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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
James A. Laurenson, Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BOARD

SERVED FEB 6 1984

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station,  
Unit 1)

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

February 3, 1984

MEMORANDUM AND ORDER RULING ON INTERVENORS' PROPOSED  
EMERGENCY PLANNING CONTENTIONS MODIFIED TO  
REFLECT REVISION 3 of the LILCO PLAN

Procedural History

On July 7, 1983, Intervenors Suffolk County, Shoreham Opponents' Coalition, North Shore Committee and the Town of Southampton filed the first set of contentions in this Emergency Planning proceeding, the "Consolidated Emergency Planning Contentions." The contentions alleged deficiencies in LILCO's "Transition" Emergency Plan, Revision 0.

At a Prehearing Conference in Hauppauge, New York on July 13, 1983, and in a subsequent Prehearing Conference Order, we invited the Intervenors to redraft their contentions to eliminate repetition and redundancy and to correct other organizational inadequacies in the original submission. Thereafter, on July 26, the Intervenors filed the second set of contentions in this proceeding, the "Revised Emergency

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Planning Contentions." After receiving and considering the written responses of LILCO and the NRC Staff, and the reply of the Intervenors, we ruled on the admissibility of each proffered contention in our Special Prehearing Conference Order of August 19, 1983. At that time, we admitted all or part of approximately 70 contentions.

During the following months, the LILCO "Transition" Plan (hereinafter "LILCO Plan" or "Plan") underwent several revisions: Revision 1 was dated July 28, 1983 (two days subsequent to the filing date of the Intervenors' second set of contentions); Revision 2, November 7, 1983 and Revision 3--the impending release of which was announced at our December 1, 1983, Conference of Counsel (Tr. 735)--was dated December 21, 1983.

On January 3, 1984, LILCO and Suffolk County filed a "Joint Motion for Adjustment of Schedule," which we approved at the January 4, 1984 Conference of Counsel. In the Joint Motion the parties indicated that they had agreed, inter alia, that parties would file revisions to the current (i.e., July 26, 1983) Contentions to reflect changes in the LILCO Plan (Joint Motion at 3).

At the January 4 Conference of Counsel, Suffolk County explained that the purpose of the forthcoming revised contentions would be "to make these contentions, which supposedly frame the issues that we are all litigating, reflect what's on the table now, which is Revision 3 of the Plan . . . . just to make the contentions reflect the Plan that LILCO is now offering, rather than the one that was on the table back in July." (Tr. 2211-12). Suffolk County attorneys were unable to state,

in response to questioning, whether the Intervenors would attempt to include new contentions among the "revised contentions." (Tr. 2213-14).

Thus, on January 12, 1984, the Intervenors filed the third set of contentions in this proceeding, the "Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan."

LILCO and the NRC Staff each filed "Objections" to the "Proposed Modifications" on January 19, 1984. LILCO noted objections to proposed changes in portions of nineteen contentions. It based virtually all of its objections upon one or more the following four grounds:

1. no apparent basis to believe that the contention might be true;
2. inadequate specificity to make parties aware of what matters were to be litigated;
3. no requirement in law or regulations mandating that LILCO take the action that would be required to correct the alleged deficiency; and
4. no justification shown for Intervenors raising an issue now rather than sometime earlier in this proceeding.

LILCO indicated that where it raised the fourth objection, untimeliness, it did so because it believed that a proffered modification raised issues that were not justified by Revision 3 of the Plan, but which could have been brought forward at some time earlier in this proceeding. Such modifications, LILCO argued, are really late-filed contentions that do not meet the requirements for admission of such contentions. Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983).

The NRC Staff objected to proposed modifications to portions of only two contentions. It objected with respect to Contention 15.E because the effect of the modification would be to expand the scope of the contention far beyond its original concern, and because the new substantive issue included by the modification could have been raised in a contention based upon Revision 0 of the LILCO Plan. It objected to Contention 66.D because, as modified, the contention is inadmissible because of a prior Board order<sup>1</sup>, that it is similar to a proposed contention denied admission by our Board in the August 19, 1983 Prehearing Conference Order, and is without basis.

On January 30, 1984, we received Suffolk County's "Response" to the Objections of LILCO and the NRC Staff.

#### Applicable Law

The Commission in Catawba, supra, considered the issue of admissibility of contentions proffered out of time where they were allegedly incapable of being filed earlier because of the "institutional unavailability" of the document(s) upon which they are based. The Commission held "the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if

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<sup>1</sup> "Contentions premised solely upon the unavailability of Suffolk County aid in emergency response are not admissible in this proceeding. 'Memorandum and Order Denying Suffolk County's Motion to Terminate the Shoreham Operating License Proceeding,' LBP-83-22, 17 NRC 608 (April 20, 1983)." NRC Staff Objections at 3.

information was available early enough to provide the basis for the timely filing of that contention." (17 NRC 1041, 1048). Furthermore, "intervenors are expected to raise issues as early as possible. To the extent that this leads to contentions that are superseded by the subsequent issuance of licensing-related documents, those changes can be dealt with by either modifying or disposing of the superseded contentions." Id. at 1050. (Emphasis supplied.)

