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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)	

MOTION OF SUFFOLK COUNTY AND NEW YORK STATE TO ADMIT NEW CONTENTION

Pursuant to 10 CFR § 2.714, Suffolk County and New York State move this Board to admit a contention, a copy of which is attached hereto, which addresses issues now made litigable as a result of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in Guard v. United States Nuclear Regulatory Commission, No. 84-1091, slip op. (D.C. Cir. Feb. 12, 1985) (copy attached). For the reasons set forth below, the County and State meet the standards of Section 2.714 for late-filed contentions.

BACKGROUND

The purpose of this proceeding is to determine whether LILCO's offsite radiological emergency response plan ("Plan") provides "reasonable assurance that adequate protective measures

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can and will be taken in the event of a radiological emergency" at Shoreham, as required by 10 CFR § 50.47(a)(1). To determine whether the needed "assurance" exists, the Board must find that the LILCO Plan complies with 16 enumerated planning standards. Id. § 50.47(b). One of those standards specifies that the Plan must include "[a]rrangements . . . for medical services for contaminated injured individuals." Id. § 50.47(b)(12).

Before February 12, 1985, offsite emergency plans were deemed sufficient if they provided simply a list of pre-existing local or regional medical facilities purportedly capable of treating persons exposed to dangerous levels of radiation. Southern California Edison Co. (San Onofre), 17 NRC 528, 530 (1983).[1/] On February 12, however, the U.S. Court of Appeals rejected as irrational the Commission's interpretation of Section 50.47(b)(12), noting that:

> [t]he petition for review questions whether it is rational to qualify, as a form of "arrangements . . . made for medical services" for persons "exposed to dangerous levels of radiation," mere

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1/ In the course of operating license hearings for the San Onofre plant, the Commission certified two definitional questions regarding Section 50.47(b)(12) as that standard bears on the general public. The Commission declared first that emergency response efforts should include considerations not only of "(1) those who become injured and are also contaminated," but also of "(2) those who may be exposed to dangerous levels of radiation." Southern California Edison Co. (San Onofre), 17 NRC 528, 530 (1983). The Commission, however, stated with respect to the second category of individuals -- those who may be exposed to dangerous levels of radiation but are not otherwise injured -- that emergency plans suffice if they provide simply a list of pre-existing local or regional medical facilities capable of treating radiation exposure. Id.

> identification of whatever facilities happen to exist. We hold that the Commission did not reasonably interpret the section 50.47(b)(12) phrase "arrangements . . . made for medical services" when it declared, generically, that a simple list of treatment facilities already in place constitutes such arrangements.

Guard v. NRC, No. 84-1091, slip op., at 3. The Court therefore vacated the Commission's interpretation of Section 50.47(b)(12) and remanded the matter to the Commission for further consideration. Id., at 13.

Although the U.S. Court of Appeals did not attempt to interpret the words "arrangements . . . made for medical services" for the Commission, and made clear that "medical arrangements" need not be read to require construction of facilities or other extraordinary measures, by holding that the mere identification of facilities is not enough, the Court indicated that specific plans and training people to perform medical services are required. Otherwise, the Section 50.47(b)(12) standard would automatically be met in every case, since, as noted by the Court of Appeals, in effect, "the NRC, with one hand, has placed section 50.47(b)'s cover over individuals exposed to dangerous levels of radiation but, with the other hand, has removed the cover." Id., at 11-12.

LILCO has never developed specific plans nor trained people to perform the medical services that would be required should persons be exposed to dangerous levels of radiation during a Shoreham accident. In fact, LILCO has done no more than to identify a list of hospitals which, in its view, are capable of

treating contaminated injured individuals. See OPIP 4.2.2, Attachment 1. Therefore, LILCO's Plan fails to satisfy Section 50.47(b)(12)'s requirement that there be "arrangements . . . for medical services" and this motion to admit a new contention should be granted.

