These contentions apparently find their genesis in portions of old EP20(C) which we ruled in our July 27, 1982 order to not be admissible as written.

LILCO objects to these contentions as not being adequately particularized. It also asserts that subsection (1) should be consolidated with EP7(A), that subsection (2) should be consolidated with EP6, that subpart (3) should be consolidated with EP6(B) and that subsection (4) should be dropped as redundant to EP3(B). The Staff's filing objects to these contentions as lacking adequate bases and specificity.

We agree with both Staff and LILCO that subsection (1), which alleged that LILCO's plan "does not provide assurance" that off-site medical personnel required for on-site medical assistance have been trained to treat individuals sickened or injured by a radiological emergency, lacks particularization and bases. It is unclear what intervenors are alleging to be lacking from LILCO's plan or what they are seeking by way of "assurance" to have included as part of the on-site plan.

Additionally, as noted by the Staff, LILCO's plan states the availability of LILCO's Medical Director in Hicksville, N.Y. and an on-call physician from Radiation Management Corporation to respond to the plant site "as required". Section 6.5.3 of the LILCO plan provides that these persons "will be trained in the handling and treatment of patients involved in radiation accidents." Furthermore, the Letter of Agreement between LILCO and Radiation Management Corporation annexed to

LILCO's emergency plan provides for the twenty-four hour availability of a Radiation Emergency Medical Team, consisting of a physician, certified health physicist and technicians with portable instrumentation, to respond to the location of any radiation accident victim. Subsection (1) is therefore without basis.

The Board also finds subsection (2), which alleges that no procedure exists to notify off-site medical personnel to report and that there is no assurance that such personnel will be available, to be inadmissible. Insofar as this contention relates to the notification of such personnel, we believe intervenors have already raised this matter under EP6(C), which we are admitting by this order. This portion of this contention is therefore dismissed as being redundant. If by their reference to the "availability" of such workers intervenors are alleging that these workers will fail to report due to conflicting obligations, we believe that portion of this contention to already be fairly raised by EP6(A), which we admitted in our July 27, 1982 order, and we therefore find it to be redundant. If intervenors attach any other meaning to the word "availability" than that stated in EP6(A), they provide no particulars which would clarify that. We therefore deny this portion of subsection (2) as lacking adequate particularization.

Subsection (3) states that LILCO's plan is inadequate in that it "does not require that route instructions to reach Shoreham shall have been previously furnished or that appropriate identification to permit

ready entry into the plant has been previously issued". If, by referring to LILCO's failure to provide directions to Shoreham prior to a radiological emergency, intervenors are attempting to allege that traffic congestion would affect the route which such response personnel would have to take to the plant, we believe this matter to be redundant to EP6(B). Otherwise, we believe this contention to lack basis and particularity. The intervenors provide no basis for their apparent conclusions that response personnel, including those indigenous to Long Island, will be unable to find their way to Shoreham without such instructions, or that LILCO, having requested the presence of such personnel at the site, will not permit their prompt entry. We note that training as to site access procedures for off-site personnel is covered by section 8.1.1 of the LILCO plan. NUREG-0654, Item II.0.1.a provides at n.1 that distribution of identification cards need only be accomplished where such cards are required by the plant in question. Accordingly, we believe this contention to be without basis.

Subsection (4) alleges the plan to have no provision to assure the availability of vehicles and trained personnel to transport on-site personnel requiring off-site medical treatment. Insofar as this contention relates to personnel, it appears to be clearly redundant to EP6(A) and therefore inadmissible. There is no basis stated or apparent to the Board that there will not be adequate vehicles onsite to transport onsite personnel who require off-site medical treatment.

Subsection (5) states that there are no procedures to relate the level of medical training and assistance which should be available to the escalating EAL levels in plan Section 4. Staff objects to this contention as lacking basis and specificity and LILCO asserts that this contention is not adequately particularized.

We have examined both the regulations referenced in the preamble to this contention and those references intervenors make to NUREG-0654. We have found nothing which would require the development of these procedures which intervenors claim LILCO's plan to lack. Intervenors also fail to state in their contention any rationale as to why such procedures should be developed. Accordingly, we believe this contention to lack both basis and particularity.

Therefore, EP3(D) is wholly denied admission in this proceeding.

EP 4: Federal Resources

Admitted.

We stated in our July 27, 1982 order that we believed this contention to lack adequate particularization and ruled it to be inadmissible as written. We also stated our belief that this matter is susceptible to settlement. Intervenor has slightly rewritten this contention, providing references to LILCO's plan and noting that LILCO's

plan states that "although no Federal assistance is expected", other than that to be provided for in the Suffolk County plan and other non-LILCO plans, the LILCO "Response Manager has the authority to request any and all Federal assistance considered apropriate for the given situation".

