293

LILCO, November 19, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LILCO'S BRIEF ON CONTENTIONS 1-10

Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, VA 23212

November 19, 1984

add. J Gore
OCA

DS03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LILCO'S BRIEF ON CONTENTIONS 1-10

Here, in response to the Board's "Memorandum and Order Deferring Ruling on LILCO Motion for Summary Disposition and Scheduling Submission of Briefs on the Merits" of October 22, 1984, is LILCO's brief on the merits of Contentions 1-10 (the "legal authority" issues) and on the three questions raised by the Board on pages 3-4 of the above-cited Memorandum and Order.

In part I below we set forth the reasons why LILCO should prevail on Contentions 1-10, including the merits of whether the State laws cited in the contentions actually do proscribe the various activities. We do not, however, reargue the preemption issue; we merely repeat here that all ten contentions should be decided in LILCO's favor because (1) the state laws invade the preempted field of nuclear safety regulation and (2) any state law that is applied specifically and willfully so as to handicap an emergency plan "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." For those of the ten contentions that address functions that the Board decides are necessary to satisfy NRC regulations (LILCO takes these to be Contentions 5-8[1]), the state laws are preempted because there is an

---

1/ Contentions 7 and 8, which deal with the ingestion exposure pathway and with recovery and reentry, are a special case, since, while they are re-

(footnote continued)

actual conflict between state law and federal.

I. WHO SHOULD PREVAIL ON EACH CONTENTION AND WHY

The legal authority contentions are based on two ideas that are utterly untrue. The first is that one has to have government permission to help (indeed, to advise) people in an emergency. In the Intervenors' worldview, the Good Samaritan would be pushed up against a wall and ordered to produce his papers, or perhaps cited for practicing medicine without a license. The Intervenors have the issue of legal authority backward; the question is not who has authority to help the public, but rather what authority permits state and local governments to refuse to.

The second wrong idea behind Contentions 1-10 is that LILCO is "usurping" the functions of the state. Obviously Intervenors are offended by the idea that a private party would presume to do what they ordinarily would do. But LILCO is not competing with government officials. Traffic guides are a good example: what LILCO proposes to do is direct2/ traffic until the police arrive; that idea is in the Plan, in the procedures, and even

---

(footnote continued)

quired to be covered by the plan under 10 C.F.R. § 50.47(b)(10) and (13), as to these subjects LILCO's "realism" argument has especial force. Given the amount of time available after an accident to deal with ingestion pathway concerns, it is hard to credit any suggestion that lack of "legal authority" would prevent protective actions from being taken.

2/ LILCO prefers to say "guide" or "facilitate" traffic because LERO will not have the means to compel ("direct") anyone to do anything, nor will it try. But since "direct" is the more common term, and since how one characterizes the activities of traffic guides makes no difference whatsoever as to the legality of those activities, we will talk about "directing" traffic in this brief.

in the name of the Plan -- the Plan was called a "transition" plan in part because it is intended to fill the gap before the authorities became involved.3/

In every respect the Plan expressly provides for the subordination of LERO personnel to State and County authority. The only respect in which LILCO has not bowed to their authority is its unwillingness to accept the State and County decision that emergency planning should not be done so that Shoreham may not operate. This decision by the State and County governments constitutes an attempt to regulate nuclear power and is, as we have argued, preempted.

Both in their answer to LILCO's motion for summary disposition4/ and in their recent pleadings to the Supreme Court of New York,5/ Intervenors New York State and Suffolk County have for all practica. purposes abandoned the position stated in Contentions 1-10, which is that certain New York statutes and ordinances prohibit certain measures contemplated under the LILCO Transition Plan. Instead, they now rely primarily on an entirely new theory that these same actions are an exercise of the "police power" such as only a government can do and, moreover, not authorized by LILCO's corporate charter.

3/ See LILCO's Memorandum of Service of Supplemental Emergency Planning Information, May 26, 1983, at 11 n.8.

4/ Opposition of Suffolk County and the State of New York to LILCO's Motion for Summary Disposition of Contentions 1-10 (the "Legal Authority" Issues), Sept. 24, 1984.

5/ See Plaintiffs' Joint Brief in Opposition to LILCO's Motion to Dismiss and in Support of Plaintiffs' Cross Motion for Summary Judgment, Sept. 11, 1984, in Cuomo v. LILCO, Consol. Index No. 84-4615 (N.Y. Sup. Ct., filed Mar. 8, 1984).

We will first address the contentions, which are what are at issue in this proceeding, in part A below and then address in part B the new issues of police power and corporate charter.

A. Contention-by-Contention Analysis

The following tracks closely what LILCO said in Section IV of LILCO's Motion for Summary Disposition of Contentions 1-10 (the "Legal Authority" Issues), dated August 6, 1984, plus what was said in LILCO's Memorandum of Law in Support of Motion to Dismiss, Aug. 14, 1984, and Brief in Support of Motion to Dismiss, Nov. 15, 1984, filed in Cuomo v. LILCO.

1&2. Contentions 1 and 2: Directing Traffic and Blocking Lanes, etc.

In Contention 1 Suffolk County objects to LERO's "directing traffic" to "ensure that evacuees follow the evacuation routes identified and prescribed by LILCO in the Plan and to 'discourage' noncompliance with those routes." Contention 2 says that LILCO employees would "implement various traffic control measures" such as "roadblocks, prescribed turn movements, channelization treatment, one-way roads, and blocking lanes on the Long Island Expressway."

The record shows that LERO traffic guides will be stationed at key intersections to facilitate the movement of traffic by using hand and arm signals and thus to discourage travel in certain directions, though traffic will not be prohibited from traveling in particular directions.6/ Tr. 2,344 (Lieberman).

6/ Traffic guides will not force anyone to turn in a particular direction should they choose not to do so. LILCO Transition Plan, Appendix A, IV-8; Cordaro et al. (Contention 65), ff. Tr. 2,337, at 76; Cordaro et al. (Contention 23.H), ff. Tr. 2,337, at 21-22; Tr. 2625 (Lieberman).

Cones, hand signals, and arm movements will be used to encourage the movement of traffic out of the EPZ as quickly as possible, Cordaro et al. (Contention 65), ff. Tr. 2,337, at 61-62, resulting in an evacuation time estimate of 4 hours 55 minutes for evacuation of the entire 10-mile EPZ in summer in good weather, six hours in inclement winter weather. Id., at 62, Att. 6 (Cases 12 and 19 respectively). Only one two-way road is converted to a one-way road under the LILCO Plan. LILCO Transition Plan,7/ Appendix A, Table XIII.

LILCO is entitled to prevail on Contentions 1 and 2 on three grounds, apart from federal preemption.

a. LERO's activities would not violate State Law

First, LERO's proposed activities would not violate state law. Contention 1 relies, first, on N.Y. Veh. & Traf. Law §§ 1102. As the attachments to the NRC Staff's answer to LILCO's summary disposition motion show, this statute provides as follows:

> No person shall fail or refuse to comply with any lawful order or direction of any police officer or flagperson or other person duly empowered to regulate traffic.

The LILCO Plan expressly provides that LERO traffic guides are to turn over their posts to police officers if those officers respond to an emergency at Shoreham, and so § 1102 is inapposite.

Section 1602 authorizes police officers to close streets or divert traffic, direct traffic, etc. As with § 1102, § 1602 does not by its terms apply to anything LILCO proposes to do under the Transition Plan. Likewise, N.Y.

7/ The Plan (Rev. 3) is LILCO Ex. 80. It will be cited hereinafter as simply "Plan."

Transp. Corp. Law § 30 (McKinney), which authorizes "special policemen" appointed by police departments to act as special patrolmen in connection with systems operated by corporations of signaling to a central office for police assistance, does not apply.

Finally, Contention 1 cites N.Y. Penal Law §§ 190.25(3), 195.05, and 240.20(5) (McKinney). New York Penal Law § 195.05 plainly has no application to any of the facts of this case. It provides:

> A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act.
>
> Obstructing governmental administration is a class A misdemeanor.

It is clear from the language of the section, as well as the cases decided under it, that the statute does not apply here.8/

For one thing, § 195.05 does not apply unless there is actual "obstruction" by means of intimidation, physical force, physical interference, or an independently unlawful act. See, e.g., Matter of Tammy M., 108 Misc. 2d 376, 437 N.Y.S.2d 565 (1981); People v. Offen, 96 Mis. 2d 147, 408 N.Y.S.2d 914 (1978); People v. Longo, 71 Misc. 2d 385, 336 N.Y.S.2d 85 (1972). LILCO does not propose to supplant or interfere with any

---

8/ If the statute were ambiguous as to its coverage, it would have to be strictly construed because it is a criminal statute. Thus, unless the alleged conduct fell squarely within its proscription, there would be no finding of a violation.

governmental activity in an emergency by any means, much less by physical or unlawful means. The New York Court of Appeals, for example, has held that sending a message by citizens band radio as to the location of a highway radar checkpoint does not violate § 195.05. People v. Case, 42 N.Y. 2d 98, 396 N.Y.S.2d 841, 365 N.E.2d 872 (1977). A fortiori the provisions of the LILCO Transition Plan are not unlawful. Unlike the facts in Case LILCO will take no steps that will make it easier for someone else to evade the law; indeed, LILCO will make it easier for the public to be protected in accordance with Article 2-B of N.Y. Exec. Law. LILCO proposes to notify the public, recommend protective actions, and use arm and hand signals to facilitate traffic flow in an emergency, and, like the facts in Case, does not propose to interfere physically or otherwise with government employees.

For another thing, § 195.05 is not violated if the conduct "obstructs" only unlawful government actions. See, e.g., People v. Ailey, 76 Misc. 2d 589, 350 N.Y.S.2d 981 (1974); People v. Papp, 19 Misc. 2d 331, 185 N.Y.S.2d 907 (1959); People v. Richter, 265 A.D. 767, 40 N.Y.S.2d 751, aff'd, 291 N.Y. 161, 51 N.E.2d 690 (1943). A total failure by Intervenors to respond in an actual emergency would be unlawful -- contrary to Article 2-B. LILCO would be acting lawfully if it took steps to compensate for that kind of unlawful government conduct.

Likewise, § 190.25(3) defines the crime of impersonating a police officer ("criminal impersonation in the second degree") and requires, first, that the offender pretend to be a public servant and, second, that he act with criminal intent ("acts with intent to induce another to submit to such pretended authority, to solicit funds or to otherwise cause another to act in reliance upon that pretense"). Neither is true of LERO.

Section 240.20 proscribes "disorderly conduct" and requires "intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof." It obviously does not apply to LERO's efforts to protect the public in an emergency.

Contention 2 cites the same statutes as Contention 1, as well as N.Y. Veh. & Traf. Law § 1114 (McKinney). Section 1114 prohibits unauthorized signs, signals, markings, or devices that attempt to direct or regulate the movement of traffic. Presumably the Intervenors believe this prohibits LERO traffic cones. But the intent of the statute is clearly to prevent "public nuisances," for example, unauthorized signs that hide stoplights from view. It cannot reasonably be construed to prohibit devices to facilitate evacuation in a communitywide disaster.

In short, the New York statutes alleged in the contentions simply authorize police and others to perform certain functions and require obedience in ordinary circumstances to official traffic control devices. They do not prohibit LERO's proposed actions. And any interpretation of those statutes that would by implication prohibit LERO's actions in an emergency if police were unavailable would be contrary to the overriding policy of Article 2-B. See, e.g., N.Y. Exec. Law, Art. 2-B, §§ 20, 2g-a.9/

9/ Indeed, it is not at all uncommon to see motorists or bystanders direct traffic around a highway accident until police arrive. In addition, utility repair crews routinely direct traffic around downed lines at least until police arrive. This kind of activity is directly comparable to the activities under the LILCO Transition Plan, though, unlike motorists, LERO traffic guides have been trained to assist traffic flow.

b. The State and County would respond

Second, the evidence supports a finding that the State and County would in fact respond in a real emergency.10/ For one thing, the Governor of the State has stated publicly that the State and County would respond. LILCO's Findings, at 313-14 ¶ 680.