Indeed, in the view of the County and State, the Court of Appeals' recent decision requires this Board to consider and determine whether adequate medical arrangements exist under the LILCO Plan. Clearly, it can no longer be seriously contended that LILCO's mere identification of medical facilities in its Plan satisfies the Section 50.47(b)(12) standard. Rather, the Board must look beyond the list of facilities supplied by LILCO to determine whether those facilities are adequate (or inadequate) to cope with the consequences of a radiological emergency at Shoreham. Indeed, in the County's and State's view, consideration of the adequacy of medical facilities relied upon by LILCO is crucial if the Board is to render an informed decision on whether LILCO's Plan provides reasonable assurance that adequate protective measures can and will be implemented in the event of a Shoreham accident.

Accordingly, the County and State hereby submit, and seek admission of, a new contention which, if admitted, would permit this Board to hear evidence concerning the adequacy of medical facilities relied upon by LILCO. The proposed contention is attached to this pleading.

DISCUSSION

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

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

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The County and State submit that all of these factors weigh in favor of admitting the proposed contention.

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

Good cause exists for the County's and State's failure to file this contention earlier. The contention at issue arises from circumstances unforeseen prior to February 12, 1985, when the U.S. Court of Appeals rendered its decision in Guard v. NRC, and the issues raised by the proposed contention could not have been tendered with the requisite degree of specificity until that date. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 469 (1982). Moreover, prior to the Court

of Appeals' decision, any contention alleging deficiencies in LILCO's "arrangements . . . for medical services" would have been directly at odds with the Commission's generic ruling in San Onofre that a mere listing of facilities -- whatever they may be -- was to be considered adequate. Thus, filing the proposed contention any earlier would have been futile.[2/] Upon reviewing the language of the Court of Appeals decision, however, it is clear that this Board's proper inquiry must be to look behind LILCO's list of facilities to determine whether the facilities are adequate to cope with the various kinds of accident scenarios that could occur at Shoreham. Having now reviewed the Court of Appeals' decision, and in an effort to act without delay, the County and State submit the attached contention. The County and State have acted promptly in bringing their concerns before the Board, and in filing this motion. Therefore, they have met the "good cause" requirement of 10 CFR § 2.714.

2/ In the context of both Phase I and Phase II emergency planning proceedings, Suffolk County raised matters which pertained to issues held to be within the Commission's San Onofre holding. See, e.g., Phase I Contention 3 (Medical and Public Health Support), as amended and revised in the First Amended Consolidated Emergency Planning Contentions, dated July 6, 1982, and in the Phase I Consolidated Emergency Planning Contentions, dated August 20, 1982. See also Consolidated Draft Emergency Planning Contentions, dated June 23, 1983, at 106, and Revised Emergency Planning Contentions, dated July 26, 1983 -- especially, Phase II Contention 54 (Medical and Public Health Support). LILCO objected to the admissibility of such contentions on the basis of San Onofre (see, e.g., LILCO's Objections to Intervenors' Consolidated Emergency Planning Contentions, dated July 8, 1983, at 51, where LILCO asserted that "there is no legal requirement that additional medical facilities and equipment be provided for the general public"), and the licensing boards then presiding over emergency planning matters for Shoreham generally concurred in LILCO's objections, denying admission of the contentions. See, e.g., Supplemental Prehearing Conference Order (Phase I -- Emergency Planning), dated September 7, 1982.

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

There is no basis for believing that any means other than litigation of the County's and State's proposed contention will adequately protect their interests in this matter. No contention or issue presently before the Board addresses the issues sought to be raised here by the County and State. Furthermore, the proposed contention raises issues which cast doubt on LILCO's ability to implement its Plan -- a Plan that poses unique problems and therefore demands close scrutiny. Without the admission of the proposed contention, there is no means by which the County's and State's interests in obtaining a determination as to the adequacy of the medical facilities relied upon by LILCO and the impact of inadequate facilities and medical personnel upon the implementability of the LILCO Plan could be protected.

