

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

'84 AGO 22 P12:02

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

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

MOTION OF SUFFOLK COUNTY
TO ADMIT NEW CONTENTION

Pursuant to 10 CFR § 2.714, Suffolk County moves this Board to admit a contention, a copy of which is attached hereto, which addresses issues arising from the recent LILCO employees' strike. For the reasons set forth below, the County meets the standards of Section 2.714 for late-filed contentions.

FACTS

The purpose of this proceeding is to determine whether LILCO's offsite radiological emergency response plan ("Plan") provides reasonable assurance that adequate protective measures can and will be implemented in the event of a radiological emergency at Shoreham. Thus, the central issue is whether the Plan proposed by LILCO can and will be implemented.

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LILCO's Plan relies on the existence and operation of an organization, which LILCO has attempted to create, known as the Local Emergency Response Organization ("LERO"). According to the LILCO Plan, LERO is said to be comprised of approximately 1800 workers, the vast majority of whom are identified in the Plan as LILCO employees. See OPIP 2.1.1. LILCO has asserted that the LILCO employees who purportedly are members of LERO are "volunteers." Approximately 1200 of the LILCO employees who are described in the Plan as being in LERO are members of labor unions.

On July 10, 1984, LILCO's union employees who are members of two Locals of the International Brotherhood of Electrical Workers went on strike. Subsequently, to the County's knowledge and belief, all of the approximately 1200 union workers who had purportedly been members of LERO, resigned from LERO.

There is considerable evidence that the strike and events relating to LILCO's austerity program, management changes, and other matters which preceded and led to the occurrence of the strike, have created among LILCO's employees attitudes of deep resentment and bitterness toward LILCO's management. As a result, there is evidence that whereas LILCO workers were once reputedly intensely loyal to LILCO (as evidenced by their

reportedly "voluntary" participation in the past in LERO), such loyalty and willingness to perform additional "volunteer" work for the company no longer exists due to the strike and events leading up to the strike. There is substantial evidence that LILCO's workers, particularly those who in the past may have volunteered for LERO duty, feel betrayed by the actions of LILCO management prior to and during the strike. Economic benefits provided to LILCO's top management, in the face of severe labor cutbacks (the sudden termination of approximately 20 percent of its workers), the refusal of management to continue to pay the workers the wages they had been receiving for the prior year, the insistence of management that the union employees take a five percent wage cut along with reductions in benefits, and LILCO's termination of all health benefits for its striking workers, have further increased the resentment felt by LILCO's workers toward LILCO. It is unlikely that the severe damage to labor relations incurred by the recent strike can be or will be repaired in the near future. The resentment felt by LILCO's employees further means that it is unlikely that they would be willing to undertake in the future the additional work, burdens and responsibilities involved in being members of LERO.

In the County's view, which is supported by knowledgeable expert opinion, the facts summarized above lead to the

conclusion ~~that~~ there is no basis upon which this Board could find that LERO is a cohesive organization with the vitality and viability to act in accordance with the lofty purpose for which it was purportedly created by LILCO. Indeed, the County submits that the Board would have to find that LERO is not an organization which is either dependable or capable of taking necessary emergency actions, and that there is no reasonable assurance that LERO could or would (a) exist in the future, or (b) be willing or able to implement the LILCO Plan.

As a result of the massive resignations from LERO, that so-called "organization" literally does not exist now. Therefore, at present it cannot be said that LILCO's Plan could or would be implemented. Furthermore, due to the potential for strikes as well as other less extreme labor-management disputes in the future, and the existing bitter relationship between LILCO management and LILCO's employees, there is no basis for finding that LERO could or would, with any assurance, either exist in the future or exist in a form that would make it capable of effectively or adequately implementing the LILCO Plan.

On July 24, 1984, shortly after the commencement of the LILCO strike, the Board acknowledged the serious threat to safety posed by LILCO's reliance on LERO to implement the LILCO

Plan by raising sua sponte three issues to be addressed by the parties.^{1/} They were:

1. Whether LILCO's ability to implement its offsite emergency preparedness plan would be impaired by a strike involving the majority of its LERO workers.
2. Whether LILCO should be required to place the reactor in cold shutdown in the event of a strike by LERO workers.
3. Whether placing the reactor in cold shutdown during a strike by LERO workers, after the reactor has operated at full power, would give "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."