But there is other evidence as well. LILCO's consultants testified that in communitywide disasters an "emergency consensus" prevails under which the protection of threatened people is the overwhelming value. See, e.g., Tr. 870-71 (Dynes). Other LILCO witnesses, who have been dealing with political realities on Long Island for months and years, gave their opinions that State and County personnel would respond. Tr. 10,472-73 (Clawson), 10,518-19 (Weismantle). The County's school administrator witnesses indicated they would plan, or at least reconsider their present positions, if Shoreham were to operate. LILCO Findings at 68 ¶ 141. The same witnesses fully supported LILCO's testimony that their only concern in a real emergency would be to protect the schoolchildren.

Perhaps most telling, despite the appearance of scores of witnesses for Suffolk County and New York State, no witness ever said the State or County would not in fact respond in a real emergency. Indeed, when asked directly during discovery, Suffolk County would not say what it would do in a real emergency, saying that "if events take place in the future, the County government will evaluate the events and take the action(s) which are agreed to be appropriate in light of the events which in fact occur." Suffolk County's Responses to LILCO's Informal Discovery Requests of June 29, 1983 and July

---

10/ This argument applies to all 10 contentions except Contention 3.

6, 1983, at 18. Similarly, the County witnesses who broached the subject evaded it:

> The answer was well, if there is a problem a [LERO] security officer will simply call the Suffolk County Police. Well, No. 1, there is no assurance yet that we will be responding. But even if we do, what does he do with this disturbance until we get there? . . . .

Tr. 13,326 (Cosgrove). Indeed, the Intervenors have fought against having any evidence on this subject in the record, thinking that LILCO's "burden of proof" would then be an insurmountable obstacle to a license.

Finally, there is an additional line of evidence that, while it may be circumstantial, LILCO believes is dispositive. That evidence consists of the position of the Intervenors that their purpose is to protect the public health and safety. The Intervenors have no motive for opposing emergency planning, or for pretending they would not respond to a real emergency, except to prevent Shoreham from operating. It follows that there would be no motive not to respond to a real emergency at an operating Shoreham, and the Intervenors' desire to protect the public compels the conclusion that they would both plan and respond if an operating license were granted.

This point is made nowhere so well as in the affidavits attached to Intervenors' answer to LILCO's motion for summary disposition, where the Intervenors praise the usefulness of some of the very measures they are trying to prohibit. For example, in the "Affidavit of Richard C. Roberts," dated September 25, 1984, in paragraph 26, Inspector Roberts says the following:

> LILCO has suggested that the evacuation time estimates for an uncontrolled evacuation would not be altered if there are no trailblazer signs. I disagree. Based on my experience and knowledge of the roads in Suffolk County, I believe that signs providing clear guidance in an evacuation scenario would be helpful to drivers attempting to escape from the EPZ. If there were no trailblazer signs, evacuation times would increase.

Affidavit of Richard C. Roberts, September 25, 1984, at 12 ¶ 26.

There is only one piece of evidence contrary to LILCO's position that State and County officials would in fact respond, and that is Suffolk County Resolution 111-1983. The Intervenors now argue that this Resolution makes it unlawful for police and others to protect citizens during a Shoreham emergency. LILCO had always read the words in the Resolution forbidding County employees to "test or implement" an emergency plan to refer to planning, not response; that is, to prohibit writing procedures, training, and cooperating with LILCO in advance of an emergency. However, if the Board chooses to accept the broader interpretation11/ now proffered by the Intervenors,12/ then the short answer is that the Resolution does not bind the Governor, who has authority under New York Executive Law Article 2-B, to suspend any statute, local law, ordinance, etc. in an emergency. N.Y. Exec. Law § 29-a (McKinney 1982).13/

11/ Any law that forbade police and others to help people in an emergency would undoubtedly be void as against public policy.

12/ Since the Intervenors' proposed findings, in which this interpretation was put forth, were submitted under the name of the Suffolk County Attorney, it must be assumed that an official opinion from the County as to the meaning of the Resolution would be consistent with those findings.

13/ LILCO's testimony that the Resolution would not in fact inhibit Suffolk County employees was stricken. However, one LILCO witness gave a realistic

(footnote continued)

So the evidence is that State and County officials would respond. And that response is bound to include either (1) providing policemen to facilitate the movement of traffic during an evacuation or (2) conferring authority on LERO to do so. The LILCO Transition Plan provides for the incorporation by its traffic guides of any police assistance offered. Plan, OPIP 3.6.3, p. 11 of 46 (Rev. 3). Traffic guides are trained to explain to the police the situation existing at the time of an emergency, to turn over posts for facilitating traffic flow to the police, and to remain if necessary as assistants in coordinating the evacuation effort. Id.; Babb et al. (Training), ff. Tr. 11,140, Vol. 5, Attachment 20, Module 12.

c. NRC regulations do not require traffic control

Third, NUREG-0654 does not require any particular type of traffic control scheme, but only that a reasonable, accurate evacuation time estimate be given in the offsite plan to meet the regulatory basis of dose minimization. NUREG-0654 II.J.8, II.J.10.1. The scheme used in the present traffic plan for Shoreham could be modified to eliminate traffic guides entirely, with a

---

(footnote continued)

view of how people behave in emergencies. The Superintendent of the Shoreham-Wading River School District, asked if he would let teachers who aren't certified to drive school buses drive them anyway in an emergency, testified as follows:

> A I wouldn t let them do that except, you know, if you are talking -- if an emergency happened tomorrow -- let's forget a nuclear emergency or some other kind of emergency, and we had to move the kids, I would let anybody who could drive drive the bus.

Tr. 9547 (Doremus).

resulting increase in evacuation time estimates of 1 1/2 hours. Tr. 2,663 (Lieberman); Cordaro et al. (Contention 65), ff. Tr. 2,337, Att. 6 (Case 24). Even this scheme, called the "uncontrolled" case, produces evacuation time estimates that are reasonable when compared to time estimates at other nuclear power plant sites and meets the accuracy standards of NUREG-0654. Id., at 46-47. Therefore, even assuming that the behavior referenced in Contentions 1 and 2 is illegal, the Board cannot find, as suggested in the contentions, that the Plan cannot be implemented. The Plan can simply be modified to delete the actions described in Contentions 1 and 2 and to substitute the "uncontrolled" evacuation time estimates for making protective action recommendations.

Intervenors have argued that traffic control is required as a matter of law. This is incorrect. Whether it is required or not is a question of fact. For example, in one case it was held that traffic control was not necessary in an area of low population and good roads. Kansas Gas & Elec. Co. (Wolf Creek Generating Station, Unit No. 1), ASLBP Doc. No. 81-453-03, slip op. at 31, 81, 82 (July 2, 1984). Other cases have found traffic control essential, or at least desirable, for particular areas. Pennsylvania Power & Light Co. (Susquehanna Steam Elec. Station, Units 1 & 2), LBP-82-30, 15 NRC 771, 796 (1982). The point is that there is a factual record for Shoreham that shows that an evacuation can be carried out without traffic guides.

This is not to say that an "uncontrolled" evacuation would be desirable, compared to a "controlled" one. Indeed, an uncontrolled evacuation would take about 1 1/2 hours longer. And for the very few postulated accidents where 1 1/2 hours would change a protective action recommendation from evacuation to sheltering, a controlled evacuation might provide greater dose

savings than an uncontrolled evacuation. But LILCO is not required to guarantee the best possible evacuation, especially where State and local officials seem dead set against it.

3. Contention 3: Traffic Signs

In Contention 3 Intervenors assert that it is illegal for LILCO to post signs to mark evacuation routes. The record shows that LILCO's traffic plan relies on "trail blazer" signs to mark routes out of the EPZ. Cordaro et al., ff. Tr. 2,337, at 61; Clawson et al. (Public Information), ff. Tr. 10,035, at 12-13. These signs are to be located along every major road in the EPZ, id., and will contain the standard evacuation route logo used for civil defense purposes throughout the country. Tr. 2,539 (Lieberman), 2,614-19 (Weismantle, Lieberman). Unlike the other functions contested by Contentions 1-10, these signs would be posted in advance of a potential emergency.

LILCO is entitled to prevail on this contention. First, posting the signs will not violate State law. New York Vehicle and Traffic Law § 1114 prohibits only unofficial signs that control, direct, or regulate the movement of traffic. The "trail blazer" signs do not control, direct, or regulate traffic; they merely mark evacuation routes, and any member of the public is free to ignore them. They are not essentially different from providing the public with maps of the evacuation routes, which LILCO is also doing. By marking pre-planned evacuation routes the signs would facilitate an emergency evacuation and enhance the protection of the public health and safety, thus serving the policy of Article 2-B of making emergency response effective. They cannot be deemed within the intended proscription of the New York Vehicle and Traffic Law. Nor are they proscribed by N.Y. Penal Law

§§ 190.25(3), 195.05, or 240.20(5), which have already been addressed above.

Second, the record shows that the LILCO Plan would be adequate even without the trail blazer signs. The evacuation time estimates for an uncontrolled evacuation would not be altered if traffic signs were not posted along evacuation routes. Cordaro et al. (Contention 65), ff. Tr. 2,337, at 68-69, Att. 6 (compare Case 24 (uncontrolled case assuming route compliance) with Case 34 (uncontrolled case assuming 50% noncompliance with route assignments)).

4. Contention 4: Towing

The LILCO Plan provides for LERO "road crews" to remove stalled cars and other obstacles from roadways using LILCO tow trucks and line trucks. Plan, OPIP 3.6.3, p. 12; Cordaro et al. (Contention 66), ff. Tr. 6,6S5, at 6-7. LILCO should prevail on this contention.

First, the plan to remove disabled vehicles does not violate state law. Contention 4 cites the New York "joy-riding" statute, N.Y. Penal Law § 165.05. But that statute is clearly inapplicable. LILCO would not be "joy-riding" and would not be carting vehicles away or impounding them during an evacuation. Stalled vehicles and obstacles would simply be pulled or pushed to the side of the road to clear the way.

Second, the LILCO Plan is adequate under 10 C.F.R. §50.47(a)(1) and (c) because during an actual emergency the State and County would be participating in an emergency response. Their involvement would remove any legal bar to removing disabled cars from the evacuation route. Therefore, the actions contemplated by the Plan would not be illegal in a true emergency.

Third, NRC regulations do not require that measures be provided for towing stalled cars. There are no specific guidelines in NUREG-0654 for judging whether a specific number of tow trucks is adequate. Tr. 12,803 (Baldwin), 12,815 (Kowieski).

5&6. Contentions 5 and 6: Activating Sirens, Making Decisions About Protective Action Recommendations, and Broadcasting Recommendations to the Public

In Contentions 5-8, the ones that go to the heart of emergency planning, the Intervenors allege that "N.Y. Exec. Law § 20 et seq. (McKinney)" prohibits the various LERO activities. This refers to Article 2-B, and it is an astonishing claim. Article 2-B sets forth the policy of the State of New York that emergency planning for disasters, including potential radiological accidents at nuclear power plants, "shall at all times be the most effective that current circumstances and existing resources allow." N.Y. Exec. Law, Art. 2-B, § 20(1)(e). Indeed, Article 2-B refutes all the Intervenors' arguments that New York law forbids the performance of the contested functions. Article 2-B makes it the policy of the State for governments at all levels, and private emergency service organizations, to plan for and respond to radiological emergencies. N.Y. Exec. Law, Art. 2-B, § 20(1). LILCO has proposed to perform various functions to enhance the protection of the public health and safety. These functions would be performed only in the limited circumstance of an actual radiological emergency at Shoreham. LILCO will not in any way attempt to supplant police or any other government servants from performing governmental functions in an emergency. Indeed, the LILCO Plan contains provisions for incorporating, and coordinating with, emergency responses by governments at all levels, including the State and the County.

LILCO's proposals -- in stark contrast to the Intervenors' desire to prevent any emergency planning -- are designed to pursue to the fullest the goals of Article 2-B.

Contention 5 asserts that LILCO is prohibited by law from "activating sirens" to alert the public that an emergency has occurred, and from "direct[ing] the broadcast and contents of emergency broadcast system ("EBS") messages to the public"; Contention 6 argues that LILCO is "prohibited by law from making decisions on protective action recommendations." If a company owned a chemical plant and suffered an explosion, for example, LILCO submits it would not be illegal -- indeed there might be a legal duty -- to assess the damage, warn the public that a toxic chemical cloud was coming, and advise them what to do. That is all LILCO proposes to do.

