

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

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

JOINT MOTION OF SUFFOLK COUNTY AND  
GOVERNOR MARIO M. CUOMO, REPRESENTING  
THE STATE OF NEW YORK, FOR SUMMARY DISPOSITION  
OF EMERGENCY PLANNING CONTENTIONS 24.0, 74 AND 75  
(RELOCATION CENTERS) AND OPPOSITION TO  
LILCO'S MOTION TO ADMIT REVISED TESTIMONY  
ON CONTENTIONS 24.0, 74 AND 75

On July 30, 1984, LILCO requested that the Board allow LILCO to withdraw its previously filed testimony on Contentions 24.0, 74 and 75 (Relocation Centers) and replace that testimony with revised testimony (hereinafter, "LILCO's proposed testimony"). Suffolk County and New York State have no objection to LILCO's request to withdraw its previously filed testimony concerning Contentions 24.0, 74 and 75. However, for the reasons stated below, the County and the State oppose admission of LILCO's proposed testimony.

In addition, the County and State hereby move, pursuant to 10 CFR § 2.749, for summary disposition of Contentions 24.0, 74 and 75 in favor of the County and the State. A Statement of

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Material Facts as to which the County and the State contend there are no genuine issues to be heard is attached hereto.

I. Background

LILCO and Suffolk County each filed direct written testimony on Contentions 24.0, 74 and 75 on March 2, 1984. Thereafter, LILCO indicated that it intended to change the relocation centers relied upon in the LILCO Plan because some of those facilities were in fact not available for use by LILCO. LILCO thus suggested that the parties file supplemental testimony regarding the relocation center issues. The County and the State did not disagree with LILCO's proposal that supplemental testimony should be filed to reflect changes made by LILCO in the relocation centers to be relied upon in the LILCO Plan. The County, however, suggested that the parties postpone filing such testimony until Revision 4 of the LILCO Plan was released; alternatively, the County proposed that LILCO file its supplemental testimony before the County or the State filed their testimony since information regarding the relocation center issues was available at that time only to LILCO, and not to the County or the State. See, e.g., Tr. 10,713-15. On June 8, 1984, the Board adopted the County's proposal and ordered LILCO to file its supplemental testimony on the relocation center issues on June 15 and the County and/or State to file on June 26. Tr. 10,972-73.

Supplemental testimony was filed by LILCO and the County within the time frame set by the Board. On July 6, however, LILCO requested additional time within which to pursue discovery and file a motion to strike the County's testimony, arguing that, because of what LILCO asserted was "new" information, discovery was necessary. The Board denied this request (Tr. 12,830) because in the Board's view it was untimely and lacked good cause and ruled that any revised or supplemental testimony filed by LILCO on the relocation center issues had to be filed on or before July 31, 1984. Tr. 12,834. On July 30, LILCO filed the revised testimony which is the subject of this motion.

## II. Discussion

### A. The Issues Raised in Contentions 24.0, 74 and 75 Should Be Summarily Decided in Favor of Suffolk County and New York State

Contentions 24.0, 74 and 75 relate to the requirements of NUREG 0654 that an offsite emergency plan must include:

- (1) identification of relocation centers (Sections II.J.10.a, 10.g and 10.h);
- (2) agreements governing the availability and use of all facilities relied upon (Sections II.A.3 and II.C.4);
- (3) relocation centers at particular locations (Section II.J.10.h); and
- (4) relocation centers with particular capacities, facilities and equipment (Sections II.J.10.g and J.12).

Clearly, an evaluation of the adequacy of agreements, specific

locations, and specific capacities and facilities cannot be made in a vacuum -- such an evaluation can only be made with respect to the particular relocation center(s) being proposed. Clearly, only after the centers being relied upon have been identified can there be compliance with the NUREG 0654 requirement that there be relocation centers, and only then can any asserted compliance with the other NUREG 0654 requirements relating to relocation centers be evaluated.

However, neither the LILCO Plan nor LILCO's proposed testimony designates any specific relocation center(s) upon which LILCO intends to rely in the event of an emergency at the Shoreham plant. See Statement of Material Facts (hereinafter, "Facts"), ¶3. Because LILCO has failed to identify any specific relocation center(s), it has failed to controvert or even address the issues raised in Contentions 24.0, 74 and 75. Therefore, there are no facts in dispute, and, the Board should summarily rule in favor of Suffolk County and New York State on these contentions. Furthermore, LILCO's intent, stated in the proposed testimony, to identify specific, but undesignated relocation center(s) at some unidentified time in the future, does not constitute a fact upon which this Board could base a ruling on Contentions 24.0, 74 or 75. LILCO's promise or hope of some day achieving compliance with regulatory requirements, without the submission of any evidence upon which a finding that such compli-

ance has in fact been achieved, does not create a factual dispute. The simple fact is that, at this time, LILCO has failed to identify any facilities as relocation centers and, thus, there are no genuine issues to be heard regarding Contentions 24.0, 74 or 75.