The Commission thus distinguishes between situations in which a timely-filed contention is modified to comport with a subsequently-released document (such as Rev. 3 of the LILCO Plan) and situations in which a contention filed out of time raises new matters. In the former case, the wording of the contention is, presumably, simply changed to more exactly reflect a changed situation. In the latter, the Commission has made it clear that a proponent must show, on balance, that the five factors set forth in 10 C.F.R. § 2.714(a)(1) support the late admission.

### Analysis

We will apply Catawba, supra, to the instant matter. A modified contention that exhibits a clear nexus to the previously-admitted contention which it purports to modify will be allowed provided that the change is based on revisions effected between Rev. 0 and Rev. 3 of the LILCO Plan. We will find that all purported "modifications" lacking such nexus are, in fact, new contentions. All such new contentions will be denied admission as "modified" contentions. The Intervenors may, if

they choose, petition this Board to admit them as late-filed contentions pursuant to 10 C.F.R. § 2.714(a)(1).

We reject the argument that modifications based upon Revision 1 or 2 should have been made earlier. In view of the "living" nature of the Plan, and the practical value of waiting until just prior to actual litigation before attempting to place the admitted contentions in their final form, we believe that it was appropriate to wait until the issuance of Rev. 3.

In ruling upon those proffered modifications, we have utilized the following terminology:

"allow"--The Board accepts the contention as modified by the Intervenors' January 12, 1984 document. The wording of the admitted contention will henceforth be considered to be as set out therein.

"deny"--The Board rejects the Intervenors' modifications.

"no ruling required"--This notation is used where no issue has been drawn that is amenable to Board ruling. Since no true objection is before us, we allow the contention as modified by the January 19, 1984 document.

Below we rule, item by item, upon each of the modifications objected to in the LILCO Objections. Included among these are the modifications to contentions 15.E and 66.D of which the NRC Staff also complained. We do not consider any portion of the "modified contentions" as to which no objection has been made. Our rulings are intended to allow or deny only the specific words that were objected to, and to have no effect upon any other modifying passages which may be in

each contention or subcontention. All sections not objected to are considered allowed.

Having considered the positions of all the parties in this matter, and upon application of Catawba, we rule as follows:

Contention 15.E modification is denied.

Contention 15 discusses effects of LILCO's alleged lack of credibility upon the implementability of its Emergency Plan. Subpart 15.E, in its original form, alleged that LILCO's emergency broadcast system (EBS) messages would not be believed because they identify a LILCO employee as the source of the information and protective action recommendation; because the public does not consider LILCO a credible information source, the messages would not be believed or obeyed. The proffered modification adds five sub-subcontentions which specify reasons why LILCO's EBS messages lack credibility. Both LILCO and the NRC Staff objected to this modification because it would broaden the contention far beyond its former scope, and because the issue of the substantive content of the EBS messages could have been raised earlier. LILCO also separately objected to each of the proposed sub-subcontentions on a variety of grounds.

In our Special Prehearing Conference Order of August 19, 1983, we admitted "main" Contention 15 only; the subparts were considered subsumed within the main contention, to be treated as reasons in support thereof (Special Prehearing Conference Order at 6). The focus of main Contention 15 is whether LILCO is perceived by the public as credible, and whether LILCO's lack of credibility will adversely impact upon

implementability of particular aspects of, or operations contemplated by, the LILCO Plan. The proposed modifications deal with the substantive content of the EBS messages; they give reasons why the messages will allegedly not be believed. They have no direct relationship to the believability of LILCO as an entity nor to the alleged unbelievability of the EBS messages because of their avowed LILCO authorship. This modification attempts to include a new issue within Contention 15. It is denied.

Contention 18 - no ruling required.

Contention 24.E - modification is allowed.

Contention 24.J - no ruling required.

Contention 24.M - modification is allowed.

In its Objections LILCO points out that the Board's August 19, 1983 Prehearing Conference Order admitted this subcontention subject to a limiting interpretation, that the agreements alleged to be missing under the contention are agreements with institutions and not with individual school bus drivers. (Objections at 11). Although we here allow the modified wording for this subcontention, its scope remains as limited by our prior ruling.

Contention 24.P - modifications are allowed in part and denied in part.

We allow only those changes which deleted words; the new phrase "in the manner or volume, according to the procedures in the LILCO Plan" is denied. The scope of the original subcontention was whether LILCO has agreements which provide assurance that certain emergency support



organizations will provide help during a radiological emergency. If the proposed added phrase were allowed, it would broaden that scope to include the issue of the nature and extent of the help that one emergency organization, the American Red Cross, would provide. It is thus not a true "modification", and will not be allowed into this proceeding characterized as such.

Contention 26.C - modification is allowed.

Contention 26.E - modification is allowed.

Contention 26.F - no ruling required.

Intervenors have withdrawn this proposed modification. (Suffolk County Response at 37).

Contention 27.C - modification is allowed.

