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LILCO, August 2, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

LILCO's Response to Suffolk
County's Offer of Proof for
Cross-Examination of FEMA Witnesses

For the reasons stated below, "Suffolk County's Offer of Proof and Request for Reconsideration of the Board's Limitations on Suffolk County's Cross-examination of the FEMA Witness Panel" should be denied.

I.

Cross examination of the FEMA witnesses on Contentions 20-22, 24, 26-32, 34, 55-61, 63, 64, 66-73, and 93-97 took place as scheduled pursuant to an agreement among the parties during the week of July 10-13, 1984. At the commencement of the hearings that week, the Board limited the time for the County's cross-examination of the FEMA witness panel to two days, pursuant to its authority under 10 CFR §2.718, stating in part the following:

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Pursuant to our bench order of June 15, 1984, Suffolk County, New York, and LILCO have submitted cross-examination plans and estimates for the amount of time expected for the cross-examination of the FEMA panel. New York estimated that it will need approximately one day. LILCO estimated it will need approximately one half day.

Suffolk County estimated that it would take four to five days.

We have reviewed the cross-examination plans of the parties. We have also reviewed the FEMA testimony upon which cross-examination will take place this week.

Based upon the foregoing, we find that Suffolk County's estimate concerning the projected length of time for cross-examination of this panel of FEMA witnesses is excessive and unreasonable.

Accordingly, we are placing a time limit on Suffolk County's questioning of these witnesses.

Tr. 12,142-43.^{1/} The Board further ruled that at the end of the County's time for cross-examination, the County could either (1) make an oral offer of proof in a motion for additional time within which to cross-examine, which the Board would rule on immediately, or (2) file a written offer of proof in a motion to conduct further cross-examination on the issues not completed during July 10-13 when the FEMA witnesses next appeared during the week of August 14. Tr. 12,146.

The County elected the second option and, pursuant to a schedule set by the Board (Tr. 13,069), filed its offer of proof and request for additional cross-examination time on July

^{1/} The Board went on to cite authority which supports the Board's exercise of its discretion in limiting excessive cross-examination by the parties. Tr. 12,143-45.

23, 1984.^{2/} In its offer of proof, the County requests additional time within which to pursue issues delineated in its offer, arguing that it had "conducted less than 2 1/2 days of cross-examination" (Offer at 3), that the Board "arbitrarily" limited the County's right under 10 CFR 2.743(a) to "conduct such cross-examination as may be required for full and true disclosure of the facts" (Offer at 9), and that its offer of proof demonstrates that "the areas of inquiry which would have been pursued by the County are relevant, probative, and material and would have been useful to the Board in determining the weight to be given to the FEMA witnesses' testimony" (id). LILCO disagrees.

II.

During the week of July 10-13, the County was afforded ample opportunity to question FEMA witnesses on the contentions under consideration.^{3/} The County's cross-examination and FEMA's responses consume approximately 600 pages of transcript out of the total 980 pages of transcript generated during that week (see Tr. 12,090-13,070). Of the 27 hearing hours available during that week, the County cross-examined for approximately 22.

^{2/} Contrary to the certificate of service accompanying that pleading, LILCO was not served with it until July 24, 1984.

^{3/} During July 10 and 11 alone, the County asked over 650 questions of the FEMA panel. Only 8 objections were made by other parties during that time. See Tr. 12,090-12,572.

In addition, the Board did not "arbitrarily" limit Suffolk County's cross-examination, as asserted by the County in its offer of proof (page 9). First, the Board stated that it arrived at the limitations after considering all the parties' cross-examination plans, the time estimates given by each party for questioning, and the FEMA testimony on which cross-examination was to take place. Tr. 12,142, lines 7-20. Second, while the Board noted during the course of the County's examination that the questioning was not eliciting evidence that would be of value in determining the outcome of the contentions raised by the intervenors (Tr. 12,528), Suffolk County did not attempt to modify its cross-examination in response to the Board's observations. Finally, although the Board announced an initial limit of 2 days for Suffolk County's cross-examination, it twice on its own initiative extended the County's time. Tr. 12,845-46; 12,961, 13,028.

In short, the County has had the opportunity to "cross-examine as required for full and true disclosure of the facts" (10 C.F.R. §2.745). The Board, under 10 C.F.R. §2.718 "has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order," and can achieve this end by "regulat[ing] the course of the hearing and the conduct of the participants" under 2.718(e). It has done so in this instance. The parties' rights under 10 CFR §2.743(a) to conduct cross-examination are not unlimited, and the questioning of Suffolk County during this proceeding has gone beyond cross-examination required "for a full and true disclosure of the facts" to an exercise in

delay. The Board did not abuse its discretion to limit the County's cross-examination. For these reasons, the County should not be allowed additional time for questioning FEMA witnesses.