C. The County and State Can Be Expected To Assist in Developing a Sound Record

If the proposed contention is admitted, the County and State will submit testimony by experts knowledgeable on matters raised in the proposed contention. Such experts would likely include Drs. David Harris and Martin Mayer, who are respectively the Commissioner of Health Services for Suffolk County and the Deputy Director of the Division of Patient Care Services in the Suffolk County Department of Health Services. Such testimony would address the implications of inadequate medical facilities

and the importance of proper training of medical personnel on LILCO's ability to implement its Plan, as set forth in this Motion and in the proposed contention. Without the admission of the proposed contention and the submission of evidence by the County and State on the matters raised therein, this Board would have no basis upon which to find that the mere listing of medical facilities by LILCO provides reasonable assurance that LILCO's Plan could or would be implemented. Thus, the admission of the proposed contention would result in the development of a sound and complete record.

D. The County's and State's Interests in the Proposed Contention Will Not Be Adequately Represented by Other Parties

No other party in this proceeding has submitted a contention similar to the County's and State's proposed contention. Furthermore, none of the other contentions previously litigated before the Board encompasses the issues now sought to be raised.

E. The County's and State's Proposed Contention Does Not Unduly Broaden the Scope of the Issues Before the Board, and Will Not Cause Undue Delay

Although admission of the proposed contention would broaden somewhat the issues presently before the Board, the issues raised in the contention are specific and narrowly focused. In addition, it is essential that they be considered. The County and State submit that factual evidence and expert opinion will prove that LILCO has done nothing more than to identify medical

facilities which, in LILCO's view, are capable of treating contaminated injured individuals. There have been no plans developed, nor have medical personnel been trained, to perform the medical services that would likely be required during a Shoreham emergency. LILCO's ability to implement its Plan must, therefore, be seriously questioned.

Furthermore, because the contention proposed by the County and State is narrowly focused, its admission would not delay this proceeding to any significant degree. This is especially true since the evidentiary record has already been reopened by LILCO on matters concerning its proposed use of the Nassau Coliseum as a monitoring and decontamination center. An evidentiary hearing will be necessary to resolve LILCO's proposed use of the Nassau Coliseum, and admission of the proposed contention need not delay this proceeding any more than the delay already caused by LILCO's reopening.

CONCLUSION

For the reasons set forth above, Suffolk County and New York State submit that they have met the standards of 10 CFR § 2.714 for late-filed contentions. Therefore, the Board should grant the Motion of Suffolk County and New York State to Admit New Contention.

Respectfully submitted,

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Dated: February 25, 1985

PROPOSED CONTENTION

10 CFR Section 50.47(b)(12) requires that there be "[a]rrangements . . . for medical services for contaminated injured individuals," including members of the public exposed to high levels of radiation who are not otherwise injured. See also NUREG 0654, Section II.L. Furthermore, Section 50.47(b)(8) requires that there be adequate emergency facilities and equipment to support the emergency response. The LILCO Plan, however, merely identifies a list of hospitals which, according to LILCO, are capable of treating contaminated injured individuals. See OPIP 4.2.2, Attachment 1. Intervenors contend that, under LILCO's Plan, there is no assurance that adequate protective measures can and will be taken in the event of a Shoreham emergency, as required by 10 CFR Section 50.47(a)(1). The specific deficiencies in the LILCO Plan are as follows:

A. LILCO has no agreements with the hospitals listed in the LILCO Plan (see OPIP 4.2.2, Attachment 1) which provide that those facilities will be available and capable of rendering necessary medical treatment to contaminated individuals in the event of a radiological emergency at Shoreham. In the absence of such agreements, the LILCO Plan does not and cannot comply with 10 CFR Sections 50.47(a)(1), 50.47(b)(1), 50.47(b)(3), 50.47(b)(8), 50.47(b)(12), and NUREG 0654, Sections A.3 and C.4.

B. Medical personnel at the hospitals identified in the Plan have not been trained to perform necessary medical services

during a radiological emergency. In addition, Intervenors contend that medical staff preparedness is deficient because there has been inadequate training with respect to proper decontamination procedures and treatment. Furthermore, the Plan provides no assurance that training can and will be provided to such medical personnel. As a result, the LILCO Plan fails to comply with 10 CFR Sections 50.47(a)(1), 50.47(b)(12), 50.47(b)(14), 50.47(b)(15), and NUREG 0654, Sections II.L, N and O.