LILCO objects that this contention has not particularized precisely what is lacking in the LILCO plan or what is objectionable about the LILCO plan, and has not defined what is meant by "local resources" available to support the Federal Response. The Staff objects to this contention as lacking the particularization required by the Board, and as being without basis in light of certain information provided in LILCO's plan. We cannot agree.

Although we agree with LILCO and the Staff that this contention is not so well particularized as we might have liked, it is not without basis. Its language tracks the wording of NUREG-0654, Item II.C.1 and uses the same terminology as that NUREG, and relies on the language of the LILCO plan. We believe that intervenors intended to reference Part II of NUREG-0654 in their citations to that document, and we have therefore reworded the contention, as admitted, to reflect this error. We have also added to the contention a citation to NUREG-0654 Item I.I, which we deem relevant.

We note, however, that we still consider this matter to be "readily susceptible to settlement". The parties are therefore directed to enter into negotiations on this contention aimed at either resolving this matter, or at least better defining the issues for litigation as part of Phase I.

EP5: Protective Actions

This contention was admitted as EP5(A) in our July 27, 1982 order. As we then ruled EP5(B)-(D) to be issues more appropriate for discussion during Phase II, intervenors have slightly altered the format of this contention.

While acknowledging that the Board has admitted this contention, LILCO observes that this contention could be better particularized. LILCO asserts that the County should be required to incorporate references to LILCO's plan and implementing procedures, and to better specify what the County finds lacking in this material, including what "particular conditions existing in the Shoreham vicinity" have not been addressed by LILCO's plan with respect to protective actions.

On August 26, 1982, we noted on the record (Tr. 9716-9717) that we agreed as to the vagueness of the particular sentence referenced by LILCO and were considering striking it. We asked the County to reply in its response to LILCO's objections, noting that we were not asking for a

respecified contention or a restatement of those matters referenced in EP1.

In its August 30, 1982 filing, the County asserts that the sentence of EP5 which states "LILCO has not assessed the relative benefits of various protective actions under the particular conditions existing in the Shoreham vicinity" is not vague, but points out a " vital flaw" in LILCO's plan:

> Nowhere in LILCO's plan are protective actions discussed in the context of conditions existing on Long Island. For instance, nowhere is the feasibility of evacuation discussed in terms of the actual topography of Long Island, and there is no discussion of the evacuation shadow phenomenon. Nor is there a discussion of the relative benefits of sheltering in the types of homes found on Long Island.

We believe the above-quoted paragraph demonstrates just how vague the reference in EP5 to "particular conditions in the Shoreham vicinity" is. The County asserts as a "for instance", three topics which are alleged to be included within the phrase "local conditions", but offers no clue as to just how many "local conditions", nowhere specifically identified in EP5, it believes litigable under that broad subject heading or which it would assert under EP5.

Furthermore, the matters enumerated by the County as examples of local conditions are themselves either vague or Phase II matters.

"[T]he feasibility of evacuation discussed in terms of the actual topography of Long Island" does not specify either what aspects of Long Island topography are in issue or what effects such features are alleged to have on evacuation.

While we believe we understand generally the phrase "evacuation shadow phenomenon", we believe that intervenors do not put this phrase in such a context so as to make the meaning the County ascribes to this phrase clear. We do not rule this matter to be unparticularized, but rather more appropriate for consideration during Phase II, if contentions with the requisite basis and specificity are raised at that time.

With respect to sheltering in homes, we note that we have ruled above in Contention EP1 that this matter may be litigated under the first sentence of the present EP5. This consideration shall be in the context of the assertion that this information is necessary to a determination of whether to recommend sheltering, or evacuation or other options for particular EALs. The second sentence is not necessary for this matter to be considered under EP5.

Accordingly, we believe the second sentence of intervenors' August 20, 1982 version of EP5 to lack adequate particularization. This sentence is therefore stricken from intervenors' contention.

EP6: Offsite Response Organization and Onsite Response Augmentation

A) No analysis whether off-site response personnel or on-site augmenting personnel would report

Admitted in our July 27, 1982 order.

We note that intervenors have deleted the phrase "many of whom are volunteers" from this contention. Neither LILCO or the Staff opposed this change. The Board has no objections to this amendment of EP6(A).

B) Effects of Traffic Congestion

Admitted in our July 27, 1982 order.

C) Notification Procedures

Admitted.

Former EP6(C) was apparently deleted as redundant in response to this Board's July 27, 1982 order that it be consolidated with EP3(C).

Current EP6(C) was formerly a portion of old EP13, which we described in our Prehearing Conference Order as being severable. Both parts were held to be inadmissible as written and susceptible to settlement. Intervenors have severed this portion of that contention

and renumbered it, but have not otherwise altered its wording. LILCO objects to this contention as lacking adequate particularization.

While we believe this contention sufficiently vague to make this ruling a close call, we conclude that intervenors have stated a litigable contention within the bounds of 10 CFR §2.714. EP6(C) is therefore admitted. We direct the parties to attempt to agree on better specification of this contention promptly, and to report to the Board by September 21, 1982.

