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LILCO, July 9, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board^{84 JUL 11 11 21}

In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
(Shoreham Nuclear Power Station,) (Emergency Planning Proceeding)
Unit 1))

LILCO'S RESPONSE TO SUFFOLK COUNTY'S MOTION
TO STAY THE EMERGENCY PLANNING HEARINGS IN
LIGHT OF THE SUBMISSION OF REVISION 4

On Friday, July 6, Suffolk County moved this Board to suspend the emergency planning hearings because of the submission of Revision 4 to the LILCO Transition Plan (Suffolk County Motion for Stay of Emergency Planning Hearings in Light of LILCO's Submission of Revision 4 of LILCO Transition Plan (hereinafter "SC Motion")). The motion is implicitly premised on two themes that the County has recurrently attempted to rely on throughout these emergency planning proceedings: first, that the hearings must, as a matter of course, be stayed as a result of the publication of any revision to the LILCO Transition Plan,^{1/} and second, that the proceeding cannot continue until FEMA has completed its review of the

^{1/} See Suffolk County Motion for Change in Schedule with Respect to Contentions 65, 23.D and 23.H and for Board Order Clarifying Which Revision of the LILCO Plan is to be Litigated (November 9, 1983); Suffolk County Request for Board Reconsideration of Emergency Planning Schedule (December 28, 1983); and Suffolk County Motion for Stay of Emergency Planning Hearings (May 29, 1984).

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latest revision to the LILCO Transition Plan.^{2/} As will be demonstrated below, Suffolk County has failed to present a legitimate reason for staying this proceeding, and hence, its motion should be denied.

The County's motion begins by arguing that time must be provided for review of Revision 4 to determine its effect on admitted contentions and prefiled testimony. SC Motion at 2. The need for this additional time is premised largely on a blanket assertion that "the contents of Revision 4 may have a substantial impact upon many of the contentions and much of the testimony that are involved in this proceeding." SC Motion at 5 (emphasis supplied). Even a cursory review of the same material -- Revision 4, the covering letter from counsel for LILCO to this Board and to all parties to this proceeding, and the accompanying explanatory matrix -- indicates that this assertion is baseless. As the cover letter clearly indicates, Revision 4 was designed solely to respond to the RAC's comments on Revision 3 to the LILCO Transition Plan. To facilitate all parties' understanding of these changes, a detailed matrix was prepared that breaks down each identified RAC comment into its component parts; provides a description of the changes to the Plan and Procedures made in response to the particular RAC concern; and identifies the pages of the Plan and Procedures that were revised to incorporate the

^{2/} Suffolk County Motion to Change Schedule (February 8, 1984).

change. A review of this matrix clearly supports the proposition, presented in the cover letter, that the Revision 4 changes add more detail to concepts already contained in the existing Plan and Procedures. The only two arguable changes in concept were identified and discussed in the cover letter for the further convenience of all parties.

As support for its assertion that the hearings must be stayed to permit review of Revision 4, Suffolk County has presented four examples that it has presumably selected to demonstrate the "substantial impact" of Revision 4 on issues in this proceeding. If such was the County's intent, the examples presented do nothing to support a claim that the proceeding should be stayed. First, Suffolk County contends that the Plan has been revised to include Suffolk County Police Department participation in the traffic elements of the Plan. SC Motion at 2. The County has simply mischaracterized this change to the Plan. As Item A.1.b.(2) on page 1 of the matrix expressly states, the inclusion of the Suffolk County Police Department in the Plan was done solely to provide the necessary planning contingencies should the police -- totally contrary to the County's lawyers' assertions, and totally contrary to LILCO's present planning basis -- elect to respond during an emergency. The Plan and Procedures clearly indicate that LERO traffic control guides will continue to carry out the traffic control measures. Accordingly, this change will not affect any admitted contention or prefiled testimony.

Second, the County cites Revision 4 changes in the proposed methods of deriving and making protective action recommendations and in the assignment of responsibilities for making such recommendations as potentially affecting eight contentions. SC Motion at 2-3. In fact, there is no relationship between the changes and the cited contentions. The change to the protective action recommendation procedure provides the Director of Local Response with the capability of using a predetermined set of protective action recommendations should certain plant conditions warrant such action. This change is unrelated to contentions dealing with the efficacy of sheltering and selective evacuation (Contentions 60, 61 and 63) or with the evacuation of schools (Contentions 69-71) or the evacuation of the handicapped (Contentions 72 and 73).

