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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)	)	

NRC STAFF RESPONSE TO SUFFOLK COUNTY AND NEW YORK STATE MOTION TO VACATE ORDER GRANTING LILCO'S MOTION FOR SUMMARY DISPOSITION ON CONTENTION 24.B AND TO STRIKE PORTIONS OF LILCO'S AND THE STAFF'S PROPOSED FINDINGS

I. INTRODUCTION

On December 7, 1984 Suffolk County and New York State filed a motion requesting the Atomic Safety and Licensing Board to revisit a decision issued on April 20, 1984. That decision granted summary disposition in favor of LILCO regarding Contention 24.B which averred that there was no agreement with the Department of Energy's Radiological Assistance Program or any outside consultant to serve as "Radiation Health Coordinator" under the LILCO off-site emergency plan. The basis of the County/State motion is "new information" which was not available at the time the Board rendered its decision. This information consists of statements made in October 1984 by President Reagan and Secretary of Energy Hodel, that the Administration "does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham." Additionally, the intervenors move to

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strike portions of the Staff's and LILCO's findings of fact filed November 6 and October 5, 1984 regarding the proposed actions of Federal agencies under the LILCO emergency plan, relying on this "new information."

For the reasons stated below, the Intervenors' Motion should be denied.

II. BACKGROUND

On February 13, 1984 LILCO moved the Board to grant Summary disposition on Contentions 24.B, 33, 45, 46 and 49. The Board granted LILCO's motion in its order of April 20, 1984. Contention 24.B asserted that the LILCO plan did not include agreements with 1) the United States Department of Energy-Radiological Assistance Program ("DOE-RAP") employees; or 2) any outside consultant that had agreed to fill the LERO position of Radiation Health Coordinator. In its decision of April 20, 1984, the Board found that: 1) the LILCO plan does contain a letter of agreement with DOE/RAP from the Brookhaven Area Office of the Department of Energy specifying that the Department of Energy has agreed to provide the support of DOE employees for radiological assistance in the event of an emergency at Shoreham, and 2) a private organization, IMPELL Corporation, has agreed to provide personnel qualified in health physics to fill the position of Radiation Health Coordinator. 1/

1/ See Attachments 1 and 2 to LILCO's Motion for Summary Disposition of Contention 24.B (Letters of Agreement with the Department of Energy and the Radiation Health Coordinator), February 13, 1984. See also, Board Order of April 20, 1984 at 4-5.

The Board concluded that the degree of response from the Department of Energy is clearly stated in an affidavit of David Schweller, Manager of the DOE Brookhaven Area Office (and author of the DOE Letter of Agreement cited as attachment 1 to LILCO's motion for summary disposition on Contention 24.B), and in the "U.S. Department of Energy Radiological Assistance Program: Personnel, Equipment and Resources", both of which were attached to LILCO's Motion for Summary Disposition on Contention 45. 2/ Hence, the Board found these letters of agreement with DOE and IMPELL Corporation satisfied the requirements of 10 CFR 50.47(b)(9), (b)(10), (b)(11), and NUREG-0654, Rev. 1, II.A3 and II.C.4, and therefore granted summary disposition on Contention 24.B on April 20, 1984. 3/

The hearing was concluded and the record closed on all off-site emergency planning matters on August 29, 1984 (Tr. 15,714).

In the instant motion, Suffolk County and the State of New York appear to assert that the Letter of Agreement with the Department of Energy is superceded by the statements made by President Reagan and Secretary of Energy Hodel. They further appear to assert that these statements raise substantial questions as to whether the federal government would respond in the wake of a radiological emergency at Shoreham, as had been indicated in the August 10, 1983 letter of agreement with the Department of Energy Brookhaven Area Office.

2/ Board Order of April 20, 1984 at 9.

3/ Id. at 10.

III. DISCUSSION

Summary disposition of Contention 24.B was granted on April 20, 1984, and the record of the proceeding dealing with the adequacy of LILCO's offsite emergency plan was closed on August 29, 1984. Although Intervenors did not style their filing as a motion to reopen the record, the closed record must be reopened if the two letters attached to Intervenors' motion are to be substantively considered. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-775, 19 NRC 1361, 1364 n.7 (1984). A party seeking to reopen the record bears a "heavy burden," and must demonstrate that the motion is timely; that the "new evidence" raises a significant safety or environmental issue; and that the "new evidence" might materially affect the outcome of the proceeding. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-756, 18 NRC 1340, 1344 (1983); Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); see also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). The Intervenors have altogether failed to address these standards, and for this reason alone the motion should be denied.