Specifically, Contention 24.0 provides as follows:

Contention 24.0. The Plan designates Suffolk County Community College as the relocation center to be used by evacuees from eight of the 19 zones in the EPZ (zones A-E, H-J). LILCO estimates the population of these zones to be 18,599 (26,574 in the summer). (See Plan, Appendix A, at IV-75 to 162). Suffolk County Community College is an entity of the Suffolk County government. LILCO has no agreement with Suffolk County to use Suffolk County Community College as a relocation center. Furthermore, pursuant to Suffolk County Resolution No. 456-1982 and Resolution No. 111-1983, the Suffolk County Community College will not be available for use in implementing the LILCO Plan. Therefore, there is no relocation center designated for a significant portion of the anticipated evacuees. Thus, the proposed evacuation of zones A-E, H-J cannot and will not be implemented. (Emphasis added.)

LILCO's proposed testimony acknowledges that LILCO has no agreement with Suffolk County to use Suffolk County Community College as a relocation center (Facts, ¶1), and states that Suffolk County Community College is not relied upon in the LILCO Plan. Facts, ¶2. Notwithstanding the admitted unavailability of Suffolk County Community College, however, LILCO has failed to

identify or designate in its proposed testimony any relocation center to be used by evacuees in zones A-E and H-J. Indeed, LILCO has failed to identify any relocation center(s) for any evacuees of the EPZ. Facts, ¶3. Thus, as stated in the contention, "there is no relocation center designated for a significant portion of the anticipated evacuees," and "the proposed evacuation of zones A-E, H-J cannot and will not be implemented." Summary disposition in favor of Intervenors should be granted on Contention 24.0 because there are no facts in dispute relating to that contention.

Similarly, the issues raised in Contentions 74 and 75 are not controverted by either LILCO's proposed testimony or the LILCO Plan, and therefore summary disposition should also be granted in favor of the County and the State on those Contentions. Contentions 74 and 75 identify specific deficiencies in the relocation centers proposed in the LILCO Plan. These deficiencies are explicitly stated in the Preamble to Contentions 74-77 and in the Contentions themselves, which provide as follows:

Further Preamble to Contentions 74-77.  
An offsite emergency plan must include means of relocating evacuees and must provide for relocation centers located at least five miles and preferably 10 miles beyond the EPZ. NUREG 0654, Sections II.J.10.g and h. Such relocation centers are essential to provide food and shelter to those evacuees who have no alternative places to stay and also to provide radiological monitoring and decontamination for

evacuees and their vehicles. The relocation centers must have sufficient personnel and equipment to monitor evacuees within a 12-hour period. NUREG 0654, Section II.J.12.

The LILCO Plan calls for the establishment of relocation centers outside the EPZ at the following facilities (Plan, at 4.2-1; OPIP 4.2.1):

Suffolk County Community College (primary)

BOCES Islip Occupational Center (primary)

State University of New York at Stony Brook (primary)

State University of New York at Farmingdale (backup)

St. Joseph's College, Patchogue (backup).

The Intervenors contend that LILCO will be unable to provide adequate relocation centers and services for evacuees, and thus the Plan fails to comply with 10 CFR Sections 50.47(a)(1), 50.47(b)(8), 50.47(b)(10), and NUREG 0654 Section J. The specific deficiencies which lead to this conclusion are set forth in Contentions 74-77.

Contention 74. Two of the three primary relocation centers designated by LILCO are well within 20 miles from the Shoreham site. Both Suffolk County Community College and the State University of New York at Stony Brook are only three miles beyond the EPZ boundary, contrary to the requirements of NUREG 0654, Section II.J.10.h.

Contention 75. The LILCO Plan provides no estimates of the number of evacuees who may require shelter in a relocation center, and the Plan fails to demonstrate that each such

facility has adequate space, toilet and shower facilities, food and food preparation areas, drinking water, sleeping accommodations and other necessary facilities. Accordingly, there is no assurance that the relocation centers designated by LILCO will be sufficient in capacity to provide necessary services for the number of evacuees that will require them. Thus, LILCO fails to comply with NUREG 0654, Sections II.J.10.g and J.12. (Emphasis added.)