III.

Finally, the County has raised no area of inquiry in its offer of proof that (1) would lead to relevant, probative evidence important to a decision in this proceeding (contrary to the County's assertion in support of its offer of proof at 9) and (2) has not already been responded to in full by the FEMA witnesses on the record. It is therefore unnecessary that the Board grant the County additional time to explore these areas, as shown by the following item-by-item response.

Contention 21

1. The FEMA witnesses have not evaluated whether LILCO has complied with FEMA Guidance Memorandum 20, which sets forth measures to be taken in the event that a single language minority does not exceed 5 percent of a County's population. [Offer p. 4]
2. Guidance Memorandum 20 interprets the requirements of NUREG 0654 in this regard. [Offer p. 4]
3. The FEMA witnesses will not attempt to determine the effectiveness for single language minorities of LILCO's public education campaign in any exercise of the LILCO Plan. [Offer p. 4]

Response. In response to questioning by counsel for New York State, FEMA witnesses discussed in detail their review of the LILCO Plan as regards Contention 21 and the issue of a foreign-language brochure (Tr. 12,977-12,986), testifying that (1) FEMA Guidance Memorandum 20, a foreign-language

brochure is required only if a single language minority group exceeds 5% of the population (Tr. 12,978); (2) this situation does not exist for the Shoreham EPZ (Tr. 12,978-81); (3) the LILCO Plan does not contain material that describes other efforts being made to reach the non-English speaking population around Shoreham (Tr. 12,985-86); and (4) during an exercise, FEMA observers will randomly select and interview EPZ residents to determine whether they understood the brochure (Tr. 12,977). Therefore, the County need not ask further questions in an attempt to establish points 1., 2., and 3. above.

Contention 22.D

1. The FEMA witnesses have not evaluated the configuration of the Shoreham EPZ against the guidelines of 10 CFR §50.47(c). [Offer p. 4]
2. The FEMA witnesses do not know whether the EPZ boundary is "recognizable" as stated in their testimony. [Offer p. 4]
3. The FEMA witnesses have failed to apply recognized planning principles to their evaluation of the Shoreham EPZ. [Offer p. 5]
4. The FEMA witnesses have not considered any alternate EPZ boundaries. [Offer p. 5]
5. The FEMA witnesses have not considered the consequences of dividing population centers. [Offer at 5]
6. The FEMA witnesses have not considered the consequences of the zig-zagging nature of the EPZ boundary, especially in Riverhead, and the confusion this would cause to the population. [Offer p. 5]
7. Contrary to the suggestion of the FEMA witnesses, 10 CFR 50.47(c) requires more than just following roadway

boundaries in defining EPZ boundaries.
[Offer p. 5]

Response. Contention 22 was discussed by FEMA witnesses at Tr. 12,938-12,954. The witnesses testified that a 10-mile EPZ was the basis for the NRC regulations and NUREG-0654 (Tr. 12,939), that LILCO uses a 10-mile EPZ in planning, and therefore that LILCO meets NUREG-0654 (Tr. 12,948). In reaching these conclusions, FEMA reviewed maps of the EPZ (Tr. 12,939); recognized that Shoreham EPZ divides certain villages, but noted that the configuration takes into account population distribution (Tr. 12,941-12,950), and follows recognizable landmarks including public roads (Tr. 12,943). FEMA witnesses also testified that they are knowledgeable about topographical features and mapping (Tr. 12,946-47). There is an ample record from FEMA witnesses on Contentions 22.D, most of which disproves the points 1-7 that Suffolk County wishes to pursue further. Additional questioning by the County is not likely to result in probative or material evidence on the points the County seeks to explore.

Contention 61

1. The LILCO Plan offers inadequate guidance on what conditions must be present to institute selective evacuation.
[Offer p. 5]

Response. In response to questions from counsel for New York State, FEMA witnesses testified that the Plan states criteria to be used in determining whether to recommend selective sheltering, and that, the Plan is adequate in this regard.

Tr. 13,002-03. Thus, FEMA witnesses have responded to the issue the County wishes to raise in item 1.

2. The LILCO Plan does not identify all types of radiosensitive people who could benefit from selective evacuation. [Offer p. 5]

Response. In response to questions from counsel for New York State, FEMA witnesses have already listed the radiosensitive groups who in their opinion might benefit from selective evacuation. Tr. 13,003-04. Suffolk County can compare this information to the LILCO Plan if it wishes, and argue that the Plan is incomplete in identifying radiosensitive groups. The County need not question FEMA witnesses further to pursue this argument.