Further, the "new evidence" offered by the Intervenors could not affect the April 20, 1984, grant of summary disposition of Contention 24.B. Contention 24.B dealt with a lack of agreements with the Department of Energy (DOE) - Radiological Assessment Program or outside consultants to fill the position of "Radiological Health Coordinator" and provide other radiological services in the event of an emergency at Shoreham. The motion for summary disposition was granted on the basis of letters of

agreement having been prepared with these entities. See Order, April 20, 1984. No showing is made that these letters of agreement are no longer binding and in place. Moreover, it is not apparent that the statements by President Reagan and Secretary Hodel affect these agreements to provide radiological services in the event of an emergency. Their statements indicated only that the Administration "does not favor the imposition of Federal Government authority over the objections of any state and local government in matters regarding the adequacy of an emergency evacuation plan." No "imposition of authority" is presented where Federal agencies merely agree to perform radiological monitoring tasks in event of an emergency and, accordingly, DOE's contingent provision of radiological services does not constitute "the imposition of Federal authority" over the objections of state and local governments in matters regarding the adequacy of emergency evacuation plans. Further, the letters by President Reagan and Secretary Hodel merely indicate that the Administration "does not favor" the imposition of Federal authority over State and local objections; those letters do not suggest that the Administration would oppose or preclude DOE and the Coast Guard from performing their respective emergency roles, or that their letters of agreement have been superceded. Accordingly, the Intervenors have not demonstrated any basis for vacating the April 20, 1984 grant of summary disposition on Contention 24.B, or for reopening the record to consider the statements made by President Reagan and Secretary Hodel.

The Intervenors have also moved to strike references to the use of Federal agencies such as the Coast Guard and DOT in carrying out LILCO's off-site emergency plan, set out in the Staff's and LILCO's proposed

findings of fact. 4/ This part of the motion is premised upon the letters by the President and Secretary Hodel, discussed above, wherein it is stated that the Administration does not favor the imposition of Federal authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan.

For the Intervenors to succeed in having these letters considered in connection with the existing record and the proposed findings of fact which have been filed by LILCO and the Staff, they must satisfactorily demonstrate that a reopening of the closed record, to consider the letters, is warranted. However, as stated above, the Intervenors have not even addressed the standards for reopening a record, nor have they satisfactorily demonstrated that the motion is timely; that it involves a significant safety or environmental issue, insofar as the existing letters of agreement are concerned; and that the new evidence might materially affect the disposition of Contention 24.B and, thereby, the outcome of the proceeding.

On the contrary, as discussed above, the mere statement that the Administration "does not favor the imposition of Federal authority" over state and local governments in matters concerning emergency evacuation, does not, on its face, suggest any relation to or impact upon the roles

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4/ No authority is cited in Intervenors' motion as a basis to strike another party's proposed findings. We therefore treat the motion as a request that the Board determine that the cited proposed findings are invalidated by "new evidence" which the Board is requested to consider.

to be performed by the Coast Guard in notifying the public of an emergency, or DOE's role in evaluating a radiological emergency. It is simply a leap of logic to say that the performance of those roles in the event of an emergency constitute "the imposition of Federal authority" over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan. Thus, the two letters provide no basis whatsoever to reopen the record, and suggest no reason to require modifications to the proposed findings submitted by LILCO and the Staff, describing the roles to be performed by Federal agencies in the event the plan is found to be adequate and an emergency arises.

IV. CONCLUSION

For the reasons set forth above, the Intervenors' motion to vacate the Board Order of April 20, 1984, granting summary disposition in LILCO's favor on contention 24.B, and to strike portions of the Staff's and LILCO's proposed findings of fact, should be denied.

Respectfully submitted,

Bernard M Bordenick SET

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of December, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SUFFOLK COUNTY AND NEW YORK STATE MOTION TO VACATE ORDER GRANTING LILCO'S MOTION FOR SUMMARY DISPOSITION ON CONTENTION 24.B AND TO STRIKE PORTIONS OF LILCO'S AND THE STAFF'S PROPOSED FINDINGS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of December, 1984.

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