We believe this contention to contain a typographical error as it appears in intervenors' August 20, 1982 filing. Consistent with intervenor's July 6, 1982 statement of contentions, intervenors' reference to "NUREG-0054" is amended to read "NUREG-0654".

EP7: Training

In our July 27, order, we ruled this contention to be "susceptible to settlement", and directed that intervenors particularize, based on references to the recent revision of the LILCO plan, any matters which remain in issue. Intervenors have slightly rewritten this contention.

LILCO asserts that this contention has not beer rewritten as directed by this Board and that it lacks particularity and basis. We address each subpart of this contention separately.

A) Offsite Response Agencies

In response to our request that intervenors particularize their assertion that the LILCO plan has not provided adequate assurance that personnel from offsite response agencies will be trained, intervenors have included a reference to the LILCO plan at 5-8. This page of that plan includes Section 5.3. "Offsite Assistance for Onsite Support" which states, in pertinent part:

> 5.3 Offsite Assistance For Onsite Support
>
> Fire protection for the area of Long Island where the plant is located is provided by volunteer fire departments which operate under the State and County Mutual Aid Plan. Under this plan, nearby departments provide support for the fire department involved in fighting a fire. Similar arrangements exist for the ambulances associated with these fire departments.

We agree that intervenors' reference to this section of the LILCO plan, without more, would not usually suffice to adequately particularize this contention. Its significance was explained at our July 20, 1982 prehearing conference, however, when intervenors noted that LILCO's plan relies on these mutual aid pacts and stated:

> [O]ur thrust in this contention is that while we understand that there may have been some discussions between the utility and the Wading River Fire Department, that to the extent that in an emergency others are called upon to assist, that they would not know what to do once they got on-site. (Tr. 7347).

NUREG-0654, Item II.0.1.6, which is referenced by intervenors, provides that "[W]here mutual aid agreements exist between local agencies such as fire, police and ambulance/rescue, the training shall also be offered to other departments who are members of the mutual aid district.

While LILCO opposes this contention as lacking basis and specificity, its August 13 and 17 letters indicate that its attorneys are aware of the nature of intervenors' concerns, but the letters do not give any indication that LILCO's plan provides that appropriate training will be offered to all other member departments of mutual aid districts.

As the parties appear to be aware of the subject of this contention, even though its wording is vague, we do not dismiss this contention for lack of specificity and basis. Therefore, we are admitting contention EP7(A), subject to the limitation that testimony must focus on the question of whether adequate training will be provided to member departments of mutual aid districts whose members may be called upon to provide assistance in the event of an emergency. The parties shall attempt to agree on specification of what training of which entities is lacking, and report to the Board by September 21, 1982.

B) Training Of LILCO Personnel

The only response intervenors have made to our July 27, 1982 request for further particularization of this contention, in light of LILCO's recent revision of its emergency plan, is to add a citation to two sections of the Code of Federal Regulations.

In light of LILCO's recent revision of Chapter 8 of its plan (which is referenced by intervenors) and that plan's incorporation by reference of a three-volume training manual, we believe this contention to be woefully lacking in particularization; it merely alleges the information contained in LILCO's plan to be inadequate, without identifying any specific fault with these documents.

Therefore, contention EP7(B) is denied as lacking adequate particularization.

EP8: Onsite Response Organization

Admitted in our July 27, 1982 order, at which time it was numbered EP9.

EP9: Public Information

Not admitted.

In our July 27, 1982 order, we stated our belief that this contention was susceptible to settlement, and directed that the contention (then numbered EP10) be clarified to state that it relates to the coordination of messages between LILCO and Suffolk County. Intervenors have not rewritten this contention, and apparently seek to litigate matters relevant to public messages.

The Staff does not object to this contention. LILCO asserts that this contention lacks adequate bases and particularity.

We agree with LILCO that intervenors have not particularized in their contention what they are alleging to be inadequate in LILCO's plan when they state only that it is not "clear" or "apparent" "in its plan" that Suffolk County should take a "major role" in determining the form and substance of messages to the public in the event of an emergency at Shoreham.

Nor do we believe there to be any basis for this contention. NUREG-0654, Item II.E.2 requires that a licensee develop such messages in conjunction with State and local officials. Intervenors allege, however, that the plan does not make the County's role in the

development of these messages "clear" or "apparent". We read NUREG-0654 to require that messages to the public to be included in plans be written by LILCO and state and local officials in conjunction with each other. There is no basis stated or apparent that this relatively simple task will not be done. Further, we do not read NUREG-0654 to require that the plans themselves state the origins of such messages.

This contention is therefore not admitted.

EP10: Emergency Operations Facility

This contention was admitted in our July 27, 1982 order as "EP12: Emergency Response Facility". Slight changes have been made in the wording of this contention. No party objects to these changes and neither does the Board.