3. Selective evacuation would not be an effective protective action in the event of a radiological emergency at Shoreham. [Offer p. 5]

Response. This conclusion is a broad statement appropriate for argument, not a basis for questions to the FEMA witnesses.

Contention 64

1. The FEMA witnesses lack knowledge of meteorological conditions in and around the EPZ. [Offer p. 6]

Response. In response to questions by counsel for New York State, FEMA witnesses discussed the issue of meteorological conditions as it relates to Contention 64 (Tr. 13,005-08). During this discussion, the witnesses exhibited detailed

knowledge about the necessity of forecasting wind shifts in making protective action recommendations (id.), and indicated that LILCO's ability to take wind shifts into account would be explored during an exercise (Tr. 13,007). Consequently, questions designed to establish that FEMA witnesses may not have specific knowledge of meteorological patterns for Long Island would not materially contribute to the Board's decision on this issue.

2. LILCO cannot reliably predict shifts in wind direction before they occur. [Offer p. 6]

Response. FEMA witnesses testified that wind shifts are predicted, and discussed the reliability of those predictions. Tr. 13,006-07. Further questioning would be repetitive. To the extent that LILCO's ability to predict wind shifts is relevant, it is LILCO's witnesses, not FEMA's who are the most direct source of information on this subject.

3. The fact that wind directions may shift before they can be predicted means that one should evacuate at least 5-7 miles in any evacuation in order to account for that uncertainty. [Offer p. 6]
4. Under the present LILCO Plan, protective action recommendations could not be issued to the subzones toward which the plume has shifted prior to the plume reaching those subzones coming into contact with the plume. [Offer p. 6]

Response. FEMA witnesses discussed the keyhole approach that has been developed to take into account potential wind shifts by including adjacent subzones that may come into contact with the plume. Tr. 13,006-07. To the extent that the County wishes to establish that this approach should be replaced by mandatory evacuation for the area 5 to 7 miles from the plant, the County is challenging NRC regulations in its proposed line of questioning.

Contentions 93-96

1. Adequate backup power is necessary for the EOC to operate. [Offer p. 6]
2. Adequate backup power for the EOC is a requirement of NUREG 0654. [Offer p. 6]
3. The FEMA witnesses have not evaluated whether the backup power at the EOC is sufficient and adequate for the EOC to function properly. [Offer p. 6]
4. Reliable sources of power at staging areas, bus transfer points and relocation centers are necessary in order for those facilities to function properly. [Offer p. 7]
5. Backup power sources at staging areas, bus transfer points and relocation centers are required to assure that emergency functions can be performed at those facilities. [Offer p. 7]
6. Without backup power, LILCO's emergency facilities would not meet NRC regulations or NUREG 0654. [Offer p. 7]
7. Communication and notification functions performed by the LILCO Customer Service Office could not be performed without a power source. The FEMA witnesses, however, have not evaluated the adequacy of the backup power source provided by LILCO for the Customer Service Office. [Offer p. 7]

Response. Items 1, 2, 4, 5, and 6 are statements suitable for argument, not issues that must be proved or disproved by questioning the FEMA witnesses. As to items 3 and 7, FEMA identifies the EOC back-up power supply in its testimony (ff. Tr. 12,174 at 94) and has testified repeatedly that the adequacy of Plan provisions, which have been reviewed, would be verified during an exercise. See Tr. 13,000-01. Therefore, the County is not likely to obtain relevant, probative evidence of decisional importance by questioning FEMA witnesses further on items 1-7.

8. The FEMA witnesses have not evaluated the adequacy of LILCO's siren system in light of the fact that 10 sirens lost power during a storm last spring. [Offer p. 7]

Response. FEMA witnesses testified that they were not aware of any loss of power to sirens as a result of a storm last spring. Tr. 13,061-63. They were not concerned about this alleged loss of power, but they noted that loss of power to sirens for an operating power plant would be of concern to FEMA. Tr. 13,064. The County will not obtain probative, relevant testimony pertinent to item 8 by questioning FEMA witnesses further on this issue.

9. FEMA's witnesses have not evaluated whether LILCO's route alert drivers can perform their functions in a timely and workable manner; nor can FEMA's witnesses support their assertion that LILCO's proposal for using route alert drivers is "adequate." [Offer p. 7]

Response. Route alert drivers were discussed at some length during the County's cross-examination. See Tr. 13,689-708. The witnesses testified that the route alerting provisions in the Plan meet NUREG-0654 (Tr. 12,690, 12,695) based in part on FEMA findings that LILCO will use its own vehicles equipped with public address units (Tr. 12,698); that route alert drivers would not necessarily abandon their routes at certain dosimeter readings (Tr. 12,701, 12,705, 12,706); that under the LILCO Plan, another driver would be assigned if a route were abandoned (Tr. 12,701, 12,705); that sixty vehicles are allotted to alerting the public under the LILCO Plan (Tr. 12,702); that vehicles would be driven at 5 m.p.h. (Tr. 12,708); and that route alert driving would be evaluated during a communications drill (Tr. 12,697-98). Further questioning on this issue would not produce additional probative, relevant evidence of decisional importance.

