

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board

AUG 18 AM 11:27

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

Docket No. 50-322 O.L.  
(Emergency Planning)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

DOCKET NUMBER  
PROD. & UTIL. FAC. 50-322 OL-3

SUFFOLK COUNTY MEMORANDUM  
IN RESPONSE TO BOARD INQUIRY REGARDING CONTENTION 22

At the Prehearing Conference on August 9, 1983, the Board posed a number of questions concerning Intervenors' Contention 22. These questions were designed to elicit the parties' views regarding whether Contention 22 was admissible under the NRC's regulations and the related issue why a Section 2.758 waiver petition had not been filed. See generally Tr. 412-35.

After reviewing the April 9 transcript, Suffolk County is concerned that the County's position on Contention 22 may not be clearly understood by the Board. See, e.g., Tr. 412 where the Board characterized the County's position on Contention 22 as being "kind of indefinite . . . as to what it was really after in this contention . . . ." It is important, in the County's view, to clarify the record on this issue so that the Board does understand what the County is "after" and so that the Board can provide necessary guidance in the event the Board rules that any parts of Contention 22 are not admissible absent

8308190314 830816  
PDR ADOCK 05000322  
G PDR

D503

a Section 2.758 waiver. Accordingly, the County provides the following clarification.

(1) The issue presented by Contention 22 is whether a contention which puts into controversy the very local conditions set forth in the regulations is acceptable. The County submits that such a contention is acceptable. Otherwise, the Board would be denied the ability to consider the factual bases upon which the Commission has determined adjustments should be made to the EPZ.

Thus, the essence of Contention 22 is Intervenors' assertion that there are particular local conditions existing on Long Island which must be addressed, evaluated and used in setting the boundaries of the EPZ. Section 50.47(c)(2) of the NRC's regulations specifies that local conditions shall be considered when the precise size of the EPZ for a particular plant is being determined. What Intervenors ask for in Contention 22 is an opportunity to demonstrate the impact of local Long Island conditions on the appropriate size of the Shoreham EPZ. The EPZ defines those persons who must be planned for, educated, notified, and otherwise informed and protected. Unless the County is given the opportunity to present evidence on the impact of local conditions, there will be no consideration given to planning for the very persons whose safety would be

affected by Shoreham. Moreover, the County will show that LILCO's 10 mile EPZ ignores important local conditions and that when those conditions are considered (as required by 10 C.F.R. § 50.47(c)(2)), the Board must rule that an EPZ greater than 10 miles is essential. Thus, the focus of Contention 22 is on local conditions and whether, as alleged by Intervenors, these conditions compel an adjustment to the EPZ which has been proposed by LILCO.

Confusion has been caused regarding Contention 22 because parties have focused on whether the regulations permit a 20 mile EPZ. However, to focus on a 20 mile EPZ is to mischaracterize Contention 22. What Intervenors are "after" (Tr. 412) is the opportunity to make the Board aware of local conditions on Long Island that should determine the location of the EPZ boundary but which, contrary to Section 50.47(c)(2), have been ignored by LILCO. The regulations clearly do not prohibit the presentation of evidence regarding local conditions which may affect the EPZ boundary.

Contention 22 does not specify precisely what size the EPZ should finally be, because its focus is on particular local conditions and their effects on the need to protect public safety. What is clear to Intervenors at the outset -- and what they request an opportunity to demonstrate at the hearing -- is

that specific local conditions and emergency response capabilities which relate to Shoreham compel the conclusion that an EPZ greater than 10 miles be established.

The evacuation shadow phenomenon is a good example of a local condition on Long Island which Intervenors contend will affect EPZ size. First, Suffolk County will present evidence to show that if there is an accident, there will be wide-spread voluntary evacuation from areas within and beyond LILCO's 10 mile EPZ. Due to the geography of Long Island, the demographic characteristics of Long Island (particularly in the peak summer season), and the limited Long Island road network, these voluntary evacuees will cause a massive traffic gridlock both within the 10 mile EPZ and in areas outside the 10 mile EPZ. Second, Suffolk County will show that due to wind and topographic conditions on Long Island, persons stranded in traffic both within and beyond the 10 mile LILCO EPZ will be exposed to harmful radiation doses. Finally, the County will show that LILCO's LERO organization lacks the capability on an ad hoc basis to augment the emergency response. Thus, persons beyond 10 miles who are exposed to harmful radiation will not be protected. Therefore, the County's evidence will demonstrate that there is a need for advance EPZ planning and preparedness in an area beyond 10 miles from the plant.

Contention 22 does not challenge any regulatory requirements or assumptions. The regulations specify that the precise size of the EPZ shall be determined in relation to emergency response needs and capabilities, as these may be affected by local conditions. The County simply seeks the opportunity to show that: (a) there are particular local conditions on Long Island that significantly affect emergency response needs and capabilities; (b) LILCO has effectively ignored these local conditions; and (c) when the local conditions are considered, as required by 10 C.F.R. § 50.47(c)(2), adjustments must be made in LILCO's proposed EPZ.