The original subcontention questioned whether many emergency response personnel would be able to report to their duty stations in a timely fashion in view of the LILCO Plan's requirement that when an emergency is declared they must first report to "staging areas" or "dispatch locations" and then to their assigned posts. The proposed modification lists the arguably time-consuming activities those personnel will have to undertake while at such staging areas: picking up personnel dosimetry, receiving briefings, and in some cases obtaining and installing equipment such as mobile radios and public address systems in their vehicles. In allowing this modification, we do not intend to allow thereunder any consideration of the specifics of mobile radios, personnel dosimetry, etc.; only their impact, if any, upon mobilization time at staging areas will be considered.

Contention 30 - modification is allowed.

Contention 34.C - modification is allowed.

Contention 39.A - modification is allowed.

Contention 39.B - modification is allowed.

Contention 44.D - modification is allowed.

Contention 44.F - modification is allowed.

Contention 61.C.2 - modification is denied.

The original Subcontention 61.C raised the issue of the LILCO Plan's alleged inadequate provision for sheltering in the schools, and complained that the LILCO Plan included no procedures indicating how or under what circumstances a sheltering order for schools would be made or implemented. The "modified" 61.C.2, a new sub-subcontention, talks about sheltering in special facilities such as hospitals and nursing homes. LILCO objected, alleging that 61.C.2 is repetitive with Contention 24.J, is supported by no legal requirement, and is without basis.

In denying this modification we are not sustaining LILCO's objection. We are acting sua sponte in view of the fact that this "modification" constitutes a new issue which is neither sufficiently related to the subcontention it modifies nor properly raised now for the first time.

Contention 66.D - modification is allowed.

Contention 67.A.3 - modification is allowed.

Contention 67.D - modification is allowed.

Contention 69 - no ruling required.

"Main" Contention 69 was not separately admitted. Thus LILCO's objection, that it raises essentially the same issue as that presented by Contentions 61.C.1 and 69.E, is meaningless.

Contention 69.B - no ruling required.

Contention 69.E - no ruling required.

Contention 71.A - modification is denied.

This "modification" would add the broad area of evacuation plans for nursery schools to our issues for consideration. Issues related to nursery school response constitutes new matter and not a modification.

Contention 71.C - modification is denied.

LILCO objects to this modification on the ground that it would require the LILCO Plan to include the details of emergency plans for schools outside the EPZ although there is no legal requirement that LILCO do so. We do not, in denying this modification, reach or consider that objection. The issue raised by this new subcontention--whether in the event of an emergency at Shoreham students who live in the EPZ but attend school outside the EPZ may be retained at school when the school day is over--is a new one. It is a late-filed contention; it is not a modification and will not be admitted.

Contention 72.D - modification is allowed.

Contention 73.B.3 - modification is allowed.

Contention 73.B.5 - modification is allowed.

Contention 81 - no ruling required.

Suffolk County's Response reports that this objection has been withdrawn by LILCO (Response at 65).

Contention 81.A - modification is allowed.

Contention 81.C - modification is denied.

Inclusion of "criteria for a contaminated operations area and how to measure it" constitutes new matter.

Contention 81.E - modification is denied.

The "modified" contention states, in pertinent part, "The plan does not state . . . how exports of agricultural products and ducks from Suffolk County or Connecticut the other parts of the country can be controlled or prevented." The addition of the words "and ducks" was not objected to. Hence, that modification was allowed. The change which would add "or Connecticut" must be denied. Suffolk County's Response admits that "all parties to this proceeding have from the beginning been aware that Connecticut is within the ingestion exposure pathway, although it was subsequent to Rev. 0 that LILCO recognized that fact in the Plan." (Response at 66). It has long been known that the State of Connecticut is within the 50-mile ingestion pathway (EPZ); Intervenors did not need LILCO's Plan to inform them of that fact. We agree with LILCO that if the Intervenors wanted to include the State of Connecticut in Contention 81.E, they could have done so when the contention was originally drafted.

Contention 85 - modification is allowed.

Contention 92 - modification is denied.

The Intervenors cannot claim that they first learned about the existence or the location of the State of Connecticut from Rev. 3.

Amendment of Schedule

Previously, all parties proposed a schedule concerning Group II contentions which depended, in certain areas, upon a Board ruling on the proposed modified contentions. The Board adopted that proposed schedule at the January 4, 1984 Conference of Counsel. However, in light of other intervening events, the Board will extend those dates as follows:

<u>DATE</u>	<u>EVENT</u>
February 14	Parties to file motions for summary disposition on contentions previously identified as involving Department of Energy
February 28	Parties to respond to motions for summary disposition

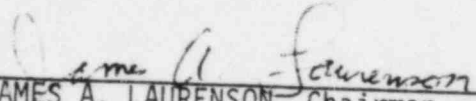
ORDER

WHEREFORE, IT IS ORDERED THAT

1. LILCO and NRC Staff's Objections to the Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan are ruled upon as set forth in the body of this Order.
2. The Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan, except as denied above, are allowed, and henceforward will be considered the contentions before the Board in this proceeding.
3. This Board's Order Confirming Schedule Changes of January 31, 1984 is amended as set forth above.

IT IS SO ORDERED.

ATOMIC SAFETY AND  
LICENSING BOARD

  
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JAMES A. LAURENSON, Chairman  
Administrative Law Judge

Bethesda, Maryland