EP11: Messages To The Public And To Offsite Authorities

Not admitted.

The first sentence of this contention appeared in intervenors' July 6 statement of contentions as EP14, which we ruled to be susceptible to settlement. The last two sentences derive from a part of old EP13, which we held both not admissible as written and "particularly

susceptible to settlement." Other than this splicing together of former contentions, this contention has not been rewritten.

LILCO objects to this contention as lacking particularity and bases. LILCO also states that on August 17, 1982, it provided to the County the number of the Shoreham procedure that contains preplanned message statements, the section of the LILCO plan that contains the standardized message forms used by all nuclear power plants in the State of New York, and five sample messages to the public.

Intervenors' contention does not state, with either bases or particularity, any defect which is alleged to exist in these standardized messages. We are aware that NUREG-0654, Item II.E.2, requires joint approval of such messages by LILCO, the County and State officials. We do not believe, however, that the County's failure to yet approve these messages, without stating any specific objections to these messages, provides a basis for the County to assert a contention alleging the non-existence of such messages.

As the County has itself noted to this Board, and as this Board firmly believes, the public can be best protected only through the integrated planning efforts of the parties. This is true, whether this be with respect to the contents of messages of the public or any number of other items which NUREG-0654 directs that the applicant plan in conjunction with state and local officials.

We recognize that this information, contained in Revision 2 of LILCO's plan, was not in existence at the time of intervenors' first filing of contentions. We therefore, of course, do not fault intervenors for raising the absence of these matters in their July 6, 1982 statement of contentions. It is not appropriate, at present, however. See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2) ALAB-687, 16 NRC ___ (August 19, 1982). We believe the ball to now be in Suffolk County's court with respect to taking steps to resolve such matters, in conjunction with LILCO, if the public is to be best protected.

Accordingly, this contention is not admitted.

EP12: Radiological Exposure To Emergency Workers

This contention, formerly numbered EP16, was admitted in our July 27 order.

EP13: Emergency Classification System

Not admitted.

This contention, previously numbered EP18, was held in our July 27 order to be inadmissible as written. Intervenors have rewritten this contention greatly, providing much additional specificity.

The Staff, however, asserts that this matter does not raise a litigable concern. In its view, the fact that certain information is missing from particular FSAR Chapter 15 initiating conditions and many Emergency Action Levels (EALs), does not form the basis for a contention as most of the blanks relating to instrumentation will be filled in later as a result of start-up testing. The Staff states that while the statements in this revised contention may be correct, this does not establish a litigable concern of safety significance, because the information must be provided prior to fuel load. On August 26, 1982, we asked the parties to address the Staff's position in their responses to the objections to intervenors' contentions. Tr. 9714-9715.

In its August 30, 1982 response, LILCO, which did not object to the admission of this contention originally, now asserts that the Staff is correct and requests that the Board deny this contention, stating that the County can repeat its concerns if, in fact, the EALs are not complete at the appropriate time.

The County appears to agree with the Staff's assertions about this contention, noting in its August 30, 1982 response that it is willing to resolve this issue subject to a commitment by LILCO that all blanks and missing information on the EALs be completed prior to the commencement of fuel load. The County asserts, however, that the Board should admit this contention, pending final resolution among the parties.

In light of the parties' apparent agreement that the missing information must be supplied by fuel load, we do not believe it necessary to admit this contention. LILCO should inform the County and parties promptly when these blanks are filled in. If these blanks are not filled in during a time-frame consistent with the litigation of Phase I of Emergency Planning issues and if this issue is not otherwise resolved by the parties, the County may set forth before the Board specific problems which it then has with LILCO's failure to fill in these blanks, and the Board will then rule on the admissibility of such matters. Any such filing shall also state what significance the County attaches to LILCO's failure to fill in those blanks and shall also state why such specific allegations as to the significance of such blanks could not have been raised at the time of intervenors' August 20, 1982 filing of contentions. See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2) ALAB-687, 16 NRC _____ (August 19, 1982).

EP14: Accident Assessment and Monitoring

Our July 27 order held this contention, then numbered EP 19, to be not admissible as then written. Subparts A and B are substantially the same as they appeared in intervenors' July 6 filing. Subpart C is the contention relating to iodine monitoring which intervenors reserved the right to file in connection with their settlement agreement as to health and safety contentions SC28(a)(iii)/SOC7A(3). Subpart D is a rewrite of

former subpart C of this contention. Objections raised to these matters are discussed below.

A) Field Monitoring Teams

Admitted over objections of the Staff. LILCO does not oppose admission of this contention.

B) Real Time Monitors

Admitted over the objections of Staff. LILCO does not object.

C) Iodine Monitoring

Admitted.