C. LILCO has developed no plans for the hospital and medical services relied upon in the Plan to provide treatment for contaminated individuals, including plans for transporting contaminated injured individuals to such hospitals, many of which are located substantial distances from the Shoreham plant. Thus, there is no assurance that facilities and medical personnel will be adequately prepared or able to handle and treat contaminated individuals in the event of an emergency at Shoreham, as required by 10 CFR Sections 50.47(a)(1), 50.47(b)(8), 50.47(b)(12), and NUREG 0654, Section II.L.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-1091

GUARD, PETITIONER

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION, RESPONDENT

SOUTHERN CALIFORNIA EDISON COMPANY, et al., INTERVENORS

Petition for Review of an Order of the Nuclear Regulatory Commission

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Argued December 19, 1984

Decided February 12, 1985

Charles E. McClung, Jr., for petitioner.

Sheldon L. Trubatch, with whom *E. Leo Slaggie*, Acting Solicitor, Nuclear Regulatory Commission, *Richard L. Black*, Attorney, Nuclear Regulatory Commission and *John A. Bryson*, Attorney, Department of Justice were on the brief, for respondent.

David R. Pigott, Samuel B. Casey and *Catherine M. Kelly* were on the brief, for intervenors Southern California Edison Company, et al.

Before: TAMM, GINSBURG, and SCALIA, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GINSBURG.

GINSBURG, *Circuit Judge*: As a condition for the issuance of a nuclear power reactor operating license, the Nuclear Regulatory Commission (NRC or Commission) must find "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R. § 50.47 (a)(1) (1984). To determine whether the needed "assurance" exists, the Commission reviews the license applicant's onsite and offsite emergency response plans for compliance with enumerated standards. *Id.* § 50.47(b). One of the standards specifies that the response plans include "[a]rrangements . . . for medical services for contaminated injured individuals." *Id.* § 50.47(b)(12). The instant petition for review concerns a Commission generic interpretation of this "arrangements . . . for medical services" standard.

In the course of operating license hearings for San Onofre Nuclear Generating Station (SONGS) Units 2 and 3, the NRC certified two definitional questions regarding section 50.47(b)(12) as that standard bears on the general public.[1] The Commission answered both questions *not* in relation to the SONGS record, but in a manner designed to give generic guidance. *Southern California Edison Co.*, 17 N.R.C. 528, 530 (1983) [hereafter NRC Decision]. The NRC declared first that emergency response efforts should include consideration not only of "(1) those who become injured and are also contaminated," but also of "(2) those who may be exposed

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[1] Preparations that the NRC's regulation requires *at the nuclear plant site* are not at issue in this case.

to dangerous levels of radiation." *Id.*[2] However, the Commission thereafter stated that, with respect to the second category of individuals—those who may be exposed to dangerous levels of radiation but are not otherwise injured—emergency plans suffice if they provide simply a list of pre-existing local or regional medical facilities capable of treating radiation exposure. *Id.*[3]

The petition for review questions whether it is rational to qualify, as a form of "arrangements . . . made for medical services" for persons "exposed to dangerous levels of radiation," mere identification of whatever facilities happen to exist. We hold that the Commission did not reasonably interpret the section 50.47(b)(12) phrase "arrangements . . . made for medical services" when it declared, generically, that a simple list of treatment facilities already in place constitutes such arrangements.

In so ruling, we impose no tight restraint on the NRC's regulatory authority. The Commission, on remand, may concentrate on the SONGS record; it may revisit the question, not now before us for review, of the scope of the section 50.47(b)(12) phrase "contaminated injured individuals"; it may describe genuine "arrangements" for medical services for dangerously exposed members of the general public; or it may pursue any

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[2] It is not before us to determine—and we intimate no view upon—whether an NRC definition of the class "contaminated injured individuals" to exclude individuals falling only within the radiation exposure category would pass muster.