(2) Contrary to the implication of one Board question (Tr. 434), an EPZ of greater than 10 miles is permitted under the NRC regulations. Indeed, depending on local conditions, a Board may be compelled to require that the EPZ be greater than 10 miles.

Section 50.47(c)(2) does state that the EPZ will "generally" consist of an area of "about" 10 miles in radius. The same regulation then specifies that:

[T]he exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. (emphasis supplied).

Thus, the NRC's regulations require that the EPZ for a particular power reactor be site specific -- that is, determined in the context of specific local conditions which may indicate a need for a larger or smaller EPZ. The regulations therefore mandate that the Board accept a contention which puts such local conditions into controversy. Indeed, local conditions are the essential ingredient of the EPZ and thus must be subject to being disputed among the parties to the proceeding.

Further, the ASLB which previously presided over emergency planning matters clearly recognized that for Shoreham, an EPZ greater than 10 miles might be required due to local conditions on Long Island. Thus, the ASLB stated in March 1982 (apparently with the evacuation shadow/East End of Long Island problems in mind):

[O]ur ruling does not preclude a contention that because of the geography of Long Island, evacuation planning within an approximate 10 mile EPZ may not be adequate because of the impact of persons outside and to the east of the EPZ choosing to evacuate and having to do so by coming through the EPZ.

March 15, 1982 Order at 25. See also id. at 25 (Board indicating that even if contentions were not filed regarding adequacy of 10 mile EPZ in view of East End problems, the Board itself would pursue the issue.)

Accordingly, based on the plain words of Section 50.47(c)(2) and the ASLB's own prior ruling, it is clear that a contention putting local conditions into controversy is acceptable whether or not the evidence presented and facts proven might require an EPZ larger than 10 miles.

(3) Staff counsel suggested on August 9 that while an EPZ does not need to be fixed precisely at 10 miles, it may be varied from 10 miles only in small amounts in order to allow for "logistical" factors such as tracking a topographic feature like a river. See Tr. 431. This view is not supported by the regulation. The regulation states that the NRC must look at local conditions. Staff counsel presumably would permit an EPZ adjustment to 10.4 miles to have the EPZ track a major river. This, in the Staff's words, would make the EPZ "conform to reality." Tr. 431. But what if that important topographic feature was at one point 10.4 miles from the plant, but at another point 12.2 miles and at yet another point 14 miles? Would the regulations somehow bar the Board from considering that "reality"? Of course not. The regulations direct the Board to look at local conditions; the regulations do not say look at local conditions only if they result in an EPZ change of only plus or minus 0.5 miles.

(4) The Board asked whether local meteorological conditions which might affect plume dispersion are the kind of local conditions which may be considered under 10 C.F.R. § 50.47(c)(2). See Tr. 414-15. The County believes that the answer is "yes." First, Section 50.47(c)(2) does not specify an exclusive list of local conditions which should be assessed. Thus, the fact that meteorological conditions are not explicitly mentioned is of no importance. Further, as a matter of logic, it is clear that the NRC cannot have intended the Board to ignore factors which may significantly affect local planning. For example, if the Shoreham site had a strong, steady wind which predominantly blew in the direction of Port Jefferson and if given that wind, one could predict major plume dispersion in an area 7-13 miles to the west of the plant, the County does not believe there could be any basis for ignoring such a local condition which significantly affects public health and safety and the need for protective actions in a particular area. See NUREG-0654, Appendix 2.

The County intends to present evidence that wind and topographic factors on Long Island will result in radioactive plume dispersion in excess of PAG levels in areas beyond 10 miles from the plant. This challenges no regulatory assumptions; rather, this evidence will demonstrate that local real



life conditions on Long Island (given so-called generic accident assumptions such as postulated in NUREG-0396) will result in significant plume dispersion to areas which the LILCO Plan has ignored. The County merely desires the opportunity to demonstrate to the Board that LILCO has ignored these local conditions, with the result that LILCO has proposed an EPZ which fails to comply with regulatory requirements.

(5) LILCO persists in asserting that Contention 22 is improper because it will result in what LILCO characterizes as litigation of the Shoreham PRA. Tr. 427-29. This argument is a red herring. As the County has noted in its prior filings, if consequence analysis or risk assessment data are available, they should not be ignored in determining the dimensions of an EPZ. However, the mere fact that some of the evidence which may be presented in litigating Contention 22 are derived from consequence analyses or risk assessments, in no way compels the conclusion that the contention is inadmissible. If LILCO desires to dispute the facts concerning the existence and effect of local conditions, which the Intervenors' intend to put into evidence in this contention, it may do so at the hearing. However, whether such facts may be based in part upon a PRA is irrelevant to the question of admissibility of the contention.