The Staff objects to this contention as lacking basis and specificity, in that intervenors do not state any reason why the in-plant iodine monitors are insufficient to provide timely and accurate information as to the actual value of the quantity of iodine released into the environment in case of a radiological accident. LILCO objects to this contention as not adequately reflecting the parties' settlement agreement, and proposes a revised version of this contention. The

parties were requested to jointly consider this matter and address it in their August 30, 1982 responses.

LILCO's response repeats its earlier objection that its settlement agreement with the County and SOC provides that "the scope of an iodine monitoring contention in the emergency planning proceeding would not contest the details of the iodine monitoring system or LILCO's compliance with NUREG-0737 or Regulatory Guide 1.97 with respect to iodine monitoring", and asserts that this agreement concedes LILCO compliance with these standards.

The County's August 30, 1982 response disagrees with LILCO's reading of the settlement agreement. In the view of the County, the language of the settlement agreement was intended to preclude intervenors from directly contesting the compliance of the iodine monitoring system with NUREG-0737 and Regulatory Guide 1.97 in the language of any future contention. However, the agreement does not require that the intervenors concede LILCO compliance with those standards in the context of the emergency planning compliance issues.

We believe the County is correct in its reading of the settlement agreement. While the language cited by LILCO may appear, on its face, to support LILCO's position, our understanding of this settlement agreement was not that the County was conceding LILCO's compliance with

NUREG-0737 and Regulatory Guide 1.97, but that the issue of such compliance was merely being moved into the context of compliance with emergency planning requirements. We conclude that the County's new contention, contesting LILCO's compliance with 10 CFR §50.47(b)(8) & (9), is in accord with the parties' earlier settlement agreement.

Further, we believe that the additional information in the County's response specifying what intervenors seek to contest with respect to EP14(C) cures the lack of particularization noted by the Staff. Accordingly, we admit this contention, as clarified by the information appearing in the County's August 30, 1982 response at pages 11-13.

D) Failure To Specifically Identify Radiation Monitors

Not Admitted.

LILCO and the Staff both object to this contention as lacking basis and specificity, in that these monitors are already identified in the LILCO plan at page 6-2 and in Table 6-1, in accordance with NUREG-0654, Item II.H.5.b.

The County states in its August 30, 1982 response that "[t]he County's objective in this contention is to have LILCO identify which effluent monitor will provide a reading for any particular EAL." It

further states that its contention provides appropriate regulatory cites.

We do not believe 10 CFR §§50.47(b)(2),(4),(8) (9) or (10) to require that LILCO identify which effluent monitor will provide a reading for any particular EAL. Nor do we believe this to be required by NUREG-0654. As noted by LILCO, Item II.H.5 requires that each utility identify and establish "onsite monitoring systems that are to be used to initiate emergency measures in accordance with Appendix 1, as well as those to be used for conducting assessment (emphasis added)", not that each effluent monitor be identified. LILCO's Table 6-1 appears to meet these criteria.

In this regard, we note that the County does not respond directly to LILCO's or the Staff's objections to this contention. If the County is seeking anything more than this listing, the basis for its contention is unclear to this Board. Therefore, this contention is denied as being without basis.

EP15: Communications With Off-Site Response Organizations

This contention is derived from old EP20(a), which our July 27 order held to be inadmissible as written. LILCO does not object to the admission of this contention. The Staff objects to portions of this contention. These objections are discussed below.

A) Telephone Power Outage, Sabotage or Overload

Admitted.

B) Telephone Network Vulnerability to Extreme Weather Conditions

Admitted.

C) Hotline Communications Network

Not admitted.

The Staff objects to this contention because (1) it asserts specific allegations not previously raised and is therefore untimely (2) NRC will be connected with Shoreham by a dedicated phone system, making connection to the hotline system unnecessary and (3) there is no basis for requiring identification of the personnel to use the hotline during this phase of the hearing in the absence of the County plan.

While we are uncertain, in light of LILCO's recent revision to its plan, that this contention would qualify as untimely, we agree with the Staff that intervenors have provided no basis as to why an NRC hotline connection with Shoreham is necessary, in light of existing plans for a dedicated phone system. We further agree with the Staff that there is no

basis for litigating information yet to be provided by the County plan as to the identities of those persons using the hotline system. LILCO has identified its personnel who will be using these phones. See plan at 5.2.8. Accordingly, we find this contention to be without basis.

D) Telephone Overload

Admitted.

E) Redundant Power Supplies

Admitted.

F) Beepers

Admitted.

In light of the preamble to EP15, which is modified by each of the subparts, we do not understand the Staff's comment that this contention fails to state a contested issue.

G) UHF And VHF Radio Base Stations

Not Admitted.

