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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

LILCO'S OPPOSITION TO SUFFOLK COUNTY MOTION TO
COMPEL PRODUCTION OF WITNESS AND DOCUMENTS
RELATING TO SHOREHAM OFFSITE CONSEQUENCE ANALYSIS

On August 25, 1983, Suffolk County filed a motion to compel the deposition of Thomas E. Potter on issues relating to the radiological consequences of an accident at Shoreham and to the consequence analysis portion of the Probabilistic Risk Assessment (PRA) he and Pickard, Lowe & Garrick (PL&G) performed for LILCO. By the same motion, the County also sought production of all documents relating to the entire LILCO PRA, not just the Pickard, Lowe & Garrick portion. See Memorandum in Support of Suffolk County Motion to Compel Production of Witness and Documents Relating to Shoreham Offsite Consequence Analysis (hereinafter "Memorandum in Support") at 8-9 (Suffolk County Requests 15 to 18).^{1/} LILCO opposes this motion to compel.

^{1/} Suffolk County's representations about the documents it has received on the PL&G consequence analysis, Memorandum in Support at 4, understate the importance and amount of that information. The August 2, 1983 Final Report provided to Suffolk County contains a detailed description of the results of PL&G's

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As justification for its motion to compel, Suffolk County has thinly veiled its attempt to litigate, once again, the LILCO PRA.^{2/} Simply stated, there is no NRC requirement that a PRA, which includes a consequence analysis, be prepared and thoroughly examined as a prerequisite for licensing. NRC Safety Goal Development Program, 48 Fed. Reg. 10772, 10775 (1983); see also Prehearing Conference Order (Phase I - Emergency Planning), slip op. 18-20 (July 27, 1982) (unpublished). Accordingly, if an applicant prepares a site-specific PRA and consequence analysis but does not seek to use them to establish its case before a licensing board, they should not be admitted in the proceeding.

We have been this route before. In Phase I the intervenors

footnote continued

work, as well as an explanation of the CRACIT model and a lengthy series of dose risk distributions. In addition, in response to Phase I discovery requests, LILCO has supplied Suffolk County with a large amount of the input data used in the PL&G work, including detailed meteorological data.

^{2/} The County's statement that it "has no desire 'to litigate the PRA'", Memorandum in Support at 5, finds no support in the County's pleading or its discovery requests. On one hand, Suffolk County quotes at length from previous testimony of Robert Kascsak and Edward Burns to show that a consequence analysis was an integral part of the PRA package commissioned by LILCO. See Memorandum in Support at 2-3. Yet, the County is quick to suggest that the consequence analysis portion of the PRA can be severed from the other portions. See Memorandum in Support at 5 n.3. Examination of the County's requests for production of documents reveals, however, that this surgery is not so simple since the County seeks information on the entire PRA, not just the PL&G portion. See Memorandum in Support at 8-9.

tried several times to get admitted an emergency planning contention based on the PRA. The Board consistently rejected these efforts, most decisively in its July 27, 1982, Prehearing Conference Order, slip op. at 20:

It also appears clear that LILCO does not plan to rely on its PRA as evidence that its accident assessment and dose assessment models meet NRC requirements. We therefore do not see the need to litigate LILCO's PRA in these circumstances, unless LILCO attempts to rely upon its PRA in either its direct or rebuttal testimony on this contention.

We do not believe that this conclusion prejudices intervenors' rights in any way. As was noted above, Suffolk County has conceded that a PRA per se is not required by NRC regulations. Furthermore, the intervenors' July 12, 1982 revision of EP27 asserts not only that the "results of the PRA/consequence analysis are not reflected in the LILCO plan," but also that "there is no evidence of other means, if any, used by LILCO to ensure the accuracy of the assessment models." Therefore, if LILCO can make its case using only evidence of "other means" used to ensure the accuracy of its assessment models, we see no reason to litigate LILCO's PRA in this context, unless LILCO attempts to rely on it.