These claims are implausible on their face, since they attempt to prohibit LILCO from warning people in danger. Basically what LILCO plans to do is to give information and advice; even the traffic guides perform essentially this function.

a. Activating Sirens

The prompt notification system is the primary mechanism to alert the general public of a radiological emergency; the mainstay of this system in the LILCO Transition Plan, as in most nuclear power plant emergency plans in this country, is a system of fixed sirens mounted throughout the 10-mile EPZ, as well as an emergency broadcast system and tone alert radios. Plan, at 3.3-4.14/ Contention 5 alleges that it is illegal for LERO to activate the

---

14/ The sirens are activated using the encoder at the EOC. Plan, OPIP 3.3.4, p. 2 of 7. In the event that the local EOC is not activated and the ini-

(footnote continued)

sirens. The statutes cited in support of this assertion are Article 2-B and New York Penal Law §§ 190.25(3) and 195.05.

As noted above, there is nothing in Article 2-B that can possibly support the conclusion that the public should not be notified, by anyone who can do it effectively, in a radiological emergency. Indeed, Article 2-B itself, § 22(3)(b), 23(7)(b), and 28(2)(a), provides that the public is to be notified in the event of a radiological emergency. Under § 28(2) the notification may come from a private "emergency services organization" such as LERO. Even without that provision, however, there plainly is nothing in Article 2-B that would prohibit LERO from making an initial notification to the public with the sirens and the EBS system, even if the State and County wished to make their own notifications.

Moreover, it is clear as a matter of fact that the State and local governments would welcome, in a real emergency, the use of the sirens unless there were at that time a better way to alert the public.15/

(footnote continued)

tial notification from Shoreham is of a General Emergency with protective action recommendations, the Customer Service Supervisor, at the direction of the Director of Local Response, instructs the Shoreham Emergency Director to activate the siren system from the Shoreham control room. Plan, at 3.3-5 and OPIP 3.3.4, p. 7. In addition, a backup encoder is located at the Brookhaven Substation. Plan, OPIP 3.3.4, pp. 2-3 of 7. If the Customer Service Operator is unable to reach the Director of Local Response within 10 minutes of receiving notification from Shoreham of a General emergency with a recommendation for protective action, the Customer Service Supervisor notifies the Shoreham Emergency Director and requests that the control room activate the sirens. Plan, OPIP 3.3.4, p. 3 of 7.

15/ The fact that New York will facilitate a response in an actual emergency removes any legal obstacle. Under New York Exec. Law, Art. 2-B, § 29-a, the Governor is authorized to suspend any law that would impede an emergency response. There can be no doubt that the Governor would not impede siren activation in an emergency requiring protective actions.

b. Notifying the Public by EBS

The sirens, of course, are simply the means by which the public is alerted to tune into the EBS station for further information. Contention 5 also asserts that LILCO is prohibited by state law from "directing the broadcast and contents of the Emergency Broadcast System ("EBS") messages to the public." Under the LILCO Transition Plan, LILCO employees determine the content of EBS messages, drafts of which are part of the LILCO Plan, OPIP 3.8.2, Att. 4, and which have been explored at length in this proceeding. See, e.g., Cole (Credibility), ff. Tr. 10,727, at 15-19; Purcell et al. (Credibility), ff. Tr. 10,727, at 70-72; Tr. 1575-1702 (Dynes, Mileti, Sorensen, Weismantle). LILCO employees also determine when an EBS broadcast should be made and initiate the broadcast. Plan, OPIP 3.3.4, p. 2 of 7.

It is the Federal Communication Commission, not the states or localities, that regulates broadcasts of information over the radio. FCC regulations permit an EBS system to be set up by any individual, 47 C.F.R. §73.913(b), and provide that station managers, without government officials' prior approval or notification, may activate any EBS system that has been set up. 47 C.F.R. §73.935(a). Thus, it is clear that under federal law the allegations in Contention 5 about EBS broadcasts are wrong, and LILCO is entitled to a decision in its favor.

Second, the contention is wrong because government officials would in fact respond to an emergency at Shoreham. Cordaro and Weismantle (State Emergency Plan), ff. Tr. 13,899, at 7. The LILCO Plan provides that the Director of Local Response will work in conjunction with government officials in responding to an emergency, Plan, 3.1-1, and therefore EBS messages would be broadcast with the cooperation of the government officials.

Consequently, even assuming that the actions addressed in Contention 5 would be illegal if taken by LILCO alone, they would be legal in a real emergency at Shoreham.

c. Making Decisions

Contention 6 alleges that under state law it is illegal for LILCO to "make decisions and official recommendations to the public as to the appropriate actions necessary to protect the public health and safety." Under the LILCO Plan, the Director of Local Response, a LILCO employee, is responsible for decisionmaking. Plan, at 3.1-1. LERO will make recommendations for protective actions by the public within the 10-mile EPZ in the event of a serious radiological emergency, as required by federal regulations. In a serious emergency, LERO might recommend evacuation of all or part of the 10-mile EPZ. Id.

These recommendations are precisely that -- recommendations. They are not binding upon any member of the public. LILCO intends that they should be followed, to be sure, and anticipates that they will be, but so does anyone who attempts to influence public action. Neither LILCO nor LERO would attempt to compel any member of the public either to follow its recommendations for protective actions or to comply with any of the advice in LERO's messages to the public.

Contention 6 cites Article 2-B, and, again, New York Penal Law §§ 190.25(3) and 195.05 (McKinney), as alleged support. As is the case with the other contentions, these statutes can by no stretch of the imagination be construed to prevent private decisionmaking exercised only until such time as the State and County elect to step in. Article 2-B recognizes that the

licensed operators of the plant must be relied upon to determine initially whether a radiological emergency condition exists and how severe it is. Section 29-c of Article 2-B provides that the New York DPC:

> (b) shall obtain from the licensee, United States nuclear regulatory commission-required high range radiation, temperature and pressure levels in the containment buildings and in the containment building vents of nuclear electric generating facilities located in the state of New York; and
>
> (c) shall obtain, subject to approval of the United States nuclear regulatory commission, any reactor data provided by the licensee to the United States nuclear regulatory commission, which the disaster preparedness commission determines, as a result of the report issued pursuant to section twenty-nine-d of this article, to be a reliable indicator of a possible radiological accident.

N.Y. Exec. Law, Art. 2-B, § 29-c(1)(b), (c) (emphasis added). As for the laws prohibiting obstruction of governmental functions and impersonating a public servant, they clearly do not apply, and it is frivolous to argue that they do.

The County's assertion that LILCO cannot legally "make decisions"16/ regarding protective action recommendations is in reality just another way of saying that State and County participation is essential for the grant of an operating license. This is the same issue raised by Suffolk County in its motion to terminate the proceeding because the County Legislature had decided not

---

16/ Anyone can lawfully "make decisions" about the public health and safety. We will make one in this footnote: smoking cigarettes is bad for your health. The issue is how we act on that decision. If we hire a radio station to warn people about smoking and urge them to stop, we have not exercised any "police power." On the other hand, if we enter tobacco stores and confiscate the stock, or take people's cigarettes away from them and lock them in closets to keep them from smoking, then we may fairly be accused of trying to exercise police powers. The former is analogous to what LILCO is doing for emergency planning, not the latter.

to adopt any emergency plan. The Licensing Board ruled then, and this Board should rule now, that the unwillingness of a locality or a state to participate in emergency planning does not, as a matter of law, prohibit a nuclear power plant from operating. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, aff'd, CLI-83-13, 17 NRC 741 (1983).

Moreover, State and local government officials would be involved in the protective action decision-making process if an emergency were actually to occur. The LILCO Plan provides for the incorporation of "the County Executive or his designated representative" in responding to an emergency, should that official choose to participate. Plan, at 3.1-1. Contentions 5 and 6 continue the fiction that in a real emergency the State and County would not participate in a response, even though the record shows the contrary. Cordaro and Weismantle, ff. Tr. 13,899, at 7.

7&8. Contentions 7 and 8: Making Recommendations for the Ingestion Exposure Pathway and for Recovery and Reentry

Contention 7 alleges that New York State law prohibits LILCO from making decisions and recommendations to the public about protective actions for the ingestion exposure pathway; Contention 8 alleges that LILCO is prohibited from making decisions and recommendations about recovery and reentry.

The LILCO Plan provides that LERO will make protective action recommendations for the 50-mile ingestion exposure pathway EPZ. Plan, at 3.6-8 & OPIP 3.6.6, Section 5.4. The purpose of these recommendations is to prevent possible ingestion of contaminated food. The recommendations will be

formulted by knowledgeable experts. The Radiation Health Coordinator is responsible for communicating recommended protective actions to farms, food processors, and other food chain establishments. Plan, at 3.6-8. The Coordinator of Public Information is responsible for communicating the same information to the general public. Id These recommendations would include suggestions about sheltering dairy animals, limiting or ceasing the consumption of certain foodstuffs, washing or scrubbing fruit and vegetables, and other precautions. See Cordaro et al. (Ingestion Pathway), ff. Tr. 13,563. In addition, the recommendations would identify areas of concern and offer to compensate anyone with economic losses due to food being withheld from the market. Plan, OPIP 3.6.6, Section 5.4.3.1; Tr. 13,679-92 (Cordaro, Daverio, Watts).

The Plan also provides that short-term and long-term recovery and reentry operations will be performed by LILCO employees. See Plan, OPIP 3.10.1. The Recovery Action Committee (1) coordinates area radiological surveys, (2) evaluates data, (3) identifies areas to be reentered, (4) mobilizes required resources, manpower, and equipment for reentry, (5) determines that all utilities are functioning, that food supplies are adequate, and that evacuation effects on public health are mitigated, (6) participates with LILCO in preparing and issuing announcements specifying the areas that may be reentered, and (7) ensures establishment of an organization to estimate population exposure on a continuous basis. Plan, at 3.10-1 & 3.10-2.17/

17/ Two states are involved in the 50-mile ingestion exposure pathway EPZ for Shoreham: New York State and Connecticut. See, e.g., Cordaro et al.

(footnote continued)

Contentions 7 and 8 cite, again, Article 2-B and N.Y. Penal Law §§ 190.25(3) and 195.05 (McKinney). Again they are inapplicable, for the reasons already given, or (in the case of Article 2-B) work directly contrary to the Intervenors' assertions. Essentially LILCO proposes to advise the public on proper health physics practices and to offer to buy contaminated food. There is nothing illegal about that.

Protective action recommendations for the 50-mile ingestion exposure pathway need not be made immediately following the declaration of an emergency. Plan, OPIP 3.6.6, p. 1 of 50; see NUREG-0396, at 13-14. Even if the Governor or County Executive was not involved in the immediate aftermath of the accident, it is inconceivable that they would not get involved in the longer-term problem of post-accident precautions and recovery. Therefore, even if one assumes that the actions described in Contention 7 are illegal if undertaken by LERO alone, there is still adequate assurance that protective action recommendations for the ingestion pathway EPZ will be implemented.

As to Contention 8, it is clear that, following any major emergency at a nuclear power plant, many governmental entities would step forward to determine what actions should be taken to reenter the affected area and recover it if necessary. Tr. 10,509-10 (Weismantle); Cordaro et al. (Ingestion

---

(footnote continued)

(Ingestion Pathway), ff. Tr. 13,563, at 7-8. Connecticut has agreed to implement protective action recommendations when notified by LILCO of an emergency at Shoreham. Cordaro and Renz (Letter of Connecticut Supplement), ff. Tr. 13,85S, at Att. 2. Therefore, the only portion of the ingestion exposure pathway EPZ that is covered by Contention 7 is the portion within New York State.

Pathway), ff. Tr. 13,563, at 38-39; Tr. 13,702-06 (Daverio, Watts); see also Federal Radiological Emergency Response Plan, 49 Fed. Reg. 3578 (1984). Even if recovery and reentry recommendations from LILCO were illegal under state law, many "non-utility entities with the necessary authority" would initiate and implement recovery and reentry for the area around Shoreham. It is unrealistic to assert otherwise.

9. Contention 9: Dispensing Fuel

Contention 9 alleges that LILCO cannot legally dispense fuel from tank trucks to automobiles along roadsides. The record shows that LILCO plans to station fuel trucks near evacuation routes to assist motorists who may run out of fuel. Cordaro et al. (Contention 66), ff. Tr. 6,685, at 14. LILCO plans to provide sufficient fuel such that three gallons of fuel per vehicle would be available. Id. at 15.