[3] The NRC also observed that individuals onsite and offsite who may become both contaminated by radiation and physically injured in some other way are "expected to be very few." Southern Cal. Edison Co., 17 N.R.C. 528, 535 (1983). The Commission therefore regarded preparations at the nuclear plant site as adequate to accommodate members of the public so affected, and ruled that no additional medical arrangements would be needed for them under § 50.47(b)(12). *Id.* At oral argument petitioner's counsel stated in response to the court's inquiry that petitioner does not challenge this aspect of the NRC decision.

other rational course. It may not, however, interpret the section 50.47(b)(12) phrase "arrangements . . . made for medical services" as meaning something other than what those words, in the context of a nuclear power plant emergency planning standard, may rationally convey.

I. BACKGROUND

On May 14, 1982, the Atomic Safety and Licensing Board (Licensing Board) authorized full-power operating licenses for SONGS Units 2 and 3, subject to the condition that within six months the applicants, in conformity with the Licensing Board's reading of section 50.47(b)(12), develop appropriate offsite medical arrangements. *Southern California Edison Co.*, 15 N.R.C. 1163, 1187 (1982) [hereafter 1982 Licensing Board Decision]. Applicant Southern California Edison Company, an intervenor here, and the NRC staff had argued before the Licensing Board that section 50.47(b)(12) did not require medical plans for the general public; as they read the provision, it confined required plan coverage to people on, or in the immediate vicinity of, the nuclear plant site (mainly plant personnel and emergency workers from the neighboring community). In keeping with this interpretation, the applicants presented no specific offsite medical plans; instead, they maintained that offsite medical arrangements could be made ad hoc after a nuclear plant accident.

The Licensing Board characterized the applicant/staff reading of section 50.47(b)(12) as "narrow" and not in tune with the prescription's language or the historical context of the emergency planning regulations. *Id.* at 1187-90. In addition to determining that the standard required medical arrangements covering the general public, the Licensing Board clearly stated that it read section 50.47(b)(12) to encompass offsite persons who, even if not otherwise injured, suffer exposure to dangerous levels of radiation. *Id.* at 1197-200 & n.30. Under the

Licensing Board interpretation, the applicants had not made the necessary offsite medical presentation, and would be required to do so as a condition of their licenses.

GUARD (Groups United Against Radiation Danger), an intervenor before the Licensing Board, and petitioner here, requested the Atomic Safety and Licensing Appeal Board (Appeal Board) to stay the Licensing Board's authorization of operating licenses pending appeal of the Licensing Board's decision. The Appeal Board denied the stay. In dictum, the Appeal Board registered its disagreement with the Licensing Board's interpretation of section 50.47(b)(12). The Appeal Board did not advert to any onsite/offsite distinction; it regarded as critical the provision's reference to "contaminated injured individuals" as the targeted group. The Appeal Board interpreted that phrase to mean *only* persons who are both contaminated *and* physically injured in some other manner as well.[4] Based on its understanding that section 50.47(b)(12) does not reach members of the public who suffer only radiation exposure, the Appeal Board agreed with the NRC staff that arrangements for radiation victims could be made ad hoc after an accident. *Southern California Edison Co.*, 16 N.R.C. 127, 136-38 (1982).

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[4] The Appeal Board defined "contaminated" as having radioactive material on or in one's body. A person may be *exposed* to radiation without having radioactive material on his or her body. Thus there is a significant difference between those who are contaminated by radiation and those who are exposed but not contaminated: persons who are contaminated carry the radioactive material with them, and therefore can spread the dangerous substance; persons who are only exposed pose no threat to others.

The Appeal Board thought that medical arrangements were necessary only for individuals who are contaminated and otherwise injured, because they present the special problem of treating the physical injury without spreading the contamination. *See* Southern Cal. Edison Co., 16 N.R.C. 127, 137 (1982).

