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BOARD OF SECRETARYS
SECRETARY'S OFFICE
BRANCH

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

I. INTRODUCTION

DESIGNATED ORIGINAL

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motion should be granted and the contentions resolved with several conditions.

II. APPLICABLE LAW

The Staff has recently discussed at length the legal standard for summary disposition in "NRC Staff's Response to LILCO's Motions for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49," February 28, 1984, at 1-5, as has the Board in its "Order Ruling on LILCO's Motions for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49," April 20, 1984, at 2-3. The Staff will not repeat those dissertations here. Suffice it to say, summary disposition is appropriate under 10 C.F.R. § 2.749, where, based upon a motion, attached affidavits, or other filings in the proceeding, it is shown that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. 10 C.F.R. § 2.749(d).^{1/} Summary disposition is a procedural device advocated by the Commission to eliminate unnecessary hearings, testimony, and cross-examination in cases where there are no material issues to be tried. See Statement of Policy in Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457; accord Ex parte Peterson, 253 U.S. 300, 310 (1920). The burden is on the moving party to demonstrate the absence of any genuine issue of material fact. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977).

^{1/} The Commission's summary disposition rule is analogous to Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974).

III. DISCUSSION

The LILCO motion for summary disposition is premised on the argument that the brochure contentions raise no genuine issues of material fact. LILCO argues that the only questions raised by the contentions remaining to be resolved are the legal questions of whether or not the brochure will meet the standards of 10 C.F.R. § 50.47(b)(7), 10 C.F.R. Part 50, Appendix E, Section IV.D.2, and NUREG-0654, Sections II.C.1 and 2. The Staff agrees with LILCO that the admitted brochure questions involve only legal questions and do not require hearing time. Summary disposition is therefore appropriate.

A. Contention 16.E

Contention 16.E states:

The LILCO brochure's discussion of radiation effects is limited to natural sources and very low levels of radiation. It does not adequately address the magnitude of doses that the public might receive during a severe accident, such as one requiring EPZ evacuation, nor the health-threatening consequences related to such releases. Such inadequate disclosure of essential facts renders the brochure incredible.

The issue in question is not a factual one. The LILCO brochure contains various discussions of radiation. There is no dispute as to the brochure's contents. The question to be resolved by the Licensing Board is whether or not the known brochure language is sufficient to satisfy the standards of the regulations and NUREG-0654.

10 C.F.R. Part 50, App. E, Section IV.D.2 states that the brochure should include "general information as to the nature and effects of radiation." NUREG-0654, II.G.1 requires "educational information on radiation." This very general regulatory guidance therefore leaves much discretion to the utilities and governments preparing public information

brochures. The general terms of the regulations and guidance also led the Three Mile Island, Unit 1 restart licensing board to conclude that even while brochure language on radiation could be further examined and improved, boards should focus instead on whether the brochure in total was acceptable for its intended purpose. That board further concluded, "that the primary purpose of these brochures is not to give a course in radiation biology, but to inform the public what to listen for and what to do in case of an emergency at TMI-1." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-59, 14 NRC 1211, 1522 (1981), aff'd subject to a condition, ALAB-697, 16 NRC 1265 (1982). Finding the brochure sufficient in that regard, the board would not rewrite such minor details as the description of radiation effects.

The LILCO brochure contains discussions of radiation and its health effects at pages 4 and 14-16. At page 4 the brochure discusses the possibility of radiation releases during accidents. At pages 14-16 the brochure discusses natural radiation, radiation detection, exposure levels, releases during an accident, and radiation guidelines. This information amply meets the generalized requirements for discussion of radiation. In addition, while the County's contention specifically alleges inadequacy in the brochure discussion of doses resulting from "a severe accident, such as one requiring EPZ evacuation," the regulations do not specifically require any such information. Nevertheless, the topic is covered by the discussion at page 4 of the brochure. The LILCO information therefore broadly covers radiation levels and effects and as a matter of law must be deemed to meet the requirements. As concluded by the TMI board, this Board need not spend hearing time litigating a minor aspect

of the public information brochure. The motion for summary disposition should be granted.

B. Contention 16.J

Contention 16.J states:

The brochure does not describe what radio stations are participants in the EBS system. See FEMA Report at 6, citing non-compliance with NUREG-0654, Section II.G.2.

This contention clearly raises no issues of material fact. The LILCO brochure, Rev. 3, provides at page 6 for the list of radio stations participating in LILCO's EBS system. The Affidavit of Carol Clawson attached to LILCO's Motion further specifies that "All of the radio stations with which LILCO presently has a signed letter of agreement or with which LILCO obtains a written agreement in the future will be listed in the final brochure that will be distributed to the public." Affidavit of Carol Clawson, at ¶ 2. LILCO is entitled to summary disposition of this contention as a matter of law.

