



## BACKGROUND

Some background is necessary to put the issue presented here in proper context. LILCO had a Probabilistic Risk Assessment ("PRA") performed for the Shoreham plant. In testimony filed in connection with one of the health and safety contentions (7B), a LILCO witness described the Shoreham PRA Study as follows:

### (a) Motivation and Goals

The Shoreham PRA study was a self-motivated LILCO undertaking . . . . The initial goals of the Shoreham [PRA] program were primarily to: (1) assess the Shoreham Emergency Plan by evaluating the Shoreham specific response to these hypothetical accidents and their consequences, (2) perform an independent design verification to ensure that the Shoreham plant design has no atypical or disproportionate elements within its design that dominate risk, and (3) develop reliability/risk analysis capability within LILCO. . . .

### (b) Scope and Schedule

Simply stated, the scope of the Shoreham risk assessment is to establish, utilizing established probabilistic risk techniques, the probability of occurrence at Shoreham of hypothetical accident sequences and their consequences that dominate risk to the general public . . . . The risk assessment is being performed in phases and is similar in scope to WASH-1400. Phase I, performed by Science Applications, Inc., involves a fault tree/event tree analysis and concludes with the establishment of a core vulnerable frequency per reactor year of operation for Shoreham-specific accident sequences. In-plant consequence analyses that establish the characteristics of a radioactive release specific to the Shoreham plant are performed in Phase II, also by Science Applications, Inc., utilizing the MARCH/CORRAL methodology. Ex-plant radiological consequence calculations of radioactive releases are to be performed in Phase III.A by Pickard, Lowe and Garrick, Inc. and includes the calculation of public

risk with the CRACIT code. Phase III.B represents an emergency plan effectiveness study utilizing the ex-plant consequence model established in the risk assessment.

Testimony of Robert M. Kascsak on Status and Use of Shoreham PRA, contained in Burns et al., ff. Tr. 4346 at 120-21.

A LILCO witness from Science Applications, Inc. ("SAI") similarly described a PRA effort as follows:

In a plant specific risk assessment, the probability (frequency) of accidents and then subsequent effects (consequences) are assessed. The three major tasks are:

- Phase I     Determination of the probability of radioactive release
- Phase II    Determination of the magnitude of the radioactive releases for each unique accident sequence including the radioactive species and release time
- Phase III   Determination of the consequences of a radioactive release to the environment or the public

Id. at 88 (Burns).

The methodology used in performing a March 1982 draft of Phases I and II of the Shoreham PRA (i.e., the portion dealing with the probabilities of releases and the magnitude, characteristics and timing of such releases), and whether Phases I and II of the PRA constituted a systematic study of potential adverse systems interactions in the Shoreham plant, was litigated during the health and safety hearings on Contention 7B. Phase III -- the consequence analysis portion of the PRA -- was

not discussed during that litigation. Between March 1982 and June 1983, Phases I and II of the Shoreham PRA were substantially revised by SAI. Thus, both the probabilities of releases from the plant, and the magnitude and characteristics of Shoreham releases have changed significantly from what was contained in the March 1982 SAI draft.<sup>2/</sup>

Phase III of the Shoreham PRA Study -- the offsite consequence analysis portion -- is based entirely upon the information contained in Phases I and II of the study. The County understands that it has been performed primarily by Pickard, Lowe & Garrick (PL&G), under the direction of Thomas Potter. The only documents which the County has received relating to any Shoreham offsite consequence analysis performed on behalf of LILCO are a sketchy and very incomplete rough draft of a PL&G Report dated March 1982, and an August 2, 1983 Final Report based on the newly revised versions of SAI's Phases I and II, which was provided to the County last week.

#### DISCUSSION

The County's discovery requests which are at issue are directed to information that is necessary to enable the County to understand LILCO's offsite consequence analyses and the opinions of LILCO's expert witnesses concerning the offsite

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<sup>2/</sup> The County has recently received copies of the June 1983 SAI Report on Phases I and II of the Shoreham PRA Study.

consequences which the LILCO Transition Plan must be capable of handling. The County has no desire "to litigate the PRA," as LILCO is fond of asserting. The County merely seeks to discover one set of facts which relate significantly to the LILCO Transition Plan -- that is, what assumptions underlie LILCO's belief that its Plan can and will provide adequate protection to the public in the event of an accident at Shoreham.<sup>3/</sup>

The consequences of a radiological emergency at Shoreham are relevant to several admitted contentions concerning the adequacy of the proposed protective actions under the LILCO Plan. For example, Contention 61 states, inter alia, as follows:

[E]ven if people were willing and able to follow a sheltering recommendation, there is no assurance that taking such action would provide any significant dose savings and thus prevent persons in the EPZ from receiving health-threatening radiation doses for the following reasons:

\* \* \*

I. The cloud doses resulting from a release of radioactive fission products from the Shoreham plant could be so substantial that even taking into account the 30 percent average dose reduction provided by shelter in the EPZ, persons who follow a sheltering recommendation could still receive doses that would cause adverse health effects.