The Staff objects to this contention, insofar as it relates to communications with off-site agencies, as being without basis. The Staff states that the UHF radio has been established and verified to provide the capability of two-way voice communications between the Technical Support Center, Emergency Operations Facility and the downwind survey teams throughout the 10-mile EPZ (LILCO plan, Section 7.2.10). The Staff also asserts that while the plan contains no specific data about the VHF radio, which will provide the capability of two-way voice communication between the station and the police, the contention has set forth no reason to doubt the capability of these standard communications systems. The Staff also asserts there to be no basis for requiring the plan to demonstrate that the radio base stations must provide a reliable communications link between the facility and the Emergency News Center (ENC), since neither of these radios will be connected to the ENC.

We agree with the Staff's comments. We further note that this contention states no basis as to why the LILCO plan must include the data which is referenced in this contention, nor does it specify either why the data which appears in the LILCO plan is "insufficient" or what data intervenors believe must be presented to sufficiently address this matter.

This contention is therefore not admitted.

H) National Alert Warning System

Admitted.

The Staff objects to this contention as being a new matter untimely raised. We are unsure whether this matter is untimely, in light of LILCO's recent plan revisions. In any event, we are very pleased by NSC's efforts in revising, refocusing and particularly renumbering old EP20. As we believe this contention to be stated with proper basis and specificity, it is therefore admitted.

EP16: Stress On Communications/Notifications Personnel

This contention appears to be an expanded version of old EP20(a)(8), which our July 27, 1982 order held to the inadmissible as written. As rewritten, this contention is limited to stress on LILCO notification personnel and specifically excludes issues related to People Against Nuclear Energy v. Nuclear Regulatory Commission, 678 F.2d 222 (D.C. Cir. 1982)

LILCO objects to this contention in its entirety as lacking particularity and asserts that as it deals with alleged inadequacies in

the training program, it should be consolidated with EP7. The Staff objections to each subpart are discussed below.

A) Lack Of Training To Deal With Psychological Stress

Not admitted.

The Staff objects to this contention because (1) it provides no basis that personnel will be subjected to psychological or mental stress during an emergency (2) it provides no basis or specificity as to how the emergency training, drills and exercises will not adequately provide a means to overcome such stresses and (3) it refers to no regulatory requirements as a basis for this contention.

We believe this contention to be without basis. We assume, despite, the Staff's reluctance to do so, that a radiological emergency is a stressful situation. However, this contention does not specify any particular reason and basis for the implication that the planned emergency training, drills and exercises aimed at preparing for an emergency such as this would not adequately prepare LILCO personnel for such an emergency.

B) Motivational Training

Not admitted.

The Staff objects to this contention because (1) it is a new matter, not raised in old EP20, and is therefore untimely filed; (2) it provides no basis as to why such motivational training is needed in light of the extensive training, drills and exercises that will be conducted; and (3) it provides no basis for the assertion that off-site personnel will have a natural reluctance to respond to the emergency and therefore, a motivational program is needed.

We agree with the Staff that this contention does not assert a basis as to why motivational training such as this is necessary in light of the extensive training, drills and exercises that will be conducted. However, in light of our decision to admit EP6(A), the subject matters of which we believe to greatly overlap this contention, we will permit testimony in connection with that contention as to how intervenors allege that such motivational training would improve the likelihood of LILCO personnel reporting to the Shoreham site in a timely manner.

C) Training For Communicators

Not admitted.

The Staff asserts that this contention, which alleges that certain unnamed communicators "do not appear to be included" in the LILCO training program, is without basis. We agree. LILCO's plan provides, at Section 8.1.1(1), for the training of LILCO's Nuclear Emergency Communications Personnel and at Section 8.1.1(5), for communications drills and testing.

We also believe this contention to lack particularity, as it makes no attempt to specify which communicators it alleges not to be included in the training program.

EP17: Personnel Assignments To Communication/Notification

This contention was drawn from several subsections of old EP20, which we held in our July 27, 1982 perhearing conference order to be inadmissible as written.

A) Dual Capacity Of Watch Engineer As Emergency Director

Not admitted.

This contention states that the LILCO plan, at Section 5.2.1, assigns the responsibility of Emergency Director to the on-shift Watch Engineer and asserts that there is no assurance that one person can perform simultaneously the duties of Watch Engineer and Emergency Director.

LILCO states that this contention should be consolidated with EP8. The Staff opposes this contention as lacking basis, since Section 5.2.2 of the LILCO plan provides for the Operations Manager or a more senior licensed operator to assume the duties of Watch Engineer, if the Watch Engineer has assumed the duties of Emergency Director. We agree with the Staff that this contention is without basis.

B) Insufficient EOF Notification Personnel

Admitted.

This contention asserts that there is an insufficient number of personnel assigned to the EOF to assure proper notification of off-site emergency support and response agencies. The Staff asserts that this contention provides no basis or specificity as to why the number of communicators already assigned to the EOF would be inadequate. We believe intervenors to have set forth this contention with reasonable basis and specificity.