The NRC declined to review the Appeal Board's denial of the stay. Noting the disagreement between the Appeal Board and the Licensing Board on the meaning of section 50.47(b)(12), however, the Commission directed certification to it of the following two questions:

> (1) Does the phrase "contaminated injured individuals" as used in 10 CFR 50.47(b)(12) require applicants for nuclear power plants to provide arrangements for medical services only for members of the public who have suffered traumatic [physical] injury and are also contaminated with radiation?
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> (2) If the answer to Question 1 is no, to what extent does 10 CFR 50.47(b)(12) require advance, specific arrangements and commitments for medical services for the general public as opposed to the general knowledge that facilities and resources exist and could be used on an *ad hoc* basis?

Southern California Edison Co., 16 N.R.C. 883, 884 (1982).

Responding to the certified questions, the NRC agreed with the Licensing Board that section 50.47(b)(12) encompassed not only persons who are both physically injured and contaminated, but also members of the general public who suffer only exposure to high levels of radiation. However, the NRC introduced a different view of the "degree of advance planning" required by the standard: it held that treatment for individuals injured only by radiation "can be arranged for on an as-needed basis during an emergency." NRC Decision, 17 N.R.C. at 530. Thus, while the Commission read section 50.47(b)(12) as encompassing radiation exposure victims, it required no more in the way of pre-accident planning for such persons than a list identifying "those local or regional medical facilities which have the capabilities to provide appropriate medical treatment for radiation exposure." *Id.* There would be no need for pre-accident inquiry into the adequacy of existing facilities or advance arrangements

with or for any particular facilities. *Id.* Whatever existed would do. The NRC staff and the license applicants, we note again, had consistently urged the adequacy of a purely ad hoc response to victims of radiation exposure; like the Appeal Board and unlike the Commission, however, they had pressed that position on the understanding that radiation exposure was *not* covered by the section 50.47(b)(12) emergency planning medical arrangements requirement.

The NRC interpretation of section 50.47(b)(12) was generic. It did not rely on evidence of medical facilities in the vicinity of SONGS, or on any other particulars of the SONGS record. The Commission made it plain that its purpose in posing and responding to the certified questions was to establish guidance applicable not only to SONGS but to all future applications. *See* NRC Decision, 17 N.R.C. at 530 ("[T]he interpretation of the regulation involves a significant issue of policy that affects other plants and proceedings.").

After answering the certified questions, the NRC remanded the case to the Licensing Board. The applicants supplemented the record by submitting a list of appropriate, existing medical facilities in the SONGS area. The Licensing Board held that under the NRC Decision, the applicants had thus fully satisfied section 50.47(b)(12). GUARD asked the Licensing Board to inquire further, to determine whether the facilities listed by the applicants would be adequate in the event of an emergency. The Licensing Board explained that any additional consideration of medical arrangements would be inconsonant with the NRC's generic disposition:

> [A]s to members of the offsite public who may suffer radiation injuries, a licensing board's proper inquiry is quite narrow—whether existing medical facilities have been identified. . . . Boards are not to go behind the list of existing facilities to determine whether those facilities are adequate (or inadequate)

> to cope with various accident scenarios in the site-specific setting. . . .
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> . . . .
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> . . . Again, as we understand the Commission, the listing of existing facilities—whatever they may be—is to be deemed adequate.

Southern California Edison Co., 18 N.R.C. 228, 232-33 (1983) [hereafter 1983 Licensing Board Decision].

GUARD seeks judicial review of the NRC generic interpretation of section 50.47(b)(12), as applied to SONGS by the Licensing Board.[5]

II. Analysis

An agency's interpretation of its own regulation generally warrants a high degree of respect. We have so observed in the specific context of NRC regulations. *See North Anna Environmental Coalition v. NRC*, 533 F.2d 655, 659 (D.C. Cir. 1976).[6] Our deference, however, has

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[5] Intervenor Southern California Edison Company argues that GUARD is time-barred from seeking review of the NRC decision because it did not file a petition in court within 60 days of that decision. *See* 28 U.S.C. § 2344 (1982) (Hobbs Act). The Commission acknowledged at oral argument, however, that any attempt by GUARD to challenge the NRC's purely generic interpretation would have been premature until the guidance was applied to SONGS on remand to the Licensing Board. We agree, and reject intervenor's Hobbs Act argument as meritless.