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<sup>3/</sup> The fact that the PL&G consequence analysis happens to have been commissioned as a part of LILCO's PRA is truly irrelevant to the discovery question presented here. LILCO's efforts to justify the withholding of information related to the offsite consequences of an accident by tying that information to a "PRA," the prior litigation of contention 7B, or previous rulings related to the Shoreham PRA, should be summarily rejected.

Thus, sheltering is not an adequate protective action in the event of an emergency at Shoreham, and the Plan, therefore, fails to comply with 10 CFR Sections 50.47(a)(1) and 50.47(b)(10), and NUREG 0654 Section II.J.9.

Similarly, Contentions 64, 65, 67, 69, 71, 72 and 73 allege that the evacuation procedures proposed by LILCO would not constitute adequate protective actions because the proposed evacuation methods would result in persons within the 10-mile EPZ being exposed to health-threatening doses of radiation. See, e.g., Revised Emergency Planning Contentions at 126 (Contention 64), 127-28 (Contention 65), 139 and 142 (Contention 67), 144 and 147 (Contention 69), 148 (Contention 71), 149 (Contention 72), 153 (Contention 73). In addition, accident consequences are also relevant to Contention 50, which deals with offsite dose assessment and projection.

1. Deposition of Thomas E. Potter

In response to a request that LILCO

Identify each person whom LILCO expects to call as an expert or non-expert witness during the emergency planning hearings and state the subject matter on which each is expected to testify,

LILCO stated that Thomas E. Potter would testify on

"radiological consequence analysis." In the cover letter which accompanied that response, LILCO's counsel also stated:

While we maintain that the contentions concerning the size of the EPZ and the PRA will not be admitted, we have included in our list . . . Tom Potter . . . who will be [a] witness[ ] for LILCO if those contentions are admitted.

Letter dated July 29, 1983 from Jessine A. Monaghan to John E. Birkenheier. LILCO did not identify which contentions, in its view, "concerned" the PRA.

The County has informed LILCO's counsel of its desire to depose Mr. Potter, and has noticed his deposition for August 31. In several communications among counsel, LILCO's counsel has stated that LILCO will not voluntarily make Mr. Potter available for deposition on matters relating to the Shoreham consequence analysis which has been performed for LILCO because in LILCO's view, consequence analyses are not relevant to issues in contention.

On August 24, 1983 the County indicated its willingness to withdraw its Notice of Mr. Potter's deposition (and the County would also not pursue the document requests discussed herein), if LILCO were to agree that Mr. Potter will not be a LILCO witness at the hearing, and that LILCO will not use the PL&G consequence analyses as part of its case at the hearing. See letter dated August 24 from Karla J. Letsche to Donald P. Irwin which is attached hereto. LILCO refused to agree.

In the County's view, the refusal of LILCO to state that it will not use either Mr. Potter or his consequence analysis as part of its case is dispositive on the issue of the relevance of the matters on which the County seeks to depose him. As long as a request concerns a matter "relevant to the subject matter involved in the proceeding" or "reasonably calculated to

lead to the discovery of admissible evidence," it is within the proper scope of discovery. 10 CFR Section 2.740(b)(1). The subject matter of Mr. Potter's anticipated testimony is directly relevant to admitted contentions and, possibly, to evidence which LILCO intends to present at the hearing. Therefore, the County's motion to compel the production of Mr. Potter to be deposed on the subject of consequence analyses should be granted.

2. Production of Documents

The County's informal discovery requests (dated July 18, 1983) and LILCO's responses thereto (dated August 5, 1983) to which this Motion applies, are set forth below:

Suffolk County Request 15.

Provide copies of all reviews, suggestions, and comments, by the peer review group or any other person or entity, received by LILCO or SAI, concerning (a) the March 1982 Draft PRA, and (b) the June, 1983 PRA.

LILCO Response

LILCO maintains that Suffolk County's contentions concerning the PRA will not be admitted; therefore, LILCO declines to respond to Suffolk County Request 15 until such time as Suffolk County's contentions concerning the PRA are admitted. LILCO objects to Suffolk County Request 15 to the extent that it seeks information protected by the work product doctrine. Without waiving its objections, LILCO states that it has already voluntarily provided Suffolk County with background information and comments on the PRA and has provided both the County and the County's consultants, Dr. Fred Finlayson and MHB Technical Associates, with copies of the final PRA.