The Staff asserts in its objections that this contention ignores the role of the public affairs personnel as set forth in LILCO plan Section 5.2.9. It is not clear to the Board, however, what notification role the Staff is asserting that these persons will play, as Section 5.2.9 appears to address dissemination of information to the public, not notification to off-site emergency support and response organizations.

LILCO asserts that this contention should be consolidated with EP10. We disagree with LILCO as to consolidation, but believe that this contention should be tried in the same time frame as EP10.

C) Conflicting Decisions

Not admitted.

This contention asserts that the LILCO plan has no safeguards against the possibility that the Emergency Director or the Response Manager may make communications/notifications decisions which conflict with State or County actions.

The Staff asserts that this contention is without basis, in light of the explicit division of responsibilities in the LILCO plan between LILCO, County and State officials in the event of an emergency. We agree.

As noted by the Staff, Section 5.4 of the LILCO plan provides that LILCO has the responsibility for implementing protective actions for all persons located in the area of the site "under owner control" and the notification of persons in residence at the St. Joseph's Villa. The State and County have the responsibility for implementing protective actions for all other members of the public. In light of this clear delineation of notification responsibilities, it is unclear what more in the way of "safeguards" against conflicting notifications decisions this contention is seeking. Therefore, it is denied admission as lacking basis and particularity.

EP18: Medical And Public Health Support

Withdrawn pursuant to the August 25, 1982 letter from Counsel for NSC, noting that this contention is redundant to EP3(D).

EP19: Recovery and Reentry

Not admitted.

In our July 27 order, we held this contention, then numbered EP 21, to be not admissible as written and susceptible to settlement. Furthermore, we asked that this contention be revised and further particularized in light of LILCO's recent revision to its emergency plans, and in light of NUREG-0654, Item II.M and 10 CFR §50.47(b)(13). Intervenors have not attempted to revise this contention.

The Staff and LILCO note that LILCO's plan and implementing procedures have established specific procedures for recovery and reentry and assert that this contention does not particularize in what ways LILCO is alleged to have inadequately considered the concerns expressed.

We agree that in light of the specific LILCO plan sections and procedures which address this issue, which LILCO brought to the attention of SOC's attorneys in response to our July 27, 1982 order, intervenors

have failed to adequately particularize those defects alleged to exist in LILCO's plan. Accordingly, this contention is not admitted.

EP20: Interim Safety Parameter Display System (SPDS)

Admitted.

This contention, previously numbered EP22, was held in our July 27, 1982 order to be inadmissible as written. Intervenors were requested to better particularize the subdivisions of this contention, particularly subpart (f). Subpart (f) has been dropped in this revised contention, and each remaining subpart has been referenced to parts of NUREG-0696.

LILCO and the Staff object to this contention as lacking adequate particularization, both asserting that intervenors have failed to provide the particularization ordered by this Board. We disagree.

While we believe this contention to be still somewhat vague, the matter in this contention about which we were most concerned was subpart (f), which referenced "human factors", without particular specification (Tr. 7385). With regard to the other subparts, what we sought was some better guidance as to their bases. Tr. 7386. The particular references to NUREG-0696 assist in this regard. While further particularization of this contention would have been desirable, we do not deem it essential for this contention to be admitted.

EP21: Emergency Implementing Procedures

Not admitted.

This contention, originally numbered EP24, was held not admissible as written by our July 27 order, and was ordered to be better particularized, or dropped if all necessary EPIPs have been provided.

LILCO objects to this contention as lacking particularity in that intervenors have not identified the alleged blanks or missing information on these EPIPs, nor listed the EPIPs which are alleged to not be complete or approved. The Staff echos this objection, adding that the missing information, if any, pertains only to procedures which may be further particularized in the future, but are not immediately required.

Suffolk County's August 30, 1982 response states that the EPIPs which are alleged by this contention not to be complete are those which relate to the EALs alleged by EP13 to contain numerous blanks or missing information. LILCO agreed with this position in its August 30, 1982 response. We stated with respect to EP13 that we do not believe the non-existence of certain information which must be provided prior to fuel load and which will be provided as a result of start-up testing gives rise to a litigable contention. We also do not believe that the present absence of EPIPs to be based on this information gives rise to a litigable contention at this time. See Duke Power Company, et al.

(Catawba Nuclear Station, Units 1 and 2) ALAB-687, 16 NRC ____ (August 19, 1982)

We believe this contention lacks particularity, as it does not state the specific EPIPs which are alleged to be missing or what significance should be attached to their absence at this point in time. This contention is therefore not admitted. If this contention is in fact duplicative of EP13 given the parties' further responses, our ruling on EP13 is dispositive of this matter.

EP22: Accident Assessment Equipment

Not admitted.

In our July 27, 1982 order, we ruled this contention inadmissible as written and directed that it be further particularized. Intervenors have added a new paragraph to this contention, alleging that LILCO's plan is inadequate as it does not state the extent to which non-safety-related instruments and equipment will be relied upon and that any such reliance is inappropriate.