The Contention cites Suffolk County Sanitary Code, Art. 12, and Code of the Town of Brookhaven, Chap. 30, Art. X. These references are not specific enough to tell what exactly the Intervenors have in mind. The policy behind the County Code is to prevent water pollution, see Sections 1201-02, and so the intent of the Code obviously doesn't include preventing emergency planning. Article X of the Brookhaven Code appears to be directed more towards safety (that is, measures to prevent explosions of flammable liquids) but is quite clearly not aimed at the situation now before the Board. In any event, it would apply only to the Town of Brookhaven.

Also, the Board should find the LILCO Plan adequate even without the functions referred to in Contention 9. Dispensing fuel from tank trucks is not required under the NRC emergency planning regulations, or even

suggested by NUREG-0654. Tr. 12,818 (Keller). Even if fuel were not dispensed and cars were assumed to run out of gas, these cars would be able to coast off the roadway, Cordaro et al. (Contention 66), ff. Tr. 6,685, at 8, and thus not impede evacuation flow.

Finally, the government participation expected in a real emergency would cure any lack of "legal authority."

10. Contention 10: Security

The County asserts in Contention 10 that LILCO is prohibited by law from performing "law enforcement functions" at the EOC, at relocation centers, and at the EPZ perimeter and that LILCO employees will be responsible for "establishing and maintaining security and access control for the EOC, directing traffic at tne relocation centers, and establishing and maintaining perimeter/access control to evacuated areas." Not even a colorable argument can be made to support the contention as to the EOC, which is LILCO's own property, and the relocation centers, which are in Nassau County. All that is left is the traffic guides.

The record shows the following:

1. The EOC is located on LILCO property. Plan, at 4.1-1. The LILCO Plan does not contemplate that LILCO employees will use threats or force; LILCO employees are assigned to the EOC to identify persons entering the facility. Plan, OPIP 4.1.1, p. 2 of 12.

2. LILCO traffic guides will be assigned to traffic control posts along the EPZ perimeter to discourage persons seeking to enter the EPZ. Plan, Appendix A, at IV-8. The traffic guides will not prohibit anyone from entering the area. Id. Individuals will be left to choose for themselves their course of action. Id.

3. All relocation centers used for the LILCO plan will be in Nassau County. Cordaro et al., ff. Tr. 14,707, at 22. LILCO relies upon the Red Cross to provide relocation centers. Id. at 15. LERO workers will rely upon the local police to provide security at relocation centers to the extent it is necessary.18/ Tr. 11,344 (Varley). No LERO personnel would be relied upon to maintain order at relocation centers. Tr. 11,344 (Varley); Tr. 12,069 (Mileti).

As previously noted, New York State and Suffolk County would respond in a real emergency at Shoreham. This means that County law enforcement officials would be available to "maintain control at the EOC" were that necessary and to "maintain perimeter access control" at the EPZ perimeter. Consequently, there is reasonable assurance that the LILCO Plan will be implemented in this regard.

Also, the LERO workers called upon to perform the activities addressed in Contention 10 will not be "performing law enforcement functions" or requiring anyone to do anything, and they will not be using force to "maintain security." Cordaro et al. (Credibility), ff. Tr. 10,396, at 101-04; Tr. 11,344 (Varley), 12,068-69 (Mileti). They will be assigned to the EOC, relocation centers, and the EPZ perimeter to assist people. They will discourage people from entering the EPZ through the use of hand and arm movements and traffic cones. Weismantle and Lieberman (Traffic), ff. Tr. 2,337, at 62. As to relocation centers and the EOC, LERO employees will be checking identification of persons at the EOC and channelling traffic and the stream of people who may be arriving at relocation centers for assistance.

18/ The Nassau County Executive has agreed to provide police support.

Cordaro et al. (Credibility), ff. Tr. 10,396, at 101-04. If difficulties arise at the EOC, the perimeter, or relocation centers, LERO workers will call the police. Tr. 11,344 (Varley). And since all relocation centers relied upon by the Red Cross to respond to an emergency at Shoreham will be beyond Suffolk County, Suffolk County police will not be called to maintain order at relocation centers.

Finally, the functions challenged in Contention 10 are not necessary to meet NRC regulations.

B. The "Police Power" and Corporate Charter Issues

Intervenors now argue that LILCO is "usurp[ing] the basic police powers of the state and local governments" (rather than violating certain statutes) under the LILCO Transition Plan, and therefore that the Plan is illegal as a matter of state law. This argument represents a fundamental shift of position by Intervenors, and as such it ought to be disregarded as beyond the scope of Contentions 1-10. In addition, it is not supported by law or common sense.

1. The LILCO Transition Plan is Not Prohibited by New York State Law

a. Actions Taken Under the LILCO Transition Plan Do Not Violate Any New York State "Police Power" Law

(1) Intervenors Have Abandoned Their Contentions.

In the contentions the County alleged that the various emergency planning activities under the LILCO Transition Plan were prohibited by specific state statutes. But in their response to LILCO's motion for summary

disposition, and in various court papers, the Intervenors essentially abandon reliance on the proscriptive force of any of the statutes cited in the contentions. Intervenors now assert that LILCO must have a specific grant of authority to undertake the activities in the Plan.

Why must LILCO have a specific grant of legal "authority" to plan for an emergency, to make radio broadcasts, and to perform the other activities proposed in the Plan? Because, Intervenors say, LILCO is proposing to exercise some undefined state "police powers." But why do the activities proposed in the LILCO plan constitute exercises of "police power"? This, the linchpin of Intervenors' entire analysis, is left unexplained. Intervenors simply assert time and again, without any explanation, that LILCO is proposing to exercise "police powers."

They do so for a simple reason: as a general proposition, activity that is not prohibited by law is allowed. This is a cardinal principle of our legal system. Put another way, LILCO is free to plan for and respond to an emergency unless a law prohibits it from doing so.

(2) Intervenors' Characterizations of LILCO's Emergency Response Are Irrelevant.

What characterizes official governmental "authority" is the threat or use of force to compel obedience to commands. That is the key to this case. It is also the reason why Intervenors have never proffered a reason for their repeated assertions that LILCO is "usurping police powers." LILCO does not propose to, and will not, use force or the threat of force to compel obedience to anything. This is an undisputed fact, and Intervenors have made no attempt to dispute it.

Whether one calls it "directing" or "guiding and facilitating" traffic, the action to be taken remains the same: a LILCO employee will be standing in the road in an emergency and pointing out to motorists the particular direction they should travel as part of a larger plan to evacuate the area expeditiously, all of which will have been publicized in advance. The actions to be taken under the LILCO Plan run on a continuum, from putting up evacuation route signs or trail blazer signs in advance of an emergency (this is the only pre-emergency activity challenged as illegal by the Intervenors), to deciding upon recommendations for action by the public to protect themselves, and informing the public of that recommendation, as required by the NRC, to suggesting that certain foods not be sold or bought, to using traffic guides to promote an evacuation plan. Intervenors argue that all of these activities constitute the "police power." While it is true that LILCO is planning in an attempt to protect the health and safety of the public, as it is required to do under the NRC regulations, there is not a single activity raised by the Intervenors that is accomplished by the use of force, threat, or coercion of any sort.

(3) The LILCO Plan Is Not Based On Coercion.

Whether it is labeled "directing" or "facilitating" traffic, LILCO employees may use hand signals and arm movements to point a particular way for motorists, but they cannot and will not stop motorists physically, they cannot and will not issue tickets to motorists who do not go in a particular direction, and they cannot and will not put the motorists in jail for disobeying their directions. If a person is in a line of traffic that a traffic guide is directing to the left, and that person wishes to turn right, he is free to do so under the

LILCO Transition Plan. Similarly, if a person drives from outside the EPZ towards the edge of the EPZ boundary that has been evacuated, and wishes to enter the EPZ, he will not be physically prohibited from entering (although he will be informed that it could be dangerous to do so).19/ And LILCO traffic guides are being trained to assist police and turn over their posts to police should police participate in the emergency response.

The significance of this missing element of force is even more apparent when one analyzes the other activities that Intervenors assert are a usurpation of state police power. They claim that LILCO has no authority under state law to decide what protective actions should be recommended to protect the health and safety of the public in the EPZ. The decision, in a vacuum, cannot be objectionable; what is objected to is LILCO's communicating the recommendation to the public. LILCO's recommendations, as required by the NRC regulations, are to be communicated to the public through (1) an alerting system of emergency sirens situated in the dry land portion of the 10-mile EPZ and (2) radio broadcasts. As noted above, LILCO has specific authority under federal law administered by the Federal Communications Commission to make those radio announcements, as does any other private individual or organization. LILCO has contracts with the participating radio stations. And no coercion will accompany these recommendations; LILCO will simply provide information to the public about the emergency and recommend

---

19/ The question of whether, absent threat or force, LILCO's direction will be followed, is another matter; it has been litigated at length in this proceeding, and LILCO has presented testimony showing that people are likely to accept LILCO's guidance during an emergency. But the fact that people may follow LILCO's recommendations does not turn LILCO's actions into "police power" actions. The essential element, acting to discipline those who do not obey, is missing.

actions that members of the public should take to protect themselves.20/

Similarly, under the Plan LILCO might recommend that food be washed before consumption, or in some cases not consumed, as a result of an emergency involving potential contamination. LILCO will in fact only make recommendations that food not be sold, bought, or eaten, or LILCO will itself purchase contaminated foodstuffs for destruction. LILCO will not go to farms, stores, and produce stands and seize or condemn any food pursuant to the LILCO Plan.21/ This applies equally to the recovery and reentry activities planned to determine how to restore affected areas. The LILCO Plan provides for data collection, mobilizing resources, determining that utilities are functioning, and establishing an organization to estimate population exposure. None of these planning activities exercises any "police power," no matter how one characterizes them. And all activities under the LILCO Plan provide for coordination with State or County officials in responding, should the State or County choose to participate.

(4) "Police Power" Means Regulation and Enforcement.

In their argument about the "nature of the police powers of the state," Intervenors recite many platitudes about the police power, including that "in the American constitutional system, the police power is an inherent attribute

---

20/ In point of fact, even governments do not ordinarily force people to evacuate at gunpoint. See Tr. 10,575-76 (Sorensen).

21/ The issue of whether LILCO could in fact implement this portion of the Plan regarding ingestion pathway was litigated before the Licensing Board. The Federal Emergency Management Agency (FEMA) witnesses explained that no force would be needed to convince people that they should not eat food that may be contaminated. In their experience at Three Mile Island, the problem was convincing people to eat any food that had come from the area. Tr. 14,257 (Keller); see also Tr. 13,687-88, 13,729 (Cordaro).

and prerogative of state sovereignty"; "the police power is reserved in the U.S. Constitution under the 10th Amendment to the state"; "the police power is the state's most essential power"; and "the police power embraces protection of the health and safety of persons within the state's territorial domain." These platitudes do not explain why Intervenors think the LILCO Plan is illegal. The sort of "promotion of safety of persons and property," which the Supreme Court has characterized as "unquestionably at the core of the state's police power," Kelly v. Johnson, 425 U.S. 238, 247 (1976), is protection by regulation, by force, and by the inherent threat of force. The police power allows the state to enforce its valid laws and to incarcerate persons who engage in prohibited activity.

The sort of protection that is afforded by the LILCO emergency plan does not derive from or depend upon threat or force. It is a protection accomplished by providing information and making recommendations. New York law, and New York State's and Suffolk County's "police powers," do not prevent LILCO or anyone else from taking steps to help people in an emergency.

(5) The LILCO Plan Does Not Regulate Emergency Planning.

The Intervenors argue that inherent in their police power is the power to regulate the health, safety and welfare of its citizens and that LILCO is usurping that power to regulate in its emergency plan. What LILCO is doing is planning for and responding to a radiological emergency; it is not regulating emergency response. It is not passing any rules which it can then impose upon anyone regarding an emergency response. It is simply developing a plan and preparing to help protect the public in the event of an emergency in accordance with existing federal regulations and N.Y. Executive Law

Article 2-B. That preparation does not constitute regulation of health and safety. If an individual, after a car accident, directs traffic around the accident until the police arrive to assist, that individual is not doing anything illegal; no one suggests otherwise. If that person keeps flares in his trunk to prepare for the eventuality of an accident where he knows he will have to direct traffic around the accident until the police arrive, that activity is not illegal.