10. FEMA's witnesses have not evaluated LILCO's agreement with Island Helicopter; nor have they evaluated whether Island Helicopter can respond to an emergency at the Shoreham plant in a timely manner. [Offer p. 8]

Response. FEMA witnesses have reviewed Revision 3 of the Plan, which does not include LILCO's agreement with Island Helicopter, and they have stated repeatedly that verification of the Plan provisions, including timeliness of response by non-LILCO organizations, takes place during an exercise. See Tr. 13,000-01. Therefore, further questioning on this item will not produce relevant, probative evidence of decisional importance.

11. Necessary functions at the ENC cannot be conducted without power. [Offer p. 8]
12. The FEMA witnesses have not determined whether backup power exists at the ENC. [Offer p. 8]

Response. The FEMA witnesses stated in their prefiled written testimony (ff. Tr. 12,174 at 97) that NUREG-0654 does not require back-up power at the ENC. Therefore, further questions regarding whether FEMA has determined whether back-up power for the EOC exists are irrelevant to this proceeding.

13. The FEMA witnesses have no support for their statement that radio communications could be conducted between LILCO and the ambulances relied upon by LILCO without offsite power. [Offer p. 8]

Response. Assuming that item 13 refers to statements in FEMA's prefiled written testimony, FEMA does not state that radio communications from LILCO to ambulances "could be conducted," but that "the need for vehicles" could be communicated. FEMA Testimony, ff. Tr. 12,174 at 98. FEMA also states that "this capability would be evaluated during an exercise." Id. Therefore, further questioning on item 13 would not produce relevant, probative evidence.

14. The FEMA witnesses erroneously appear to believe that LILCO communicates directly with ambulances. [Offer p. 8]

Response. This assertion is not supported in the existing record. The FEMA witnesses testified that "the ambulance companies virtually all have their own type of communication

between the ambulance and its dispatch point" (Tr. 12,264 lines 4-6), that radios link the EOC to ambulance dispatch stations (Tr. 12,543, line 24; Tr. 12,562 lines 20-25), that LILCO relies on existing radio links to hospitals, ambulance dispatch stations, and mobile ambulances (Tr. 12,564 lines 12-24) and that no direct communication between the EOC and ambulances is contemplated (Tr. 12,565-12,568). It is clear from this record that the County cannot show through further questioning that its assertion in item 14 is true.

15. The FEMA witnesses are not aware of the fact that some of the ambulance companies relied upon by LILCO lack reliable offsite power. [Offer p. 8]

Response. FEMA witnesses testified that the capability of ambulance companies to respond to an emergency would be tested during an exercise (FEMA Testimony ff. Tr. 12,174 at 98; see Tr. 13,000-01).

16. The FEMA witnesses state in their answer to Q. 119 that a power failure during an evacuation would have significant effects on evacuation. The County would prove that the consequences of such a power failure would make evacuation an ineffective protective action. [Offer p. 8]

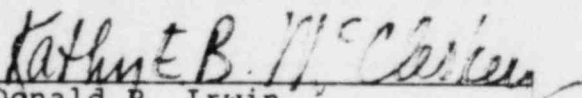
Response. Item 16 is argument stating broad conclusion, not a specific area of inquiry for questioning FEMA witnesses. In addition, to the extent that the County seeks to establish through further questioning that the consequences of loss of offsite power around a nuclear power plant would make evacuation an ineffective protective action, the County is attempting to challenge the planning basis established by NRC regulations.

III. Conclusion

For the reasons stated above, LILCO asks that this Board deny the County's request for additional time within which to cross-examine FEMA witnesses on issues that were scheduled to be discussed during the week of July 10-13.

Respectfully submitted,

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DATE: August 2, 1984

LILCO, August 2, 1984

CERTIFICATE OF SERVICE

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

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USNRC
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I certify that copies of LILCO's RESPONSE TO SUFFOLK COUNTY'S OFFER OF PROOF FOR CROSS-EXAMINATION OF FEMA WITNESSES were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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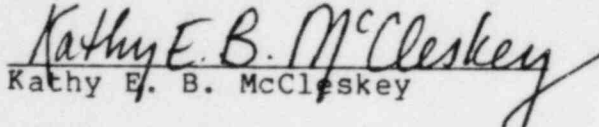
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