In response to the Board's Order, in particular issues 1 and 3, the County initiated an effort to prepare a direct case that would establish, among other things, that: (1) because the recent strike resulted in the literal disintegration of LERO, LILCO could not implement its Plan now or at any time; and (2) because of the potential for future strikes and the ill feelings engendered prior to and during the recent strike, there can be no reasonable assurance that adequate protective measures could or would be taken by LERO, even if it were to be

^{1/} Memorandum and Order Determining That A Serious Safety Matter Exists (July 24, 1984) [hereinafter, "Memorandum and Order"].

re-created following the recent or any future strikes. Since neither of Board issues 1 or 3 limited the referenced need for an offsite response or the occurrence of a radiological emergency to the time period during an actual strike, the County understood that the matters it intended to address were within the scope of the issues identified by the Board.^{2/}

On August 8, 1984, the Board called a conference of counsel to discuss, among other things, the strike issues. During that conference, the Board informed the County that, despite the language used by the Board in setting forth the three Board issues, those issues actually were intended only to address the occurrence of a radiological emergency at the time of a strike. Thus, the Board ruled that the broader ramifications of a strike, including the effects of a strike on LILCO's ability to implement its Plan at any time (not just during a strike), were not within the scope of the issues identified as Board issues in the July 24 Memorandum and Order. Tr. 14,003-14,011. The

^{2/} In addition, these matters had been identified by counsel for the County during a discussion held at the hearing on July 19, 1984, in response to the Board's solicitation of the parties' views on the impact of the LILCO strike upon the emergency planning issues. It was following that discussion and, the County believed, at least in part in reliance upon the matters raised by the parties, that the Board's Memorandum and Order was issued.

effect of the strike on the existence, esprit de corps, and viability of LERO as an organization essential to the implementation of LILCO's Plan was thus excluded from consideration in this proceeding.

In the County's view, consideration of the consequences of the recent strike on the reliability, institutional integrity and viability of LERO is crucial if the Board is to render an informed decision on whether LILCO's Plan can and will be implemented in the event of a radiological emergency at Shoreham. Therefore, the County hereby submits, and seeks admission of, a new contention which, if admitted, would permit this Board to hear evidence concerning the consequences of the recent strike and of potential future strikes by LILCO's workers upon LILCO's capability of implementing its proposed Plan. The County's proposed contention is attached to this pleading.

DISCUSSION

The admissibility of late-filed contentions is governed by 10 CFR §2.714(a)(1) and (b) which set forth five factors that a Board must consider. Those factors are:

- (i) Good cause, if any, for failure to file on time.

- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The County submits that all of these factors weigh in favor of admitting the County's contention.

A. Good Cause Exists for Not Having Filed the Proposed Contention Earlier

Good cause exists for the County's failure to file this contention earlier. The contention at issue arises from circumstances unforeseen prior to the LILCO strike. The LILCO strike and en masse LERO resignations did not commence until July 10, 1984, and the issues raised by the proposed contention therefore could not have been tendered with the requisite degree of specificity until that date. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982). Furthermore, before the County had an opportunity to submit a contention relating to the strike, the Board, sua

sponte, issued its July 24 Memorandum and Order. Upon reviewing the language used by the Board in its Memorandum and Order to describe the issues it intended the parties to address, the County in good faith interpreted that language to cover the full scope of the County's concerns arising from the LILCO strike, including the issues raised in the attached proposed contention. Thus, it was not until the conference of counsel on August 8, that the County was informed that the scope of the issues raised by the Board was narrower than the County's interpretation of those issues. In an effort to act without delay, the County now submits the attached contention.^{3/} Thus, the County has acted promptly in bringing its concerns before the Board, and in filing this motion. The County submits that it has met the "good cause" requirement of 10 CFR §2.714.

^{3/} During the period between August 8 and the date of this filing, counsel involved in this proceeding have conducted depositions of FEMA witnesses (August 9), the deposition of LILCO witness Mr. Raspbury (August 13), and participated in the hearing (August 14-16).

B. There Are No Other Available Means Whereby the County's Interest Will Be Protected

There is no basis for believing that any means other than litigation of the County's proposed contention will adequately protect the County's interest in this matter. As defined by the Board's ruling of August 8, no contention or issue presently before the Board addresses the issues sought to be raised by the County. Nevertheless, the County's proposed contention is based on specific recent events which cast serious doubt on LILCO's ability to implement its Plan -- a Plan that poses unique problems and therefore demands close scrutiny. Without the admission of the proposed contention, there is no means by which the County's interest in obtaining a determination as to the impact of the recent strike and future strikes by LILCO employees upon the implementability of the LILCO Plan, could be protected.

C. The County Can Be Expected to Assist in Developing a Sound Record

Prior to the Board's ruling of August 8, the County had contacted experts, including David Olson, Michael Lipsky, John Fakler and Peter Cosgrove, who are knowledgeable on matters raised in the proposed contention. If the proposed contention is admitted, the County would submit testimony by these experts

on the implications of the LILCO strike on LILCO's ability to implement its Plan as set forth in this Motion and in the proposed contention. The County had also had discussions concerning potential testimony with other experts prior to the Board's August 8 ruling but has not pursued those discussions in light of the Board's ruling. If the proposed contention is admitted, however, the County may submit testimony by witnesses in addition to the four identified above. Without the admission of the proposed contention and the submission of evidence by the County on the matters raised therein, this Board would have no basis upon which to find that, in light of the current realities of LERO staffing and the labor-management relations at LILCO, there is nonetheless reasonable assurance that LILCO's Plan could or would be implemented. Thus, the admission of the proposed contention will result in the development of a sound and complete record.