Although the particular relocation centers referenced in the contentions are no longer designated by LILCO as relocation centers, the deficiencies identified in Contentions 74 and 75, concerning the location of relocation centers and the Plan's failure to demonstrate that any relocation center(s) relied upon by LILCO will have adequate space, toilet and shower facilities, food and food preparation areas, drinking water, sleeping accommodations, and other necessary facilities, remain uncontroverted. As noted, LILCO's proposed testimony fails to designate any specific facilities as relocation centers. Clearly, bald assertions that any relocation center(s) which may be identified in the future "will be" a particular distance from the EPZ, or "will have" necessary facilities, do not constitute "facts" or evidence upon which this Board could find that the requirements of NUREG 0654



identified in Contentions 74 and 75 have been met.<sup>1/</sup> For example, to dispute the issues raised by Contention 75 and to demonstrate that a facility has adequate space, food, water and sleeping accommodations, and other necessary facilities, LILCO would have not only to identify a facility, but present precise information to the Board regarding the physical characteristics of that facility and its buildings. LILCO, however, has failed even to identify any relocation center(s) that will be used by the public in the event of an emergency at Shoreham.

In short, Contentions 24.0, 74 and 75 raise issues of fact which can only be resolved by the designation and evaluation of specific relocation centers. LILCO's proposed testimony simply fails to address the issues set forth in these contentions.

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<sup>1/</sup> Attachment 1 to LILCO's proposed testimony includes a long list of institutions and building owners with which the Nassau County Chapter of the American Red Cross purportedly has agreements relating to emergencies. The list includes buildings such as fire truck garages, BOCES facilities, churches, and entire public school districts, without identification of particular schools or buildings. It is difficult to imagine that LILCO would seriously suggest that a fire truck garage has the necessary facilities to make it a suitable center for long term relocation in the event of a radiological emergency. More significantly, it is clear from LILCO's proposed testimony that the list contains only the names of buildings or owners of buildings which LILCO might consider for use in the event of an emergency at Shoreham. None of these facilities is designated as a relocation center under the LILCO Plan, and the inclusion of such a list of "candidate" owners of potential relocation facilities does nothing to cure LILCO's failure to controvert Contentions 24.0, 74 and 75. In addition, despite the County's request for copies of the alleged agreements between the Nassau County Chapter of the American Red Cross and the building owners on the list, LILCO has indicated that it may refuse to make such agreements available to either the County or New York State.

There are no facts in dispute and therefore, summary disposition in favor of the County and the State should be granted.

B. LILCO's Proposed Testimony Is Neither Relevant Nor Material and Should Therefore Not Be Admitted Into Evidence

Pursuant to 10 CFR 2.743(c), only relevant and material evidence is to be admitted into evidence. LILCO's proposed testimony is neither relevant nor material and therefore it should not be admitted by the Board.

The focus of these hearings is the adequacy and implementability of the LILCO Plan, not of proposals under consideration, or proposals that may, in the future, be incorporated into the Plan. LILCO's proposed testimony, by failing to specify or identify any relocation center(s) for use by the public, is nothing more than a proposal by LILCO to do something in the future. Moreover, unlike the proposals contained in previously filed LILCO testimony, this testimony does not even identify what the future action to be taken by LILCO will be. Admission into evidence of LILCO's vague and speculative proposed testimony would serve no purpose, since no meaningful facts can be culled from such testimony, and no findings of compliance with regulations, adequacy of relocation centers, or plan implementability can be made based on that testimony.

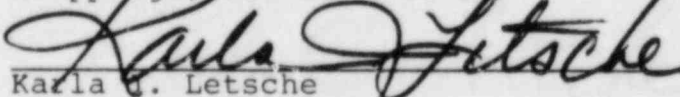
LILCO has had three chances to address the relocation center contentions. It has repeatedly failed to do so. Its latest attempt should be rejected, and the proposed testimony should not be admitted by the Board. LILCO's testimony is not relevant, because it does not relate to or bear upon the matters raised by Contentions 24.0, 74 and 75. Likewise, LILCO's testimony is not material, because it has no influence or effect upon the matters in dispute.

III. Conclusion

For the reasons stated above, Suffolk County and New York State submit that summary disposition of the relocation center contentions should be granted in favor of the County and State; and, in the alternative, that LILCO's motion to admit its revised testimony on the relocation center contentions should be denied.

Respectfully submitted,

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