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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
JUN 1984

Before the Atomic Safety and Licensing Board

'84 AGO -6 P2:29

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))
_____)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

FEMA'S RESPONSE TO
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

INTRODUCTION

The instant Offer of Proof and Request for Reconsideration of the Board's Limitations on Suffolk County's Cross-Examination of the FEMA Witness Panel arose in response to a ruling of the Atomic Safety and Licensing Board on July 23, 1984 (Tr. 12,146). Though this ruling arose sua sponte the Federal Emergency Management Agency (FEMA) is of the view that the Board was within its authority in regulating the course of the hearing and the conduct of the participants (10 CFR 2.718(e)).

In order to determine whether Suffolk County's Motion for Reconsideration should be granted there has to be a determination that the Board erred and arbitrarily limited the ability to create a full and true disclosure of the facts. In addition, the offer of proof has to clearly demonstrate that a substantial right is affected and that the facts support the claim

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of the party making the offer. FRE 103. Suffolk County has not sustained its burden in this matter.

DISCUSSION

The County indicated in its offer of proof that the record is deficient in respect to eight (8) contentions. If the County's claim is correct, it still fails to state why it didn't allocate the time allotted to it in such a manner to enable it to include these areas instead of pursuing repetitious lines of inquiry.

The County alleges that three areas relating to contention 21 and single language minorities were not explored. This is simply not the case (see Tr. 12,976 - 12,987). Item #1 1/ was covered in detail by New York State (see Tr. 12,983 11 9-25 - Tr. 12,984 11 1-15, Tr. 12,986 11 5-8). Item #2 was discussed by New York State (see Tr. 12,985 1 2-8), as was Item #3 (see Tr. 12,978 11 1-23 Tr. 12,979 11 1-6).

As to contention 22, which deals with the configuration of the EPZ, Suffolk County spent twenty-seven (27) pages alone on July 13, 1984 exploring this rather limited contention (see Tr. 12,938 - 12,954). Item #1 was specifically discussed (see Tr. 12,940 11 18-25 - 12,941 11 1-5) as was Item #2 (see Tr. 12,943 11 17-25). As to Item #3 the FEMA witnesses stated what factors should be considered in adopting an EPZ (see Tr. 12,942 1 21-25 - Tr. 12,942A 1 1-6). Item #5 was also discussed (see Tr. 12,952 11 19-25 - Tr. 12,953 11 1-13).

1/ To save space FEMA will utilize the notation format outlined in Suffolk County's Motion for Reconsideration in its response.

Though the subject of the importance of a boundary recognizable by the public (Item #6) was not specifically raised by Suffolk County, it was addressed by FEMA in response to Item #5 (see above). As to Item #7, the County has received an answer from the witnesses and that answer is in direct opposition to the County's offer of proof (see Tr. 12,942 11 19-25 - Tr. 12,942A 11 1-6).

Item #4 fails to establish any foundation that an alternate EPZ boundary must be considered. It constitutes an argument that is best reserved for Suffolk County's Proposed Findings of Fact and Conclusion of Law.

The items listed under contention 61 were raised by New York State. The fact that Suffolk County determined not to inquire into this area does not satisfy the requirements of the offer of proof, especially when there has been a full and true disclosure of the facts in response to inquiries by other parties. Item #1 was addressed by New York State (see Tr. 13,002 11 17-25 - Tr. 12,003 11 1-18, 19-24) as was Item #2 (see Tr. 12,004 11 2-25).

Item #3 deals with a generic issue, the use of selective evacuation. This offer of proof is a direct challenge to the guidelines and is beyond the scope of the admitted contention.

Contention 64 was inquired into by New York State, as follows: Item #1 (see Tr. 13,005 11 14-25 - Tr. 13,006 11 1-2), Item #2 (Tr. 13,005 11 18-25), Item #3 (Tr. 13,006 11 1-10), Item #4 (Tr. 13,006 - Tr. 13,008) and by Suffolk County (Tr. 12,893 11 12-25 - Tr. 12,894 11 1-15 and Tr. 12,896 11 15-25).

Contentions 93-96 deal with the availability or lack thereof of back-up power supplies for various locations including the EOC (Items 1-3), staging areas, bus transfer points and relocation centers (Items 4 and 5); LILCO's customer service office (Item 7); siren system (Item 8); emergency news center (Items 11-12); ambulance communications systems (Items 14 and 15). FEMA has indicated in its direct testimony and during its appearance before the Board that it has conducted a Plan review, has addressed in its testimony issues that were raised during that Plan review and has indicated certain items must await an exercise in order to be evaluated.