Suffolk County Request 16.

Provide copies of all consequence analyses, including draft as well as final documents, performed by Pickard, Lowe & Garrick ("PL&G") or any other entity or person on behalf of LILCO, other than the March, 1982 partial PL&G draft provided to the County in 1982.

LILCO Response

LILCO maintains that Suffolk County's Contention 22A concerning the 20-mile EPZ will not be admitted; therefore, LILCO declines to respond to Suffolk County Request 16 until such time as Suffolk County's Contention 22A is admitted. Without waiving its objection, LILCO will provide to Suffolk County a copy of the final report produced by Pickard, Lowe & Garrick when it becomes available.

Suffolk County Request 17.

When does LILCO anticipate receiving a final version of Phase III of its PRA? Please provide all draft documents related to Phase III of the PRA, as well as all peer review comments and reviews, suggestions or comments by any other persons or entities received by LILCO, PL&G, or other entities involved in Phase III, relating to such drafts.

LILCO Response

LILCO declines to respond to Suffolk County Request 17 on the grounds set forth in its Response to Suffolk County Request 16 above.

Suffolk County Request 18.

Provide copies of all underlying documentation relating to any consequence analyses and calculations performed by or on behalf of LILCO using information contained in (a) the Draft (March 1982) PRA, and (b) the June, 1983 PRA.

LILCO Response

LILCO declines to respond to Suffolk County Request 18 on the grounds set forth in its Response to Suffolk County Request 16 above.

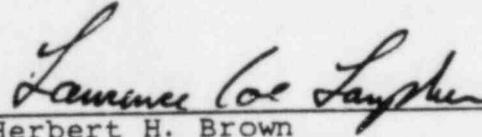
These requests seek relevant information for the reasons set forth above in connection with Mr. Potter's deposition. Facts and underlying data from Phases I and II of the PRA form the bases for the PL&G -- or any other -- offsite consequence analyses; and are necessary to understand such analyses. Similarly, requests for drafts and underlying documentation concerning the consequence analysis itself are clearly proper. Moreover, the fact that final reports have been provided, and that a limited amount of backup information was provided with respect to the March 1982 version of Phases I and II of the PRA, does not constitute a response to the requests posed by the County.

Furthermore, in response to several informal discovery requests by LILCO concerning Shoreham consequence analyses and related information in the possession of the County or its technical consultants, the County has provided or agreed to make available to LILCO all requested nonprivileged information that exists, including all backup and underlying documentation for the consequence analysis performed on behalf of the County and referenced in the County's contentions. Presumably, LILCO's requests were made because LILCO considered the requested information to be relevant to issues in contention.

Accordingly, the County's motion to compel production of documents related to the offsite consequence analyses should be granted.

Respectfully submitted,

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August 24, 1983

BY TELECOPIER

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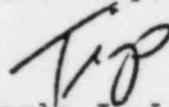
Dear Don:

In your letter dated August 23, 1983 you stated that "LILCO will not voluntarily make Tom Potter available for deposition on matters relating to the consequence part of the PRA, since it is not relevant to issues in contention ...." We have no desire to litigate the Shoreham PRA. However, as we discussed during our meeting last Thursday, the consequences of an accident at Shoreham are relevant to several contentions which have now been admitted by the Board. Specifically see Contentions 50, 61, 64, 65, 67, 69, 71, 72, 73, 81 and 83. Since consequences of an accident are relevant, it is proper to depose Mr. Potter and to request the documents underlying his analyses.

We have no desire to depose Mr. Potter unnecessarily, however. If you represent that LILCO (a) will not use Mr. Potter as a witness at the hearing, and (b) will not use the PL&G consequence analysis (or any part of it) as part of its case, either in direct testimony or in rebuttal, we will be happy to withdraw our notice of Mr. Potter's deposition.

Let's discuss this matter when we talk about other discovery questions this afternoon.

Sincerely,



Karla J. Letsche

KJL:so

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )

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

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion to Compel Production of Witness and Documents Relating to Shoreham Offsite Consequence Analysis and Memorandum in support thereof have been sent to the following this 25th day of August, 1983 by U.S. mail, first class, except as otherwise noted:

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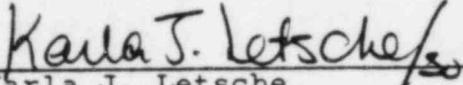
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DATED: August 25, 1983