The activity proposed by LILCO under its Plan is directly supported by New York State Executive Law, Article 2-B, which provides for responses to emergencies in New York State, including radiological emergencies. Article 2-B provides that it "shall be the policy of the state" that "state and local disaster and emergency response functions be coordinated in order to bring the fullest protection and benefit to the people," § 20.1.C; "that state resources be organized and prepared for immediate effective response to disasters which are beyond the capability of local governments and emergency service organizations," § 20.1.D; and that "state and local plans, organizational arrangements, and response capability required to execute the provisions of this Article shall at all times be the most effective that current circumstances and existing resources allow," § 20.1.E. Article 2-B defines "emergency services organization" for the purposes of the statute as

> a public or a private agency, organization or group organized and functioning for the purpose of providing fire, medical, ambulance, rescue, housing, food or other services directed toward relieving human suffering, injury or loss of life or damage to property as a result of an emergency, including non-profit and governmentally supported organizations, but exluding governmental agencies.

Section 20.2.E. The Local Emergency Response Organization (LERO) created

under the LILCO Transition Plan squarely fits this definition. Far from prohibiting the creation of such organizations, Article 2-B encourages them.22/

b. LILCO's Action in Developing the Transition Plan is Not Ultra Vires

Intervenors contend that, by setting up the Transition Plan, LILCO acted beyond the powers expressly or impliedly conferred upon it by its Certificate of Incorporation and the State of New York, and therefore that LILCO's actions are ultra vires. This argument is not supported by New York State law.

LILCO possesses the powers conferred upon it by its Certificate of Incorporation and by the State. People ex rel. New York & Albany Lighterage Co. v. Cantor, 239 N.Y. 64, 145 N.E. 741, reh'g denied, 239 N.Y. 633, 147 N.E. 227 (1924) (enabling act and certificate of incorporation represent the source of corporation's purpose and powers). New York has adopted a broad interpretation of the powers which can be held by a corporation. "The powers of corporations are now so extensive, and include so many objects arising indirectly out of the apparent purposes for which they are organized, that it is difficult to say in any given case that a business act is not within the powers of a business corporation." City Trust, Safe-Deposit & Surety Co. of Philadelphia v. Wilson Manufacturing Co., 58 A.D. 271, 68 N.Y.S. 1004, 1005 (1901). The key to the interpretation of corporate powers is to look for a logical relationship between the act to be performed and the

---

22/ It is LILCO's view that at the same time that Article 2-B allows the LILCO Transition Plan, it prohibits states and local governments from (1) refusing to plan for emergencies, including emergencies at nuclear power plants, and (2) interfering with the efforts of others to prepare for emergencies, including emergencies at nuclear power plants.

corporate purpose set forth in the charter. Steinway v. Steinway, 17 Misc. 43, 40 N.Y.S. 718, 720 (N.Y. Sup. Ct. 1896).

By dint of LILCO's Restated Certificate of Incorporation, dated October 6, 1980, the State has granted LILCO the broad powers listed in New York Business Corporation Law § 202 (McKinney 1963) and New York Transportation Corporation Law § 11 (McKinney 1943 and Cum. Supp. 1983-1984), and the express power to exercise the powers conferred by the laws of New York. Subsection 202(a)(16) of the Business Corporation Law specifically allows a corporation to "have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed."

Any doubt as to the construction of a grant of power should be resolved in favor of the corporation, where the power exercised is not entirely inconsistent with the granted powers or purpose of the corporation. John B. Waldbillig, Inc. v. Gottfried, 22 A.D.2d 997, 254 N.Y.S.2d 924 (1964), aff'd, 16 N.Y.2d 773, 209 N.E.2d 818, 262 N.Y.S.2d 498 (1965). If there is a permissible construction of a corporate charter that would encompass the acts to be performed, this construction should be adopted. In re Heim's Estate, 166 Misc. 931, 3 N.Y.S.2d 134, 139, aff'd, 255 A.D. 1007, 8 N.Y.S.2d 574 (1938). The words of a grant of power may not be restricted to defeat their intendment. Robia Holding Corp. v. Walker, 257 N.Y. 431, 178 N.E. 747, 750 (1931).

A corporation has the powers expressly granted in its charter or in the statutes under which it is created and such powers as are necessary for the purpose of carrying out its express powers and the object of its incorporation. Leslie v. Lorillard, 110 N.Y. 519, 18 N.E. 363 (1888). A

corporation is not restricted to the exercise of powers expressly conferred by its charter, but the corporation has the implied or incidental power to do whatever is reasonably necessary to effectuate the powers expressly granted and to accomplish the purposes for which the corporation was formed. This power exists unless a particular act is prohibited by law or charter. Gause v. Commonwealth Trust Co., 196 N.Y. 134, 89 N.E. 476, 479 (1909). These implied powers are not limited to such as are absolutely or indispensibly necessary, but comprise all powers that are reasonably necessary. Id. The existence of such powers is recognized and codified by subsection 202(a)(16) of the Business Corporation Law.

LILCO's Restated Certificate of Incorporation gives LILCO the express power to manufacture, purchase, and sell gas and electricity and derivatives thereof; to deal in bonds and other securities; and generally to exercise the powers conferred by the laws of New York on gas and electric utilities. LILCO therefore has the broad powers, authorized by New York law, necessary to manufacture and sell electricity. There is no requirement that LILCO's corporate charter spell out in laborious detail all actions that may be necessary and convenient to pursue its corporate purposes. For example, no New York law explicitly "authorizes" LILCO to answer telephones, repair electric lines, read meters or give testimony at hearings and administrative proceedings. But all of these powers are necessary and convenient to effect the purpose for which LILCO was incorporated, and are therefore powers which LILCO possesses.

LILCO has the power to build and operate power plants. As a condition precedent to operating a nuclear power plant at full power, the NRC requires an adequate offsite emergency response plan. LILCO has the power to take

all actions necessary and convenient to effect this purpose. LILCO's development of the Transition Plan is within its corporate powers, conferred upon it by its Revised Certificate of Incorporation and by the State of New York.

In short, the essential elements of the "police power" that the Intervenors seek to protect are the elements of regulation and of force. Force is not used in any of the actions under LILCO's emergency plan. The Plan was developed in accordance with government regulations; it does not itself regulate. Thus, LILCO needs no "authority" to act. The real problem faced by Intervenors is that they are searching for some way to stop the operation of the Shoreham Nuclear Power Station. They have attempted thus far to convince the Nuclear Regulatory Commission that the plant is not safe; those efforts have failed. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC ___ (Oct. 31, 1984). They have also withdrawn their resources and support from any emergency planning efforts in the hope that the absence of their resources would prevent all emergency planning and stop the NRC proceeding on Shoreham. That effort, too, failed. They are now challenging LILCO's emergency planning efforts, casting about for some state law under which they can characterize those efforts as illegal. But no existing state law will serve that purpose.

II. THE BOARD'S THREE QUESTIONS

A. Question 1: What action should this Board take on Contentions 1-10 in the event that there is no decision from a New York State court at the time the Initial Decision in the emergency planning proceeding is issued?

As LILCO noted in its reply to the responses to its motion for summary disposition, since the Intervenors have no decision from a New York court that supports their legal theories, then the Board should rule that there is no basis for their contentions, or alternatively that they have not met their burden of going forward, as recited in Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1093 (1983):

> The ultimate burden of proof on the question of whether the permit or license should be issued is, of course, upon the applicant. But where, as here, one of the other parties contends that, for a specific reason (in this instance alleged synergism) the permit or license should be denied, that party has the burden of going forward with evidence to buttress that contention. Once he has introduced sufficient evidence to establish a prima facie case, the burden then shifts to the applicant who, as part of his overall burden of proof, must provide a sufficient rebuttal to satisfy the Board that it should reject the contention as a basis for denial of the permit or license.

(Quoting Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 345 (1973)). It would be fundamentally unfair to rule that an intervenor meets both his burden of providing a "basis" for his contention and his initial burden of going forward merely by citing a statute that he claims makes an operating license illegal and that the applicant then has to rebut by going into a separate forum to secure a ruling to the contrary. See LILCO's Reply to the Responses to its Motion for Summary Disposition on Contentions 1-10, at 3-16 (Oct. 15, 1984).

In the alternative, the Board should simply decide Contentions 1-10 on the merits -- that is, decide whether as a matter of law the state laws do or do not prohibit LILCO's proposed activities. The reasons why LILCO believes they do not are explained above.

The NRC Staff's suggestion that further hearings be held is not well-taken. Back in the spring of 1983, when LILCO first unveiled its Transition Plan, it served it on the Board and parties along with a memorandum setting out certain significant facts about the Plan (actually plans, because there were several) and how it would be used. LILCO's Memorandum of Service of Supplemental Emergency Planning Information, May 26, 1983. On page 18 of that memorandum LILCO said the following:

> As noted above, the LILCO-County plan relies on Suffolk County police to direct traffic at certain key points. In the interim plans, trained LILCO personnel will guide traffic; if Suffolk County police are willing to help, LILCO personnel are also being trained to aid police officers in the emergency response. Also feasible is an alternate plan that requires advance publication of evacuation routes but no traffic control.

Id. at 18 (emphasis in original). Everyone has long been on notice that the uncontrolled evacuation scenario would be an issue in this proceeding; indeed, how could one fail to consider the possibility, in light of Contention 1 itself, which alleges, in its second paragraph, that LILCO's lack of authority to direct traffic renders its evacuation time estimates inaccurate, since the legal prohibition will prevent LILCO from ensuring that motorists use the prescribed routes?

B. Question 2: In connection with LILCO's "immateriality" argument, whether the LILCO activities enumerated in Contentions 1-10 are necessary pursuant to NRC regulations in order to obtain an operating license.

As stated in section I.A above, LILCO believes that only the functions in Contentions 5-8 (essentially assessing the accident, making decisions, and advising the public) are required by NRC regulations. The functions specified in Contentions 1-4, 9, and 10 (essentially traffic management) are not required.

Even if the activities addressed in Contentions 1-4, 9, and 10 were ordinarily required, under the more flexible provision 10 C.F.R. § 50.47(c)(1) the fact that the obstacle presented is beyond the applicant's control23/ and could be easily eliminated by the State and County is a basis for not requiring the activities in this particular case.

23/ The inability of the utility to compel a local government to participate is one factor to be taken into account in deciding whether a reactor may continue to operate. See Consolidated Edison Co. of New York (Indian Point, Unit Nos. 2 and 3), CLI-83-11, 17 NRC 731, 733 (1983); Consolidated Edison Co. of New York (Indian Point Units 2 and 3), CLI-82-38, 16 NRC 1698, 1703 (1982).

C. Question 3: In connection with LILCO's "realism" argument, what effect would an unplanned response by the State or County have and would such a response result in chaos, confusion and disorganization so as to compel a finding that there is no "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" at Shoreham?

This question is not part of any admitted contention. The Intervenors have never alleged, nor attempted to prove, that they would confound an emergency response by blundering around fecklessly. LILCO raised the issue of whether the State and County would in fact respond only to show that the purely legal issues in Contentions 1-10 are a fiction. The much broader issue of how the State and County would respond, now raised by the Board sua sponte, is an entirely new issue that has not been addressed in testimony.

The remedy for this is not to hold additional hearings; if the Intervenors had wanted to raise this issue they could have; the facts were squarely within their control. Instead, the presumption that the State and County will act responsibly should be applied. However, the issue can be resolved on the evidence as well, using the existing record, as we shall show below.