LILCO asserts that this contention seeks to relitigate SC/SOC 7(B), involving safety classification of equipment and systems interaction. Both the Staff and LILCO allege that this contention lacks adequate particularization. Suffolk County, in its August 30 response,

denies that this contention seeks to relitigate SC/SOC 7(B), noting that it seeks to question the reliability of non-safety-related instruments.

We do not believe that intervenors have particularized what instrumentation they believe must be safety-grade, or why they believe non-safety-grade instrumentation to be inadequate. In addition, we note that none of the references in this contention provides any basis for intervenors' assertion that LILCO must identify in its Emergency Action Level scheme the extent to which non-safety-grade instruments and equipment are relied upon or why such reliance would be inappropriate or inadequate at Shoreham. This contention is therefore not admitted for lack of particularity and basis.

EP23: Accident Assessment And Dose Assessment Models

Admitted as EP27 in our July 27, 1982 order, as rewritten by the Board at that time.

EP24: Technical Support Center

Not admitted.

In its July 6, 1982 statement of contentions, intervenors sought to reserve the right to file contentions concerning LILCO's technical

support center on completion of that structure. Our July 27, 1982 prehearing conference order directed that intervenors include any proposed contentions which they might have with respect to the technical support center in their August 20, 1982 filing. Tr. 7231.

The new contention filed by intervenors asserts that the technical support center will not be functional by the fuel load date, which it states to be currently scheduled for September 20, 1982. LILCO and the Staff object to this contention as lacking basis and particularity. Staff also asserts that LILCO's revised fuel load date is now projected to be in November 1982.

The Board believes there to be no basis for asserting that LILCO's technical support center will not be completed by LILCO's actual fuel load date, whatever date that might eventually be. If LILCO were to later propose to load fuel without the technical support center being complete, the intervenors may then propose a specific legal and/or factual issue. Accordingly, this contention is not admitted.

Schedule

The parties are directed to continue to hold negotiations in an attempt to settle, narrow or further particularize admitted contentions. The parties shall file joint or coordinated status reports summarizing the efforts and progress achieved so as to be received by the Board by September 21, 1982.

The reports shall also include a specification with supporting explanation of which, if any, admitted issues would likely be materially affected by the completion of the Staff's on-site appraisal report. The report shall take into account the Staff's interim report, expected to be issued September 7, 1982, and all subsequent information.

The date for the receipt of written direct testimony or the contentions admitted by this order, as previously established, is October 12, 1982. That date remains in effect unless and until it is modified as to some or all of the issues. The parties are directed to consider and, if possible, agree on whether some of the direct testimony can be filed as early as September 28 or October 5 without disrupting orderly preparation of the remainder of the testimony. Positions on this point shall be included in the September 21 report.

Admitted Contentions

Attached to this order as Appendix A is a summary of which of intervenors' August 20, 1982 contentions have been admitted or denied by this order. An Appendix B to this order, which will state all contentions as admitted by the Board during Phase I of the Shoreham emergency planning proceedings, will be issued shortly. So as to assist the parties in focusing their negotiations and preparation of testimony on emergency planning issues, the Board has concluded that the issuance of this order should not be delayed pending the completion of that Appendix B.

THE ATOMIC SAFETY AND
LICENSING BOARD

Lawrence Brenner, Chairman
Lawrence Brenner
ADMINISTRATIVE JUDGE

Peter A. Morris, Member
Dr. Peter A. Morris
ADMINISTRATIVE JUDGE

James P. Carpenter, Member
Dr. James P. Carpenter
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 7, 1982

APPENDIX A

The lists below reflects the disposition of those contentions advanced in intervenors August 20, 1982 "Phase One Consolidated Emergency Planning Contentions" by the Board's September 3, 1982 "Supplemental Prehearing Conference Order (Phase I Emergency Planning).

Admitted

EP2(A)

EP2(B)

EP2(C)

EP3(A)(2)

EP3(A)(3) (As amended by Board)

EP3(B) (As rewritten)

EP4 (As amended by Board)

EP5 (Sentence stricken by Board)

EP6(A) (As amended by Board)

EP6(B)

EP6(C)

EP7A (As limited by Board)

EP8

EP10

EP12

EP13

EP14(A)

EP14(B)

EP14(C) (As clarified by SC 8/30/82 Response)

EP15(A)

EP15(B)

EP15(D)

EP15(E)

EP15(F)

EP15(H)

EP17(B)

EP20

EP23

NOT ADMITTED

EP1

EP2(D)

EP2(E)

EP3(A)(1)

EP3(A)(4)

EP3(C)

EP3(D)

EP7(B)

EP9

EP11

EP14(D)

EP15(C)

EP15(G)

EP16(A)

EP16(B)

EP16(C)

EP17(A)

EP17(C)

EP18

EP19

EP21

EP22

EP24