Third, the County argues that Revision 4 includes substantial changes concerning relocation centers. SC Motion at 3. These changes have previously been discussed and incorporated in LILCO's revised testimony on relocation centers, testimony which Suffolk County has reviewed and replied to in supplemental testimony.^{3/}

Fourth, the County argues that Revision 4 appears to contain much additional and/or revised information on ingestion pathway and recovery/reentry procedures, SC Motion at 3-4, and that the

^{3/} The relocation centers are the subject of an entirely unrelated controversy because of the County's last-minute production of letters purporting to establish that the BOCES-II and SUNY-Farmingdale facilities' agreements with the Red Cross do not extend to emergencies at Shoreham.

full impact of these changes cannot be understood without a complete review and analysis of Revision 4, SC Motion at 4. The County's motion grossly overstates the potential effect of these Revision 4 changes on the litigation schedule. The issues relating to the ingestion pathway and recovery/reentry are severable from other emergency planning issues since they are premised on a number of preliminary assumptions on a time continuum well after most events that form the reason for emergency planning have occurred. In other words, ingestion pathway and recovery/reentry concerns arise only after there has been a radiation release and most probably, an evacuation. Hence, to judge the "full impact" of changes to these provisions, one must only review the specific portion of the Plan and Procedures relating to each. Further, the reasons for the submission of supplemental testimony on Contentions 85 and 88 have been fully documented in the motions accompanying that testimony. The revisions to the Contention 85 testimony concern a new three-page procedure (OPIP 3.10.2) that permits the calculation of a total population dose. The revision to LILCO's testimony on Contention 88 involves changes designed, in large part, to resolve concerns raised by Suffolk County.^{4/} Thus, the four examples offered by Suffolk County do not establish that Revision 4 changes have substantially impacted the contentions or

^{4/} The County should not be permitted to use its own intransigence regarding the settlement of issues as a grounds for delaying the litigation of issues in this proceeding.

previously filed testimony, and hence, do not provide a basis for staying this proceeding.

The County next argues that it would be senseless to proceed with the cross-examination of FEMA witnesses on their opinions about Revision 3 since those opinions may, "at least in some measure, [be] about to become obsolete." SC Motion at 5. This argument, which really is nothing more than an unsupported assertion that some of FEMA's testimony may be mooted, is fatally flawed because it fails to distinguish between the RAC's function as reviewer of emergency plans and the function of some RAC members who are testifying on specific contentions in this proceeding. The two are not synonymous. As a reviewer of emergency plans, the RAC judges a plan's compliance with the enumerated guidelines of NUREG-0654. The requirements of NUREG-0654 cover all aspects of emergency planning, including many issues that are not in controversy in this litigation. It is the contentions presented by the County that are the subject of litigation, not the RAC's review of the LILCO Transition Plan. Accordingly, the only relevant inquiry is whether Revision 4 will materially affect the FEMA witnesses' testimony on the Group II contentions. Suffolk County's motion does not address this question or offer any showing of material effect; hence, it must fail.

A review of FEMA's direct testimony indicates that cross-examination can proceed as scheduled. In general, the FEMA testimony on a given contention is likely to follow one of four broad themes:

1. NUREG-0654 requires certain components in an emergency plan and the LILCO Transition Plan contains those components;
2. NUREG-0654 requires certain components in an emergency plan and the LILCO Transition Plan will meet those requirements if certain items are added to the Plan;
3. NUREG-0654 requires certain components in an emergency plan and while the LILCO Transition Plan appears to have treated those elements adequately, final judgment must await the planned exercise; and
4. NUREG-0654 does not require the inclusion of items at issue in the contention.

The FEMA witnesses' answers following Themes 1, 3 and 4 are not affected by Revision 4 and cross-examination can proceed as scheduled. As to the second theme, the FEMA testimony generally identifies with some specificity the items that must to be added to the Plan and Procedures. It will therefore a simple matter to ask the FEMA witnesses whether the Revision 4 changes,^{5/} if properly characterized, were responsive to the RAC's concerns. Thus, even if Suffolk County had properly framed the issue of whether the cross-examination of the FEMA witnesses could proceed as scheduled, it would have been unable to show that a stay was warranted.

Finally, the County presents a hodge-podge of reasons for why the FEMA witnesses cannot be cross-examined beginning on July 10.

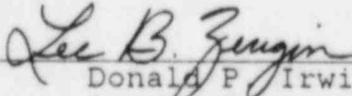
^{5/} It must be noted that the Revision 4 changes were discussed at a meeting on May 11 between LILCO and the RAC at which counsel for Suffolk County (Messrs. Lanpher and Birkenheier) were present.

SC Motion at 7-9. These include a pending SC motion for further discovery; a presumed need for further discovery following FEMA's review of Revision 4; and the future submission of FEMA testimony on training issues. With the exception of the County's speculative concerns about the need for discovery regarding an, as of yet, unapproved FEMA review of Revision 4 to the LILCO Transition Plan, these reasons do not relate to the submission of Revision 4. The County's motion makes no attempt to explain why, if these scheduling concerns were meritorious, they could not have been made earlier in a separate pleading. Indeed, rather than eliminating duplication and waste, see SC Motion at 9, the County's hodge-podge rationale for a stay of the proceedings bids only to produce a needless delay that will extend the ultimate conclusion of this proceeding.

For the above stated reasons, LILCO believes that the emergency planning hearings should proceed as scheduled, and the County's motion be denied.

Respectfully submitted,

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