1. The State and County will not respond unprepared

It would be a great injustice to allow a local government to thwart the emergency planning regulations by threatening to sabotage, if only by their own unpreparedness, an emergency response. Indeed the "law of the case" prevents it. The Brenner Board ruled that it would be improper for the County to raise as issues its own refusal (as distinguished from its inability) to plan:

> Accordingly, we hold that we are not bound by the County's findings on the adequacy of the LILCO offsite plan or the feasibility of developing adequate emergency planning for Shoreham. Our determination that the County has made such findings in contradiction to federal law does not have the effect of requiring the County to adopt or implement an emergency plan for Shoreham. We do not possess the jurisdiction necessary to bring about such a result. However, if the County seeks to have its findings adopted, it must litigate before us the facts which it believes support its view that it is not feasible to implement emergency preparedness actions which would meet NRC regulatory requirements in the event of a radiological emergency at the Shoreham nuclear power plant. The right of the County to litigate whether necessary emergency action can be taken may be distinguishable from the circumstance of a governmental litigant before us which simply refuses to take otherwise feasible actions.
>
> . . . . [W]e will entertain no contentions inconsistent with this order. For example, we will not entertain contentions premised solely on the absence of a Suffolk County approved plan.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 643, 644, aff'd on other grounds, CLI-83-13, 17 NRC 741 (1983).

The NRC Staff opposed admission of draft Contention 6.E (later 24.Q), which attempted to raise the question of whether Suffolk County police would provide security for evacuated areas:

> It is a given in this proceeding that Suffolk County will not perform any evacuation functions. However, this contention would extend the County's non-participation beyond that premise. The Board has held that it will entertain no contentions in this proceeding "premised solely on the absence of a Suffolk County approved [evacuation] plan." LBP-83-22, at 62. The County in effect is arguing in this contention that the LILCO plan is insufficient because the County will do anything (or not do anything) to insure that the plan is insufficient. Under such terms, litigation of the issue will serve no reasonable purpose.

NRC Staff Response to Draft Emergency Planning Contentions, at 22-23 (July 7, 1983); see also NRC Staff Response to Revised Emergency Planning Contentions, at 20 (Aug. 2, 1983); NRC Staff Objections to Suffolk County's Revised Emergency Planning Contentions, at 3 (Jan. 19, 1984). The Board denied the contention, finding "no basis to assume that the Suffolk County police, contrary to their normal duties, would refuse to provide reasonable and appropriate protection in the event of any type of emergency in the County." Special Prehearing Conference Order, at 15 (Aug. 19, 1983).

The issue of whether the State and County would, inadvertently or not, sabotage an emergency response is likewise an issue based solely on their refusal to plan, or worse, their commitment to confound any plan. It ought not to be allowed for that reason.

Moreover, the hypothesis that there would be an unplanned, ad hoc response by the State or County is a fiction, like the assumption throughout the rest of this proceeding that the State and County would make no response at all. There is ample basis for the Board to find that the State and County will provide for a planned response, but only after Shoreham begins to operate.

There is no evidence on the record that the State or County would respond in an ad hoc manner, for the Intervenors have diligently avoided saying what they would do in a real emergency. Even the recently filed Roberts and Palomino affidavits[24/] do not claim that a State or County

---

24/ Affidavit of Richard C. Roberts, Sept. 25, 1984, and Affidavit of Fabian G. Palomino in Opposition to Motion to Dismiss and in Support of Plaintiff's Cross Motion for Summary Disposition, Sept. 12, 1984, submitted as Attachments C and D respectively to Opposition of Suffolk County and the State of New York to LILCO's Motion for Summary Disposition of Contentions 1-10 (the "Legal Authority" Issues) (Sept. 24, 1984). These will be cited here as the "Roberts Affidavit" and the "Palomino Affidavit."

response would be ad hoc, though they may imply it.25/

In particular, the Intervenors have not said what they will do after Shoreham begins operating but before any accident occurs.26/ Even so, there is ample basis for finding that they would plan in that event to ensure that they would be prepared to respond in an actual emergency. This conclusion is justified on the following basis: It is uncontested that the State and County want to protect the public as effectively as possible from a radiological emergency. (Indeed, they are required to do so by the State law and policy set out in New York Executive Law Article 2-B.) It is uncontested that, if a plant operates, the public is better protected with an emergency plan than without one -- that is, a planned response is safer than an unplanned one. Thus, the Intervenors' refusal to plan can make sense, in their thinking, only so long as it can be used as a tactic to stop Shoreham from operating altogether. To put it another way, the Intervenors are not anti-planning; they are simply anti-operation. Or, to put it yet another way, the State and County have taken great pains to oppose the LILCO Plan, alleging that it is not adequate. It is credible that they would attempt to replace it with a poorer model of their own improvised devising.

25/ All that Inspector Roberts' affidavit says on this question is that "[a]ssuming arguendo that there could be some sort of ad hoc response by Suffolk County personnel" (Roberts affidavit at 2 ¶ 4; see also id. at 4-5 ¶¶ 9, 10) and that there "is no evidence" that the State or County would undertake recovery and reentry (id. at 13 ¶ 29). The rest of the affidavit is a repetitive formulaic recital of why various things cannot be done (1) because County Resolution 111-1983 forbids them and (2) because they have not been planned for, a repeat of various propositions the County failed to prove at the hearings (see, e.g., id. at 5-6 ¶ 12), and a series of quotes from the County Executive.

26/ The issue of what should be done in the short time between the time operation begins and the time the State and County are trained and ready to respond is yet another issue that could be raised, but a minor one compared to the other issues addressed here.

All this is undisputed and undeniable, based on the record (especially the frequent claims of the Intervenors that they want only to protect the public)27/ and, more important, on the truth. It follows, then, that if Shoreham begins to operate, the incentive for the Intervenors not to plan vanishes, and a strong incentive to plan must take over. On this basis alone the Board should find that the Intervenors will plan for an emergency at Shoreham, if Shoreham begins to operate.

2. Responding unprepared so as to sabotage the emergency response would itself violate the Supremacy Clause

Second, if the State or County were to respond ad hoc in a way calculated to confound the response under an NRC-approved utility plan, their actions would violate federal law and be preempted. Thus, the preemption issue is once again raised.

The legislative history of the recent NRC Authorization Acts, including the one enacted just last month, shows the clear Congressional purpose to have effective emergency response capability and not to let State and local governments thwart this goal.

During the floor debate on the most recently enacted bill, Congressman Pasahayan stated as follows:

27/ The Intervenors presented no witnesses who are in a position to make emergency planning decisions. But if one may be permitted an analogy, the school administrators who testified for the County acknowledged that if Shoreham were to operate they would at least reconsider their decision not to plan. Tr. 11,084 (Jeffers, Muto), 11,084-85 (Petrilak). On the difference generally between what people do now and what they would do if the plant were licensed, see Tr. 9327 (Weismantle, Cordaro), 9214-15 (Robinson, Cordaro), 5259 (Clawson) (radio stations).

> I applaud this provision which I view as clearly confirming what is already in the law: That a plan submitted by a utility will satisfy the Atomic Energy Acts requirements. I also view existing law as providing authority for the federal government to implement any utility plan submitted under this provision. I think that both concepts -- that of utility submission, and that of federal implementation, of emergency plans -- are important, and I am happy to see them further reinforced by this bill.
>
> Both are important because they add up to one central principle: The Congress does not intend to allow states or localities, by refusing to participate in the emergency planning process, to prevent a completed facility from operating. A refusal to participate could take the form either of a refusal to submit or a refusal to implement a plan. With regard to a refusal to submit a plan, the bill provides explicitly for a remedy: a utility plan will suffice. With regard to a refusal to implement, the bill is not explicit, but the intent of Congress is clear: We cannot allow a refusal to implement to be used to prevent the operation of a facility, for to do so would make a mockery of the provision. It would allow states and localities to achieve through a refusal to implement a plan what we have expressly forbidden them to do by refusing to submit one.

Id. (emphasis added).

A decision by the State and County not to prepare for an emergency, at the same time that they know they would respond if a true emergency occurred, is itself an emergency plan of sorts -- but a plan aimed at thwarting the Congressional purpose and nullifying NRC regulations. Such a decision, if made, would be preempted by federal law.

3. The State and County will take advantage of LILCO's planning base in a real emergency

Third, assuming that the Intervenors will not prepare, even in the presence of an operating plant (an unrealistic assumption), the Board should

find that the planning done by LILCO will compensate for the Intervenors' lack of planning. The bedrock principle here is that any government official in an emergency will try to act responsibly.28/ This means that if a means of protecting people is made available to him, he will use it. No one alleges that the Governor or County Executive would perversely and destructively refuse to use available resources.

As LILCO said in its Reply to the responses to the motion for summary disposition, there are several bases for a finding that government officials would act responsibly. One is the standard legal presumption to that effect. Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-84-37, 20 NRC ___, slip op. at 54 (Sept. 18, 1984). Another is the presumption that if a party fails to present his evidence, his failure raises a presumption against him. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-471, 7 NRC 477, 478, rev'd as to other matters, CLI-78-14, 7 NRC 952 (1978). A third is New York State Executive Law Article 2-B, which requires state officials to behave responsibly. See Cordaro and Weismantle, ff. Tr. 13,899, Att. 10, App. A. A fourth is the evidentiary record, which shows that in an emergency people concentrate on protecting threatened people, Tr. 870-71 (Dynes), and which contains the opinions of various LILCO witnesses that Suffolk County and New York State officials would act responsibly. See Tr. 10,472-73, 10,616 (Clawson), 10,519 (Weismantle).

Finally, the affidavits of Inspector Roberts and Mr. Palomino (if the Board chooses to consider them) support LILCO's case, because they

---

28/ The thesis of the County's witnesses on "conflict of interest" was that elected officials in an emergency would be concerned only about the public welfare.

demonstrate that the State and County understand that an unprepared emergency response is inferior to a prepared one. With this understanding, it is inconceivable they would deliberately try to bring about the precise horrors that their affidavits postulate. In other words, the Intervenors admit, in these affidavits, that their unplanned response would not live up to NRC standards; if LILCO's plan is found by this Board to meet NRC standards then the State and County must admit it is better than their ad hoc efforts (except to the extent they question the correctness of the NRC decision or question NRC standards). It is simply not credible that, recognizing this, the State and County would willfully choose an inferior over a superior mode of response in a real emergency.

The presumption that arises when a party refuses to present evidence applies with special force here, because the Intervenors waged a campaign throughout this proceeding to exclude evidence about what they would do in a real emergency. Indeed, they succeeded in having stricken from the record much of LILCO's evidence about what kind of response the State or County would make. For example, LILCO submitted written testimony (on "role conflict") stating that Suffolk County police and other personnel can be expected to respond in a real emergency. Cordaro et al., ff. Tr. 831, at 29-30. At the County's request, this was stricken. Amended Suffolk County Motion to Strike Portions of LILCO Testimony on Contentions 25, 23 and 65, at 7-8 (Nov. 29, 1983); Tr. 790-793 (Dec. 1, 1983); Order Confirming Changes in Schedule with Regard to "Group II" Contentions and Rulings on Motions to Strike (Dec. 2, 1983). See also Tr. 1624-25 (striking testimony about public officials giving interviews inconsistent with official information).

On December 15, 1983, the Board elicited information about whether the County had agreed to participate in a coordinated news release. Dr. Cordaro answered as follows:

> A. (Cordaro) I am not aware of any formal agreement or understanding we have with the county which says that they would coordinate their efforts.
>
> That's pretty much due to the fact that we have this what I call an academic situation here, where our plan has to stand on its own and the county has contended that it will not participate in any way.
>
> Now, in the real world, if this goes forth and a plan is approved and an accident does indeed take place, or plant gets a license to operate, I fully expect that the county will realize what the situation is and cooperate.
>
> They are aware of problems in news dissemination and the difficulties that can develop. They were involved originally in the planning process that developed things like news centers, when they were cooperating with us in the development of the plan.
>
> So they are fully aware of the difficulties involved and I assume they would cooperate and understand.
>
> In fact, we have made provisions at the news center to accommodate county personnel who would show up and participate in the news dissemination process.

Tr. 1972-73 (Cordaro). The County moved to strike all but the first paragraph; the motion was granted. Tr. 1973.

Later the same day, on redirect, LILCO counsel asked whether an agreement with the County was necessary, a proper question in light of the earlier question whether such an agreement existed. Dr. Cordaro answered:

> A. (Cordaro) I don't think so. I think my response was premised on an understanding of the county's expression that they are required by law to protect the public health and safety in the event of

> any catastrophe, including a nuclear power accident, that they would actively, by law, become involved in that catastrophe and do anything they can to respond to that incident.
>
> That would include being involved in proper news dissemination.
>
> One place that they would have access to all the appropriate information is at the news center, the joint news center. So I suppose that they definitely would participate in the news center activities.