C. Contentions 16.K and 16.L

Contentions 16.K and L state:

K. The brochure states (at page 9) that "[y]ou will find it easy to get to your relocation center if you travel along the recommended route." This is a mischaracterization of the facts. The suggestion that evacuation will be "easy" makes LILCO's brochure inaccurate, misleading and not credible.

L. The brochure states (at page 9) that the routes recommended to the evacuees will be the "safest and fastest way out of the emergency planning area." This statement is inaccurate, misleading, and renders the brochure not credible. Residents of the EPZ will know that the routes prescribed by LILCO are not the "fastest" way out of the zone.

These two contentions assert the inadequacy of the LILCO brochure because of two allegedly invalid statements in the brochure. Both statements are invalid in the County's view for the reasons presented by the County on the traffic issues of Contentions 23 and 65. As argued by LILCO in its motion for summary disposition, Contentions 16.K and L therefore raise no new issues of material fact and do not require further testimony or hearing time. The issues should be conditionally resolved in LILCO's favor. The condition on the decision should be that the brochure be conformed, if necessary, to the Board's eventual decision on traffic issues. The NRC staff can monitor this as a post-hearing confirmatory matter. Cf. Consolidated Edison Co. of New York (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951 (1974).

D. Contention 16.M

Contention 16.M states:

M. The brochure states (at page 9) that evacuees should "Follow the blue and white pathfinder signs which are located on every major road in the 10-mile emergency planning area. They will direct you out of the area." An almost identical statement is on page 8 of the Brochure. These statements are false. No such pathfinder signs exist or have been installed. Moreover, residents of the EPZ will know that such signs are not "located on every major road" in the EPZ. The statements render the brochure not credible.

This contention raises the question of installation of the LILCO "pathfinder signs." However, there is no real genuine issue of fact put in dispute by this contention. The LILCO signs are admittedly not now installed. However, LILCO has stated its commitment to install "approximately 1000 blue and white pathfinder signs in the EPZ." Affidavit of Edward B. Lieberman, at ¶ 2. A commitment by an Applicant or a confirmatory action to be completed prior to operation is sufficient to

resolve a contested issue. See, e.g., Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-729, 17 NRC 814, 886-887 (1983). The NRC staff, as a post-hearing matter can be entrusted to verify that the pathfinder signs are indeed installed.

The County may argue that this contention raises more than the issue of installation of the pathfinder signs. However, there are only two other questions which can even remotely be inferred from the admitted contention. Neither raises a genuine issue of fact.

The first question is the redundant issue of LILCO's "legal authority" to install pathfinder signs. This issue will be separately decided in the decision on Contention 3. As stated by LILCO, if this issue is decided against LILCO, the brochure can be easily remedied by striking the reference to the signs. That remedy can be confirmed as a post-hearing matter by the Staff. The summary disposition ruling in LILCO's favor should therefore be conditioned upon the Board's ruling on Contention 3.

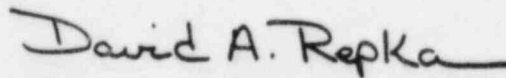
The second possible issue placed in dispute by Contention 16.M is whether or not the pathfinder signs will indeed be located at "every major road" in the EPZ. This semantic issue does not raise, however, any genuine issue of fact which would justify testimony and hearing time. First, LILCO has represented in the Affidavit of Edward B. Lieberman, at ¶ 4, that the signs will be located on "every major road" in the EPZ. The County must demonstrate in affidavits that this assertion is not correct. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 2-16, 248 (1975). Second, the issue of whether 1000 signs distributed throughout the EPZ covers "every major road" in the EPZ, and therefore whether or not the brochure language should be amended,

is simply too insignificant an issue to justify litigation. See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1107 (1983). LILCO's motion for summary disposition of this contention should be granted.

IV. CONCLUSION

For the reasons stated above, LILCO's motion for summary disposition of Contentions 16.E, J, K, L, and M should be granted. The rulings on Contentions 16.K, L, and M should be conditioned on the Board's decision on other above-specified contentions in this proceeding, in order that the brochure be conformed to the Board's eventual decision on those contentions where necessary.

Respectfully submitted,



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Dated at Bethesda, Maryland
this 17th day of May, 1984

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Emergency Planning)

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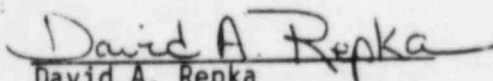
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