FEMA's witnesses have indicated in their direct testimony that according to the LILCO Transition Plan a source of back-up power is available at the EOC (Items 1-3) (see Testimony, Q. 110); ^{2/} the availability of back-up power at staging areas, bus transfer points, hospitals or relocation centers could not be located in the Plan (Items 4-5) (see Testimony, Q. 111), and that the Plan indicates that the criteria utilized in selecting relocation centers included on-site power generation capability (see Testimony, Q. 75). NUREG 0654 does not require back-up power (Item #6) (see Testimony, Q. 75). The witnesses have again clearly stated that the availability of back-up power at the LILCO customer service office (Item #7) could not be located in the LILCO Transition Plan (see Testimony, Q. 112), that no such back-up power source or alternate facility for the Emergency News Center (Items 11-12) could be located in Plan (see Testimony, Q. 116) and that even though there is no indication in the Plan whether the capability exists for ambulance services to supply their services if there is a loss of off-site power (Items 13 and 15), the primary concern is the ability of LERO to be able to communicate the need

^{2/} Direct testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski, and Philip H. McIntire concerning Phase II Emergency Planning.

for vehicles. The capability to handle this communication (by two-way radio) would be evaluated during an exercise (Testimony, Q. 117). No further purpose could be served by inquiring into this area until after the conduct of an exercise.

Any additional testimony that the County could elicit on these areas would tend to be cumulative and would not add any substantive information not already available on the record. This is one of the reasons the Board was given discretion to guide the course of the hearing.

As to Item #8, it was already addressed during cross-examination (see Tr. 12,696 11 17-18, 1 22-25, Tr. 12,697 11 10-16, Tr. 12,702 11 24-25, Tr. 12-703 1 1, Tr. 13,061 11 17-25 - Tr. 13,062 11 1-25), as was Item #9 (see Tr. 12,698 11 1-9, Tr. 12,703 11 7-10, Tr. 12,690 11 11-15).

Item #10 deals with a letter of agreement that does not appear in Revision 3 of the LILCO Transition Plan and was not available to the FEMA witnesses for review. The witnesses have clearly stated that during the course of an exercise the ability to field the necessary resources, including equipment and personnel as outlined in the letters of agreement would be tested (see Testimony, Q. 21). No further use would be served by inquiry into this item at this time.

Item #14 was inquired into by the County (see Tr. 12,565-8, Tr. 12,264 LL 4-6, Tr. 12,543 LL 18-24, Tr. 12,562 LL 7-24, Tr. 12,563 LL 4-8, Tr. 12,564 LL 12-24).

The only remaining issue not directly pursued by the parties in their examination of the FEMA witnesses involve the impact of a power failure on an evacuation (Item #16) as referenced in FEMA's Testimony at Question 119.

The FEMA witnesses state (Testimony, Q. 119) that a power failure during an evacuation would have significant initial effects brought about by traffic signals and gas pumps not functioning. The issues raised are generic ones that are beyond the scope of this proceeding. But, if the Board wishes to inquire further into the impact of a power failure during an evacuation on the functioning of residential lighting, street lights, traffic signals and service stations, FEMA will raise no objection.

The Board, within its discretion, set a reasonable time limit on the cross-examination of the parties. It monitored the progress of the examination and extended the time available to Suffolk County. In addition, the Board inquired of the County, if you had an extra half hour or so, would that eliminate the need of the County to file this request. The County declined that offer (see 13,065 L 10-13). The use of designated time limits for cross-examination has been utilized by Boards in other proceedings and is within the scope of authority delegated pursuant to 2.718(e).

CONCLUSION

For the reasons stated above, FEMA believes that the Board was within its authority in regulating the course of the hearing and the conduct of the participants and that Suffolk County did not establish by its offer of proof that the Board limited the ability to create a full and true disclosure of the facts.

Respectfully submitted,

Stewart M. Glass
Regional Counsel
Region II, FEMA

Dated: August 2, 1984
Washington, D.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD P2:29
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In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station, Unit 1)

OFFICE OF REGULATORY SERVICES
Docket No. 84-322-OL-3
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Federal Emergency Management Agency's Response to Suffolk County's Offer of Proof & Request for Reconsideration of the Board's Limitations on Examination of the FEMA Panel has been served on the following by deposit in the United States mail, first class, or where indicated by an asterisk by Telecopier this 2nd day of August 1984

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