Tr. 2064 (Cordaro). Again, Suffolk County moved to strike the answer as "speculation." Tr. 2064. LILCO counsel argued that the Board was admitting evidence that Suffolk County's nonparticipation could be harmful while excluding evidence on the other side of the issue:

> [LILCO counsel]: I think if we strike that sort of evidence, we are at the same time letting in evidence, which was let in today, about the county not participating. I think we are letting in evidence on one side of the issue and risking getting error into the record.
>
> Second, I don't think the premise of these proceedings is that we can ignore what would happen in the real world based on an artificial premise because of a present political or legal position. Where there is testimony that something will happen in a real emergency in the real world, that testimony should be listened to and included.

Tr. 2064. In response Suffolk County repeated its standard position:

> [Suffolk County counsel]: As I have said all along, this whole proceeding is premised on the Lilco transition plan. How the county is not participating in the Lilco transition plan. The Lilco transition plan is something that is to be implemented by the LERO organization.
>
> The board struck other parts of Lilco's other plans that had anything to do with governmental participation. LERO is the organization that is supposed to implement this plan, and speculation about the county's participation is just that, speculation.

Tr. 2065-66. Dr. Cordaro's testimony was stricken. Tr. 2066.

Time and again, the Intervenors tried to exclude evidence about what the County's people or New York State's would do in a real emergency.29/ See, e.g., Suffolk County Motion to Strike Portions of LILCO's Group II-A Testimony, at 26-27 (Mar. 9, 1984): Suffolk County Motion to Strike Portions of LILCO's Group II-B Testimony, at 10, 17-18, 19, 42 (March 28, 1984). Likewise, they repeatedly tried to strike testimony about how New York State plans for radiological emergencies generally or at other nuclear plants. See, e.g., Suffolk County Motion to Strike Portions of LILCO's Group II-B Testimony, at 65-66, 69 (March 28, 1984).

To be sure, the evidence on the "conflict of interest" issue revealed that public officials may be influenced by the wrong things and may make mistakes. And TMI showed what happened when even well-intentioned public officials were unprepared. The difference is that here LILCO has provided a planning base that will prevent such problems. All that the Board need find with regard to State and County participation is that they will not actively try to harm the public health and safety.

3. An analysis of the Plan and the record shows that chaos, confusion, and disorganization would not result

As the record makes clear, the LILCO Plan is designed to incorporate elements of the State or County who may wish to respond. The Plan (LILCO Ex. 80) provides as follows:

29/ LILCO designed a plan expressly for use in case the State chose to take a part, but the Board ruled that it would not be litigated. Order Limiting Scope of Submissions (June 10, 1983).

> Should Suffolk County, New York State, or Federal governments choose to implement actions consistent with their respective legal authorities to protect the health and safety of the public, those actions will take precedence over LERO actions. The Director of Local Response will assure that LERO actions continue as needed to support governmental response activities.

Plan at 1.4-1 (Rev. 3); see also Cordaro and Weismantle, ff. Tr. 13,899, at 8-9; LILCO's Motion for Summary Disposition of Contentions 1-10 (the "Legal Authority" Issues), at 45 (Aug. 6, 1984); LILCO's Proposed Findings of Fact and Conclusions of Law on Offsite Emergency Planning, at 314 ¶ 681 (Oct. 5, 1984); Tr. 10,527-28, 10,682-83 (Weismantle). Specifically as to Suffolk County,30/ the Plan says this:

30/ The role of the State is discussed (in Rev. 4) as follows:

> Should the Governor declare that the State of New York is in command of the emergency response, the Director of LERO would subordinate personnel and equipment to the Governor or his designee. The Governor or his designee could be accommodated in the Director's Office in the EOC, or could choose to work out of the state EOC in Albany. The Director would continue to provide advice and assistance to the State in the degree they request. If the State chooses to assist in the emergency response without assuming command and control, then LERO will incorporate State resources into the emergency responses as these resources became available. The types of services that the State might provide are identified in the New York State Radiological Response Plan and include:
>
> - Command and Control - the Governor is capable of mobilizing both State and County resources to assist in emergency response efforts.
>
> - Communications - The State police maintain a state-wide communications system that has a mobile command post bus with extensive com-

(footnote continued)

> The role of Suffolk County, should it decide to become involved in the response to a radiological emergency, either because the Governor orders it to do so or because the County Executive so chooses, will be for the various members to participate to the extent to which they are qualified by reason of prior training or experience. This would include the active participation at the EOC of the County Executive; the participation of Public Information personnel at both the EOC and the ENC; and the participation of other County officials to the extent the County Executive deems prudent.

Plan, at 1.4-2 (Rev. 3) (at 1.4-2a in Rev. 4).

The evidence compiled in this proceeding shows that the State or County could respond ad hoc if necessary, given LILCO's planning base. To address this issue, we must look at the various functions that must be carried out in an emergency response.

a. Notifying the State and County

First, the State and County must be notified. In the very short run after an accident began, before the State or County could be notified, the

---

(footnote continued)

> munications equipment.
>
> - Social Services - the State Office of Disaster Preparedness can provide food and logistical support for care of evacuees.
> - Public Health - The State Dept. of Health can do sampling and testing of food and soil to determine public risks and appropriate remedial actions.
> - Fire and Rescue - The State Office of Fire Prevention and Control can activate state mobilization and mutual aid plans to activate and coordinate local fire departments.

Plan, at 1.4-2 & -2a.

LILCO Plan would be in effect of necessity. Indeed, if the LILCO Transition Plan meets NRC regulations, then the speed at which the State and County can be notified is immaterial; no matter how long it takes, a qualified plan will be in operation until then.

As soon as it could be accomplished, however,31/ the State and County would be notified by means of the RECS line.32/ The Suffolk County Police Communications Center monitors the RECS line 24 hours a day. Plan, at 3.4-2 (Rev. 3).

The State has advised that the RECS telephones at State offices have been disconnected and placed "in storage." Palomino Affidavit at 6. However, LILCO witnesses testified that if the RECS line could not be used, they would pursue other means of communication. Tr. 13,737 (Cordaro). Other means (commercial phone lines) are available. Plan, Fig. 3.4.1 (Rev. 3). A licensing board or court cannot find that NRC regulations cannot be met simply because a state government has deliberately unplugged its phone.

31/ Revision 4 of the Plan provides that "Upon his arrival at the local EOC, the Director of LERO will establish contact with the LILCO EOF and the New York State EOC. Plan, at 4.1-1 (Rev. 4).

32/ The Plan says this:

> New York State has continuous access to emergency event information at Shoreham via the Radiological Emergency Communication System (RECS) which connects all the nuclear power plants in the State with State authorities. If, during an emergency, the State decided to participate their efforts could be coordinated with LERO at the Brentwood EOC initially via the RECS line and commercial telephone.

Plan, at 1.4-2 (Rev 4); see also id. 3.4-1 (Rev. 3); Tr. 13,737-41 (Daverio).

b. Receiving Information

Second, State or County decisionmakers must receive information. The information system is, of course, already in place. Indeed, communications from Shoreham to offsite agencies were a "Phase I" issue not litigable now. See, e.g., Phase I issues EP 15, 16, and 17, discussed in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 1011-15 (1982). As noted above, the LERO EOC can communicate with the State by RECS line or commercial telephone, Plan, Fig. 3.4.1 (Rev. 3); it can communicate with the County the same way, id., and there is radio communication between the Shoreham Station and the County police, see Shoreham, supra, 16 NRC at 1012. Also available is the National Alert Warning System, which allows contact with Suffolk and Nassau Counties. See Testimony of William F. Renz and Philip Friedman for the Long Island Lighting Company on Phase I Emergency Planning Contention 11(A), (B), and (C) -- Communications with Offsite Response Organizations, at 8-9, 10, 13-14 (Oct. 12, 1982).33/

Moreover, various federal agencies can provide information to the State and County.34/ And LILCO has provided means to furnish information to

---

33/ This was Phase I testimony and, because of the County's default, was never heard.

34/ The Plan (Rev. 4) provides that FEMA will serve as the primary point of contact for requests for Federal assistance from State and local officials and coordinate and ensure appropriate nontechnical assistance, including telecommunications support, requested by State and local agencies. Plan, at 2.2-4 & -4a (Rev. 4). The NRC is to provide technical advice to State and local agencies and develop for them a Federal technical recommendation. Plan, at 2.2-4a (Rev. 4). The Department of Energy is to maintain a technical liaison with State and local agencies that have radiological monitoring, assessment evaluation, and reporting responsibilities. Plan, at

(footnote continued)

local governments like that used during storm outages. Tr. 10,675, 10,676 (Clawson), 10,676, 10,679 (Robinson).

So the information will be available; the State and local officials have only to listen to it. The reason they will listen to it is that having information is better than not having information in an emergency, and they know it. It is inconceivable that State and local officials would refuse to pay attention to advice, monitoring information, etc. from LERO, DOE, NRC, and FEMA.35/

c. Making decisions

Third, the State or County decisionmaker may have to make a decision about protective action recommendations. As the Plan describes the process:

> The Director of Local Response will be receiving and reviewing a constant flow of information from the Radiation Health Coordinator at the EOC as to event classification, escalation or de-escalation, real or potential radiation hazards, and recommendations on protective responses. In conjunction with the Radiation Health Coordinator the Director of Local Response will formulate the LERO position regarding the protective response required.
>
> Having determined the appropriate protective response, the Director of Local Response will then confer with the Manager of Local Response. Based on the information provided by the Manager of Local Response and information from the Utility, the

---

(footnote continued)

2.2-4b (Rev. 4); see also id. at 2.2-4c & -4d (Rev. 4). Other federal agencies also are called upon to provide advice and guidance to State and local officials. Plan, at 2.2-4e (Department of Health and Human Services, Department of Transportation), 2.2-4f (Environmental Protection Agency, National Communications System) (Rev. 4).

35/ The school administrators presented as witnesses by Suffolk County testified that they would take into account all available information and make a decision based only on what was best for the health and safety of their pupils. Tr. 11,004, 11,009-10, 11,040-41 (Muto), 11,058-59, 11,061 (Petrilak), 11,005 (Jeffers).

> Director of Local Response will make a decision regarding the implementation of offsite protective actions.
>
> It must be recognized that the decision making process during a radiological emergency is one of continual re-evaluation based on changing conditions within the plant and meteorology. Event classification and recommended protective response actions will constantly be modified, and upgraded or downgraded accordingly.

Plan, at 4.1-2 (Rev. 3). The main shortcoming would be that these officials would not have received Shoreham-specific training. As the LILCO witness testified, "[i]t would be difficult for Suffolk County officials to take part in the decisionmaking process without training." Cordaro et al., ff. Tr. 10,196, at 30. But they would have available all the advice and information that a LERO decisionmaker would have and, while it would not be the most desirable situation, they could be led through the decisionmaking process by those present who are trained. As the Plan says:

> Should the County Executive or his designated representative choose to report to the Local EOC during a drill, exercise or emergency, the Director of Local Response will work in conjunction with the County Executive or his representative in responding to the emergency.

Plan, at 3.1-1 (Rev. 3).

Moreover, the Governor or his designee should be prepared by virtue of the fact that New York has a state plan that covers the five operating nuclear plants in New York State. If the State personnel are qualified to participate at Ginna, Nine Mile Point, FitzPatrick, and Indian Point, they are in large measure qualified to participate at Shoreham. In many respects the decisions to be made are the same everywhere. The logic of decisionmaking -- the choice between sheltering and evacuation, for instance -- is generic.

The information on which protective action recommendations are based is stipulated on the New York State radiological emergency data form. Cordaro, et al., ff. Tr. 10,196, at 13. The LILCO Plan goes so far to include a provision for selective sheltering and selective evacuation to make it consistent with the State plan. Plan, at 3.6-5, 3.6-6 (Rev. 3); Cordaro et al., ff. Tr. 8760, at 28-35.

d. Notifying the public

Fourth, the State or local officials must notify the public. The sirens are already installed, and the EBS stations are prepared to broadcast the messages. See generally Clawson et al., ff. Tr. 5254, at 8-9, Att. 1, 4-12. Large institutions, including schools, have tone alerts.36/ No one suggests, or believes, that the Governor (for example) would decline to use the sirens, tone alerts, and radio stations and elect to handicap himself by trying to find some other means of communicating on the spur of the moment.