D. The County's Interest In the Proposed Contention Will Not Be Adequately Represented By Other Parties

No other party in this proceeding has submitted a contention similar to the County's proposed contention. Furthermore, the Board has instructed the parties that its sua sponte issues do not encompass the issues now sought to be raised by the County.

E. The County's Proposed Contention Does Not Unduly Broaden the Scope of the Board's Consideration of the Impact of the LILCO Strike, and Will Not Cause Undue Delay

Although admission of the proposed contention would broaden somewhat the inquiry deemed necessary by the Board relating to the LILCO strike, the issue raised in the contention is specific and narrowly focused. In addition, it is essential that it be considered. The LILCO Plan is unique among all other radiological emergency response plans because the implementation of protective actions for the public is completely dependent upon the timely and effective performance of innumerable functions by the employees of a private company, as opposed to governmental authorities. These unique circumstances and their impact on the Plan's ability to meet NRC requirements must be acknowledged and reviewed by this Board. The County submits that factual evidence and expert opinion will prove that the LILCO strike and the potential for future strikes have serious ramifications upon LILCO's ability to implement its Plan.

Furthermore, since the contention proposed by the County is narrowly focused, the County does not believe its litigation will take more than a few days of hearing time, if that long. Therefore, admission of the County's contention will not delay this proceeding to any significant degree.

Conclusion

For the reasons set forth above, the County submits that it has met the standards of 10 CFR §2.714 for late-filed contentions. Therefore, the Board should grant the Motion Of Suffolk County To Admit New Contention.

Respectfully submitted,

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Dated: August 20, 1984

PROPOSED CONTENTION

NRC regulations require a finding of reasonable assurance that adequate protective measures can and will be taken during a radiological emergency prior to the issuance of a full power operating license. 10 CFR § 50.47(a). Section 50.47(b)(1) and NUREG 0654, § II.A.1.a, further require that an offsite radiological emergency response plan must specify organizations which will implement the plan. Principal organizations identified in the Plan are required to be capable of responding 24 hours a day and must be capable of continuous (24-hour) operations for a protracted period. NUREG 0654, §§ II.A.1.e and 4. Finally, 10 CFR §§ 50.47(b)(14) and (15) and NUREG 0654, §§ II.N and O require that emergency workers be adequately trained and drilled to respond to a radiological emergency.

According to the LILCO Plan, "LERO" is the principal organization which is expected to respond to, and take command and control of, a radiological emergency at Shoreham. As described in the LILCO Plan, LERO is composed of approximately 1800 LILCO employees, about 1200 of whom are members of unions. According to LILCO, membership in LERO is voluntary.

On July 10, 1984 LILCO's employees who are members of two Locals of the International Brotherhood of Electrical Workers

went on strike and all such workers resigned from LERO. Prior to the actual strike, LILCO management had taken actions perceived by employees as unfair to non-management level employees, including terminations of employees, increases in management salaries and benefits, refusals to continue employee benefits and existing pay levels, and insistence upon employee wage cuts and reductions in benefits. In light of these events, their effect upon the attitudes of LILCO employees, and the potential for labor-management disputes and strikes involving LILCO employees in the future, the County contends as follows:

1. There can be no reasonable assurance that the LERO organization would or could be re-created in light of the en masse resignations which have occurred in connection with the recent strike.

2. Even if LERO were eventually re-created, there can be no reasonable assurance that LERO would be staffed or trained to the levels described and relied upon in the LILCO Plan, or that such re-created LERO would be the same as the postulated organization that heretofore was the subject of this proceeding;

3. Even if LERO were eventually re-created, there can be no assurance that the LILCO workers in LERO would constitute a reliable organization and would dedicate themselves to achieving a level of preparedness adequate to give reasonable assurance that the LILCO Plan can and will be implemented;

4. Even if LERO were eventually re-created, there can be no reasonable

assurance that LERO workers actually would or could respond to a radiological emergency in the manner set forth and relied upon in the LILCO Plan.

The County therefore contends that the LILCO Plan, the implementation of which is dependent upon the existence of LERO and the capacity of LERO to perform as an organization, does not meet the requirements of 10 CFR §§ 50.47(a) and (b)(1), (14) and (15) and NUREG 0654, §§ II.A.1.a, 1.e and 4, II.N. and II.O.

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-322 (O.L.)
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Motion of Suffolk County to Admit New Contention have been served on the following this 20th day of August 1984, by U.S. mail, first class, except as otherwise noted.

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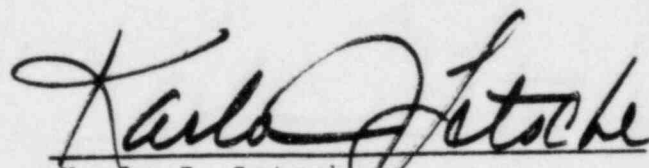
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DATE: August 20, 1984

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