Strong policy reasons exist for adhering to that practice in this case. A review of the contentions cited by Suffolk County as establishing the relevance of PL&G's consequence analysis reveals that each is premised on one or more standards codified at 10 CFR § 50.47(b) and one or more of the corresponding criteria contained in NUREG-0654. LILCO's ability to demonstrate compliance with these standards and criteria does

not require the use of consequence analyses. In fact, LILCO has no plans to use the PL&G work in its direct testimony.^{3/}

Admission of the PL&G consequence analysis would open a Pandora's box of issues before this Board. An assessment of the consequences of radiological accidents, contained primarily in NUREG-0396, forms the basis for the criteria established by NRC/FEMA in NUREG-0654.^{4/} Thus, in arguing that a consequence analysis is relevant to these proceedings Suffolk County is attempting, as it did in its earlier challenge to the 10-mile EPZ of 10 C.F.R. § 50.47(c)(2), to go beyond the language of § 50.47 and reopen issues settled by the Commission when it promulgated that section.^{5/} As this Board has already noted in its Special Prehearing Conference Order:

^{3/} Contrary to Suffolk County's assertion, LILCO was willing to agree not to use Mr. Potter as a witness and the PL&G consequence analysis in its direct case. LILCO's refusal to accept the County's offer was based solely on a desire to retain the option of using Mr. Potter and the PL&G work to rebut any consequence analysis testimony presented by the County, should such testimony be admitted. See Letter, Irwin to Letsche, August 26, 1983 which is attached hereto.

^{4/} NUREG-0654 is consequence-oriented, in that it is designed to provide a framework for response to a wide range of accidents. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC _____, slip op. 35 (June 29, 1983).

^{5/} Taken to its logical extreme, Suffolk County's argument would permit it to question the magnitude of the consequences of an accident at Shoreham, as well as the suitability of the Protective Action Guidelines (PAGs) for protecting public health.

NRC rules and regulations are not subject to challenge or attack in adjudicatory proceedings absent a Commission determination to waive this requirement. 10 CFR § 2.758.

Special Prehearing Conference Order at 9 (August 19, 1983).

There, as here, the Board correctly concluded that it should not

broaden the regulation to permit introduction of evidence of site-specific conditions such as those found in local PRA's.

Id. at 11. Viewed in this light, the deposition of Mr. Potter and the production of documents requested by Suffolk County are not "reasonably calculated to lead to the discovery of admissible evidence," 10 CFR § 2.740(b)(1). Accordingly, Suffolk County's motion to compel should be denied.

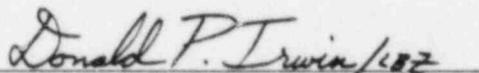
Finally, Suffolk County appears to suggest that LILCO's informal discovery requests regarding consequence analyses performed by the County's consultants evince an admission of the relevance of consequence analyses to remaining contentions. Memorandum in Support at 10. Suffolk County's suggestion is simply inaccurate. At the time the request was posed, this Board had not determined which contentions would be admitted for hearing, including the 20 mile EPZ contentions which the County was then proposing. Therefore, in an effort to avoid the loss of valuable discovery time, LILCO was forced to inquire into a broad range of subjects that were potentially relevant if certain contentions, i.e., the 20 mile EPZ

contentions, were admitted. LILCO's responses to similar Suffolk County discovery requests, see Memorandum in Support at 8-9, demonstrate that LILCO never admitted that consequence analyses were relevant to Phase II emergency planning contentions. Indeed, LILCO has consistently maintained throughout this proceeding that the FRA is not litigable for emergency planning purposes. When the County submitted written testimony on the consequence analysis in Phase I, LILCO moved to strike it. (The County's default on the Phase I issues prevented the motion to strike from being rule on by the Board).

WHEREFORE, LILCO requests that the Suffolk County Motion to Compel Production of Witnesses and Documents Relating to Shoreham Offsite Consequence Analysis be denied, and that the attached Motion for Protection Order be granted.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



DONALD P. IRWIN
JAMES N. CHRISTMAN
LEE B. ZEUGIN

Hunton & Williams
707 East Main Street
P. O. Box 1535
Richmond, Virginia 23212

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