[6] GUARD urged diminished deference to the NRC interpretation of § 50.47(b)(12) because the Commission's view is not in agreement with the view of the Federal Emergency Management Agency (FEMA). The regulation containing § 50.47(b)(12) tracks the emergency preparedness guidelines developed jointly by FEMA and the NRC after the Three Mile Island nuclear plant accident. NRC & FEMA, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support

limits. Again referring to the NRC, we have stated that our high regard "is appropriate only so long as the agency's interpretation does no violence to the plain meaning of the provision [at issue]." *Deukmejian v. NRC*, slip op. at 41 (D.C. Cir. Dec. 31, 1984); *see Union of Concerned Scientists v. NRC*, 711 F.2d 370, 381 (D.C. Cir. 1983). This is a case in which the Commission's interpretation of its own regulation lacks the quality necessary to attract judicial deference.

As we recounted earlier, the NRC began its generic interpretation of section 50.47(b)(12) by determining, in response to a question the Commission itself framed, that the provision covers members of the public exposed to high levels of radiation even if they are not otherwise injured. *See supra* pp. 2-3, 6. The Commission has not withdrawn that determination and it remains unchallenged in this review proceeding. We express no view on the threshold coverage question thus raised and answered by the NRC. *Cf. Deukmejian*, slip op. at 29-36 (court reviewed NRC ruling that possible complicating effects of an earthquake on emergency planning were not material for purposes of individual licensing proceedings and found that NRC acted within its discretion). Once the NRC placed radiation victims under the protection of section 50.47(b)(12), however, it could not disregard the words used in the regulation to describe the required protection. *Cf. Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984) (although NRC has broad discretion to determine scope of licensing proceed-

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OF NUCLEAR POWER PLANTS 69 (NUREG-0654/FEMA-REP-1, Nov. 1980).

Because we find that the NRC interpretation conflicts with the plain meaning of § 50.47(b)(12), we need not reach this issue. We note, however, that FEMA's position on the meaning of § 50.47(b)(12) is far from clear. *See* 1982 Licensing Board Decision, 15 N.R.C. at 1193-95 & n.21; NRC Decision, 17 N.R.C. at 536 n.12a; 1983 Licensing Board Decision, 18 N.R.C. at 231.

ing, once NRC defines an issue as material to such a proceeding, NRC cannot deny statutory right to a hearing on the issue).

As an emergency planning standard to be met *before* an operating license issues, section 50.47(b)(12) requires that "[a]rrangements be made for medical services for contaminated injured individuals." The Commission interpretation of section 50.47(b)(12), however, allows medical services for radiation exposure to be arranged entirely ad hoc *after* the onset of an emergency. A provision calling for pre-event arrangements is not sensibly met by post-event prescriptions.

The Commission specified only one advance preparation requirement: license applicants must identify appropriate facilities existing in the area. Once an accurate list is composed, the license applicant has satisfied the requirement. Planning in this instance starts and stops with a list. In court, the Commission and intervenors made three attempts to qualify the NRC decision as something other than a mere listing and blanket acceptance of whatever medical facilities happen to exist in the area. These attempts fail.