A greater concern is that State and local officials might broadcast ill-considered messages to the public, creating another TMI-style "information disaster." This is the only respect in which it makes much sense, LILCO submits, to be concerned about the possible ill effects of ad hoc participation.37/ However, Dr. Mileti testified that it would be better, from the

---

36/ The tone alerts were a "Phase I" issue, though there is some evidence about them in the Phase II record as well. See, e.g., Tr. 11,020 (Muto), 9207, 10,676 (Robinson), 9208, 1138-39 (Miele). Likewise, the sirens were addressed in Phase I. The Plan uses the radiological emergency data form used throughout the State of New York. Tr. 14,569 (Keller).

37/ Other emergency actions simply do not present much potential for conflict or confusion. If, for example, the State were to attempt to provide buses for evacuees or to evacuate nursing homes it could hardly hurt.

standpoint of public information, if the County were participating, but that nevertheless the response might be as good as if the state or local government were participating because the many factors about public information that really matter for human response in an emergency are addressed in the information system in the Plan. Tr. 1785 (Mileti).

Moreover, there is no basis for finding that the State or County would broadcast misleading, inaccurate, or inconsistent information. For one thing, where would the State or County get false information to pass on? Who in an emergency would have the information about plant status? LILCO and the NRC. Who would have information about projected or monitored dose rates? LILCO and the DOE RAP team. So, all the agencies with pertinent information are in the LILCO Transition Plan. And the record suggests that LILCO, the NRC, and DOE would not likely be the source of misinformation. See, e.g., Barnett et al., ff. Tr. 10,396, at 115.

The Board may also rely to some extent on the fact that New York State has five operating nuclear plants and must be assumed to understand something about the importance of emergency information. If it doesn't, then all five plants are unsafe too. One might also reasonably infer that the County is aware of the importance of emergency messages to the public, because in Phase I it attempted to have admitted a contention that LILCO's onsite plan was not clear that Suffolk County should take a "major role" in determining the form and substance of messages to the public in the event of an emergency at Shoreham. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 1006 (1982).

This question was addressed in LILCO's prefiled written testimony on the "credibility" issue, in which the LILCO witnesses testified that they

believed both State and County officials would act responsibly in an emergency, and that this would mean declining to disseminate information without adequate basis. Barnett et al., ff. Tr. 10,396, at 113-15. This portion was stricken at the County's request.

Nevertheless, the record still contains evidence suggesting that communicating with the public can be accomplished based on LILCO's planning. For example, the Plan provides for joint releases of information:

> Press conferences will be conducted periodically in the Press Conference Room of the ENC. Private and public agency/or organization representatives (i.e. American Red Cross, Suffolk County, FEMA, NRC, State officials, etc.) will be invited to join LERO workers at the ENC to participate as a panel in all press conferences to provide up-to-date information, respond to any rumor received, and answer any questions the media may have. This panel will also be invited to help disseminate any emergency announcements including accident termination ("ALL CLEAR") announcements.

Plan, at 3.8-6 (Rev. 3). LILCO has done extensive planning to deal with the news media. See, e.g., Tr. 2025 (Weismantle). Indeed, Mr. Weismantle testified at length (Tr. 1715-32) about LILCO's emergency news center and how it has space for State and County representatives. Tr. 1715 (Weismantle). He said that in his opinion the coordination of news releases from a single news center would eliminate conflicting statements by officials. Tr. 1720 (Weismantle).

Moreover, there is a procedure for working out differences of opinion about emergency information among LERO officials and other agencies that might be involved in an emergency response:

> A. (Weismantle) There is a process for identifying the differences, for trying to work out resolutions, and if resolutions can't be worked out, through discussions the various representatives of the organizations who might have disagreements for

> identifying those disagreements in a public forum, that is, in the form of the ENC to the press through press conferences.
>
> That's true both for disagreements that may arise between LERO and another organization or possibly -- as well as disagreements that may arise, between, say, two federal agencies. So the mechanism is in place and would be exercised to make sure that accurate information got to the media and, hence, got to the public.

Tr. 2036-37 (Weismantle); see also Tr. 1515 (Mileti) ("The lack of government participation [in planning] isn't going to help. What's important, however, in judging and preparing for public safety in reference to emergency information is building an emergency information system that, with reasonable assurance, guarantees that good emergency information is issued; that the county isn't participating makes that job harder, doesn't make it impossible.") Once again, the Board need find only that the Intervenors would not in an emergency act in a crazed and self-destructive fashion, and that is not a difficult finding to make.

It is true that there is no guarantee that the press will not try to exploit political differences. Tr. 10,620, 10,703 (Clawson). But as one LILCO witness, a former reporter, said, reporters can tell responsible sources, and responsible people would not comment on something about which they have no information. Tr. 10,616 (Clawson).

e. Evacuation

Fifth, the State or local officials must take certain steps to facilitate protective actions. If no protective action for the public were required, or if the appropriate protective action were sheltering, then the system described so far would be adequate, and nothing more would be required for an

effective emergency response. But if evacuation of some of the public were required, then it might be necessary (1) to evacuate people in their own cars; (2) to evacuate special institutions such as hospitals, nursing homes, and schools; and (3) to provide buses for able-bodied people without their own transportation.

For people who can drive themselves and their neighbors out of the EPZ, LILCO has proposed to use traffic guides. As the record shows, LERO traffic guides are instructed to turn over their duties to Suffolk County policemen, if they show up, but to stay and assist.38/ As the "Traffic Guide

---

38/ Revision 4 of the Plan provides:

> 5.1.3 If the SCPD offers assistance:
>
> a. Suggest that SCPD send an SCPD Representative to the EOC to coordinate with the Traffic Control Point Coordinator. This SCPD Representative should bring a portable police radio that can be used to contact the Police Dispatcher at SCPD Headquarters.
>
> b. Inform the Traffic Control Point Coordinator that an SCPD Representative will be arriving and to coordinate with this representative as outlined in Attachment 14 (Participation of Suffolk County Police Department During a Radiological Emergency).

Plan, OPIP 3.6.3, pages 2-3 of 46 (Rev. 4). Also, the Lead Traffic Guides are to

> 5.4.13 If notified by the Traffic Control Point Coordinator that Suffolk County Police Department will assist LERO during an evacuation, implement procedures subtitled "Lead Traffic Guide" on Attachment 14 (Participation of Suffolk County Police Department During a Radiological Emergency).

Plan, OPIP 3.6.2, at page 5 of 46 (Rev. 4).

Procedure" in the Plan says:

> If County or other police arrive at your post, turn over control to them. Brief them on the strategy of the control post and any problems that may have arisen during the emergency. Remain with them throughout the duration of the assignment to provide radiological dose information and communications with LERO. Request that police accompany you to the Emergency Worker Decontamination Center at the completion of the assignment.

Plan, OPIP 3.6.3, page 11 of 46 (Att. 1, page 2 of 2) (Rev. 3).39/

In any event, even assuming that the Suffolk County police were to respond in their ad hoc fashion by arresting LILCO traffic guides instead of directing traffic, the situation would still be no worse than an "uncontrolled" evacuation. Indeed, it is hard to see how the Suffolk County police, untrained or not, could make matters worse than an uncontrolled evacuation, and it is doubtful that Suffolk County will claim that they would. It is true that the police would be untrained in the specifics of the LILCO Plan. That is one reason why the traffic guides have been instructed to stay with the police and brief them. And we have heard at length from Suffolk County police witnesses about how only they are qualified to direct traffic.

As for providing buses for people without their own cars, the ad hoc nature of the governments' response would make no difference. Buses are provided by private bus companies and driven by LILCO drivers or by the bus companies' own employees. There is no reason to suppose that the Governor would order these buses not to leave their garages. Similarly, the evacuation of health care facilities has been prearranged between LILCO and

---

39/ Revision 4 of the Plan has a procedure called "Participation of Suffolk County Police Department During a Radiological Emergency." Plan, OPIP 3.6.3, pages 46c & 46d of 46, Att. 14 (Rev. 4).

those institutions. Nothing the Governor would wish to do would likely interfere with arrangements already made. Finally, the evacuation of schools is carried out by their own buses. The Governor could do nothing more nor less than what LILCO proposes to do. There is no apparent reason why the Governor would, for example, order the schools not to use the reception centers chosen by LILCO.

f. Recovery Phase

Sixth, the postulated ad hoc response is not likely to render ineffective the aspects of the emergency response that involve the 50-mile ingestion pathway zone and recovery and reentry. Planning for the ingestion pathway EPZ does not deal with "immediate life threatening situations" and does not require immediate response. Pacific Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-82-70, 16 NRC 756, 766 (1982); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-717, 17 NRC 346, 373 (1983).

The Plan provides that:

> 5.1.3.6The Director of Local Response will contact the New York State Commissioner of Health and the Connecticut Department of Environmental Protection and provide the LERO Ingestion Pathway protective action recommendation:
>
> - New York State Commissioner of health
>
> - Connecticut Department of Environmental Protection, Chief of Radiation Control Unit
>
> If the above-mentioned state officials/agencies indicate that they are willing and able to implement the ingestion pathway plan for their state, no further action is necessary. If an adequate response cannot be ensured, refer to Section 5.4.

Plan, OPIP 3.6.6, pp. 1e & 1f of 50 (Rev. 3). Again, the planning base for the State or County to use has already been put in place. For example, LILCO has compiled listings of names, addresses, and (where available) telephone numbers of dairy farms, poultry farms, hog farms, vegetable and fruit growers, and farmstands in the New York part of the 50-mile EPZ as well as food and dairy processors using agricultural commodities produced in the 50-mile EPZ. Cordaro et al., ff. Tr. 13,563, at 10, 23-24, 37-38, Att. 1-6. LILCO maintains up-to-date maps showing key land use data, dairies, food processors, surface water intakes, reservoirs, treatment plants, and groundwater sources. Id., at 25-26. LERO maintains a comprehensive list of community wells and surface water sources. Id., at 26-29. These resources could be used by New York State as well as LERO. See generally LILCO's Proposed Findings of Fact and Conclusions of Law on Offsite Emergency Planning, at 298-314 (Oct. 5, 1984).

The short of the matter is that, given the extensive and detailed planning base that LILCO has put into place, the specter of an unplanned response by State and County officials cannot prevent LILCO from carrying its burden of proof. To decide this issue against LILCO the Board would in effect have to find that in a real emergency the State and local officials would deliberately act contrary to the interests of the public. There is no basis for such a finding, and much evidence to the contrary.

III. CONCLUSION

For the reasons given above, LILCO submits (1) that the Board should decide the merits of Contentions 1-10 and (2) that, even leaving aside the issue of federal preemption, LILCO should prevail on all 10 contentions.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

BY _____
James N. Christman

Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, VA 23219

DATED: November 9, 1984

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S BRIEF ON CONTENTIONS 1-10 were served this date upon the following by first-class mail, postage prepaid, or, as indicated by an asterisk, by Federal Express:

James A. Laurenson,*
Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Jerry R. Kline*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.*
Oreste Russ Pirfo, Esq.
Edwin J. Reis, Esq.
U. S. Nuclear Regulatory
Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Donna Duer, Esq.*
Attorney
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
East-West Tower, North Tower
4350 East-West Highway
Bethesda, MD 20814

Fabian G. Palomino, Esq *
Special Counsel to the
Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Herbert H. Brown, Esq.*
Lawrence Coe Lanpher, Esq.
Christopher McMurray, Esq.
Kirkpatrick & Lockhart
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Mr. Jay Dunkleberger
New York State Energy
Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stewart M. Glass, Esq.*
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
P.O. Box 398
Riverhead, New York 11901

Ralph Shapiro, Esq.
Cammer & Shapiro, P.C.
9 East 40th Street
New York, New York 10016

James Dougherty, Esq.
3045 Porter Street
Washington, D.C. 20008

Jonathan D. Feinberg, Esq.
New York State Department of
Public Service, Staff Counsel
Three Rockefeller Plaza
Albany, New York 12223

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Room 840
Washington, D.C. 20472

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

James N. Christman

James N. Christman
Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, Virginia 23212

DATED: November 19, 1984