(6) The Board correctly noted that Contention 22 "is one of the important issues in this case . . . ." Tr. 416. The County is concerned that LILCO and the Staff are taking positions which would have the effect of denying Intervenors the opportunity to present these local conditions to the Board for its consideration. The contention has been drafted by Intervenors to be consistent with NRC regulations. If the Board is concerned, however, with particular words in the Contention, the County suggests that it so advise the parties so that it can be reworded in a manner that obviates these concerns.

In short, the County does not want technical niceties of contention writing to become an issue in this case. The local conditions on Long Island must be considered by the NRC in determining whether the LILCO Plan meets minimal NRC requirements. The County believes Contention 22 as presently written presents those local conditions for Board consideration in a proper manner. We will certainly consider use of any other words which ensure that a hard look is taken at emergency planning realities on Long Island.

Respectfully submitted,

David J. Gilmartin  
Patricia A. Dempsey  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11788

*Lawrence Coe Lanpher*

~~Herbert H. Brown~~

Lawrence Coe Lanpher

Karla J. Letsche

KIRKPATRICK, LOCKHART, HILL,

CHRISTOPHER & PHILLIPS

1900 M Street, N.W.

Washington, D.C. 20036

Attorneys for Suffolk County

August 16, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

\_\_\_\_\_ )  
In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
Unit 1) )  
\_\_\_\_\_ )

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY MEMORANDUM IN RESPONSE TO BOARD INQUIRY REGARDING CONTENTION 22, dated August 16, 1983, were served to the following this 16th day of August, 1983, by U.S. mail, first class, except as otherwise noted.

- |   |   |
|---|---|
| * James A. Laurenson, Chairman<br>Atomic Safety and Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555 | Ralph Shapiro, Esq. #<br>Cammer and Shapiro<br>9 East 40th Street<br>New York, New York 10016                             |
| * Dr. Jerry R. Kline<br>Atomic Safety and Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555           | Howard L. Blau, Esq.<br>217 Newbridge Road<br>Hicksville, New York 11801  |
| * Mr. Frederick J. Shon<br>Atomic Safety and Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555        | W. Taylor Reveley, III, Esq. #<br>Hunton & Williams<br>P.O. Box 1535<br>707 East Main Street<br>Richmond, Virginia 23212  |
| Edward M. Barrett, Esq.<br>General Counsel<br>Long Island Lighting Company<br>250 Old Country Road<br>Mineola, New York 11501       | Mr. Jay Dunkleberger<br>New York State Energy Office<br>Agency Building 2<br>Empire State Plaza<br>Albany, New York 12223 |
| Mr. Brian McCaffrey<br>Long Island Lighting Company<br>175 East Old Country Road<br>Hicksville, New York 11801                      | Stephen B. Latham, Esq. #<br>Twomey, Latham & Shea<br>33 West Second Street<br>Riverhead, New York 11901                  |

Nora Bredes  
Executive Director  
Shoreham Opponents Coalition  
195 East Main Street  
Smithtown, New York 11787

Marc W. Goldsmith  
Energy Research Group, Inc.  
400-1 Totten Pond Road  
Waltham, Massachusetts 02154

MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, California 95125

Joel Blau, Esq.  
New York Public Service Comm.  
The Governor Nelson A. Rockefeller  
Building  
Empire State Plaza  
Albany, New York 12223

David J. Gilmartin, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\* Bernard M. Bordenick, Esq.  
David A. Repka, Esq.  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Stuart Diamond  
Environment/Energy Writer  
NEWSDAY  
Long Island, New York 11747

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Hon. Peter Cohalan  
Suffolk County Executive  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Eleanor L. Frucci, Esq.  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

Ezra I. Bialik, Esq.  
Assistant Attorney General  
Environmental Protection Bur.  
New York State Dept. of Law  
2 World Trade Center  
New York, New York 10047

Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Comm.  
Washington, D.C. 20555

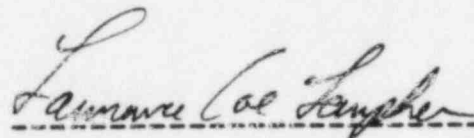
Jonathan D. Feinberg, Esq.  
Staff Counsel, New York State  
Public Service Commission  
3 Rockefeller Plaza  
Albany, New York 12223

Stewart M. Glass, Esq.  
Regional Counsel  
Federal Emergency Management  
Agency  
26 Federal Plaza, Room 1349  
New York, New York 10278

\* James B. Dougherty, Esq.  
3045 Porter Street, N.W.  
Washington, D.C. 20008

Spence Perry, Esq.  
Associate General Counsel  
Federal Emergency Management Agency  
Washington, D.C. 20472

Mr. Jeff Smith  
Shoreham Nuclear Power Station  
P.O. Box 618  
North Country Road  
Wading River, New York 11792



Lawrence Coe Lanpher  
KIRKPATRICK, LOCKHART, HILL,  
CHRISTOPHER & PHILLIPS  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

DATED: August 16, 1983

- (\*) By Hand
- (#) By Federal Express