First, intervenors pointed to evidence of medical facilities in the SONGS record to show that arrangements for radiation exposure in the SONGS area are adequate. Brief for Intervenors at 10-11. Neither the Commission nor the Licensing Board on remand, however, ever reviewed the SONGS record evidence on medical facilities to determine the adequacy of those facilities for the radiation-exposed public. The NRC's generic interpretation rendered such a specific inquiry unnecessary. *See supra* pp. 7-8. Second, intervenors noted that "the capability of any of the listed . . . facilities 'to provide appropriate medical treatment for radiation exposure'" may be challenged. Brief for Intervenors at 46 (quoting NRC Decision, 17 N.R.C. at 537). The NRC interpretation may allow a challenger to question whether a list

is *accurate*, but it provides no wedge for any inquiry whether the facilities properly on the list would be *sufficient* in an emergency. *See* 1983 Licensing Board Decision, 18 N.R.C. at 232-33. Third, the Commission suggested that if existing medical facilities in the vicinity of a plant site are not adequate, a *waiver* of section 50.47(b)(12) could be sought *by concerned members of the public*. *See* 10 C.F.R. § 2.758 (1984); Brief for Respondents at 36. This suggestion virtually concedes that, as construed by the NRC, section 50.47(b)(12) would not itself respond to the possibility that the listed medical facilities may be inadequate.

The underlying assumption made by the Commission—that wherever present or future nuclear power plants may be located, adequate facilities will be available in the area to serve victims of radiation exposure in the event of an accident—is hardly within the core of the Commission's expertise. In any case, it is not an assumption properly indulged in an emergency preparedness regulation. Section 50.47(b) describes the medical arrangement requirement as one of the several "standards" applicants' emergency response plans "must" in fact meet. In effect, the Commission has declared that, as to one category of protected persons (those injured only by exposure to high levels of radiation), the "standard" will be met automatically in every case.[7] It appears, in sum,

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[7] The Commission attempted to justify its failure to require any medical arrangements for radiation exposure, other than a list of existing facilities, in part with the observation that "[i]t was never the intent of the regulation to require directly or indirectly that state and local governments adopt extraordinary measures, such as construction of additional hospitals or recruitment of substantial additional medical personnel, just to deal with nuclear plant accidents." NRC Decision, 17 N.R.C. at 533. But, as the Licensing Board observed in its 1982 decision, and as GUARD agreed at oral argument, medical arrangements need not require "the construction of hospitals,

that the NRC, with one hand, has placed section 50.47 (b)'s cover over individuals exposed to dangerous levels of radiation but, with the other hand, has removed the cover.

The Commission's explanation for its position is terse:

> The nature of radiation injury is that, while medical treatment may be eventually required in cases of extreme exposure, the patients are unlikely to need emergency medical care. The non-immediacy of the treatment required for radiation-exposed individuals provides onsite and offsite authorities with an additional period of time to arrange for the required medical service. Thus, any treatment required could be arranged for on an *ad hoc* basis.

NRC Decision, 17 N.R.C. at 535-36 (footnote omitted). One might expect to encounter this reasoning in an opinion explaining why medical arrangements for radiation exposure should not be part of the section 50.47(b)(12) emergency planning standard. But the NRC has decided that radiation exposure *is* covered by the standard. The above NRC statement provides no explanation at all why a standard demanding medical arrangements *before* an emergency occurs is properly interpreted to mean something quite different. *Cf. New England Coalition on Nuclear Pollution v. NRC*, 727 F.2d 1127, 1130 (D.C. Cir. 1984) (it would be irrational for agency to support a rule requiring financial qualifications review for *some* utilities with a statement that all financial qualifications reviews are worthless).

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the purchase of expensive equipment, the stockpiling of medicine—in short, any large expenditure the sole purpose of which would be to guard against a very remote accident. The emphasis, rather, is on developing specific plans and training people to perform medical services." 1982 Licensing Board Decision, 15 N.R.C. at 1200. We think it plain that "medical arrangements" need not be read to require construction of facilities or other extraordinary measures.

CONCLUSION

For the reasons stated we reject as irrational the NRC's generic interpretation of section 50.47(b)(12) with respect to members of the public exposed to dangerous levels of radiation. Accordingly, we vacate the dispositions on review that state or apply the generic interpretation and remand this matter to the agency for further consideration consistent with this opinion.

It is so ordered.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Certificate of Service

I hereby certify that copies of Motion of Suffolk County and New York State to Admit New Contention have been served to the following this 25th day of February, 1985 by U.S. mail, first class, except as otherwise noted.

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