

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))
-----)

'84 NOV -9 11:29

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

FEDERAL EMERGENCY MANAGEMENT AGENCY'S
COMMENTS ON THE PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON OFFSITE EMERGENCY PLANNING

It is not the intent of the Federal Emergency Management Agency to weigh the evidence presented or judge which party should prevail, that is not the role of FEMA in these proceedings. Nor, is FEMA advocating any position relative to the granting of a license in this proceeding. Rather, FEMA feels it should be provided an opportunity to clarify its role in these proceedings and respond to certain assertions relative to FEMA contained within the Proposed Findings of Fact and Conclusions of Law on Offsite Emergency Planning as propounded by the parties. Of particular concern are the statements made in regard to the rebuttable presumptions to be afforded FEMA's interim findings, the impact of revisions to the LILCO Transition Plan, Revision 3 on FEMA's interim findings, and the weight to be afforded a plan review.^{1/}

In the aftermath of the accident at Three Mile Island, the Nuclear Regulatory Commission undertook a "formal reconsideration of the role of emergency planning in the continued protection of the public health and safety in areas around nuclear power facilities." 45 Fed. Reg. 55402

^{1/} It is not the intent of this filing to address all issues and FEMA's silence on specific interpretations of its testimony should not be accepted as acquiescence. FEMA understands that the NRC staff has submitted Proposed Findings that accurately reflect FEMA's testimony.

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(August 19, 1980). The Commission subsequently promulgated its emergency planning regulation.^{2/} The Commission regulations require a finding that "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." be made before an operating license can be issued. 10 C.F.R. § 50.47 (a)(1).

In reaching its decision regarding the existence of "reasonable assurance" the Commission relies on "findings and determinations made by the Federal Emergency Management Agency (FEMA).^{3/} FEMA makes findings and determinations in accordance with its emergency planning regulations, 44 C.F.R. Part 350, which contains the same sixteen planning standards as the Commission's regulations. FEMA reviews offsite emergency plans against these sixteen planning standards and NUREG-0654/FEMA REP 1, Revision 1 (1980), a joint NRC/FEMA regulatory guide.^{4/}

Pursuant to FEMA/NRC's Memorandum of Understanding (MOU), (45 F.R. 82713) (December 16, 1980) FEMA has agreed to make findings as to whether offsite emergency plans are adequate. Such findings are referred to as

2/ 10 C.F.R. § 50.47 (1980)

3/ 10 C.F.R. § 50.47 (a)(2).

4/ "We agree that documents such as the FEMA findings and determinations, NUREG-0654, and FEMA-REP 2, somewhat like the Regulatory Guides, do not rise to the level of regulatory requirements. Neither do they constitute the only method of meeting the applicable regulatory requirements. Of. Fire Protection for Operating Nuclear Power Plants (10 CFR 50.48), CLI-81-11, 13 NRC 778, 782 n.2 (1981); Gulf States Utilities Company, (River Bend Station, Units 1 and 2) ALB-444, 6 NRC 760, 772-773 (1977). In the absence of other evidence, the adherence to regulatory guides may be sufficient to demonstrate compliance with regulatory requirements. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406-407 (1978). "Metropolitan Edison Company et al., (Three Mile Island Nuclear Station, Unit 1) 16 N.R.C. 1290 at 1298-99 (1982).

"interim" because they supplement the formal procedures set forth in 44 CFR 350 and they reflect the status of the plans and the capability of the response at the time of evaluation. Requests for interim findings are usually made by the NRC to FEMA to provide information at a licensing proceeding. By the terms of the MOU, FEMA is also responsible for providing witnesses to testify at the ASLB hearings on these FEMA findings.

Pursuant to the "Memorandum of Understanding Between the NRC and FEMA Relating to Emergency Planning and Preparedness", the Staff requested that FEMA provide expert testimony in response to the contentions and to provide witnesses at the hearing. In response to that request the FEMA staff prepared extensive written testimony which was admitted to these proceedings.^{5/} The Commission's rule provides that FEMA's findings and determinations constitute a rebuttable presumption on the issue of the adequacy of offsite plans. 10 C.F.R. § 50.47 (a)(2); South Carolina Electric and Gas Company, et al. (Virgil C. Summer Nuclear Station, Unit 1), 16 N.R.C. 477 485 (1982) Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1) 16 N.R.C. 1290, 1296 (1982). Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), 14 N.R.C. 1211 at 1460-66 (1981). FEMA's testimony, however, is not frozen at the point of its interim findings or prefiled testimony at the expense of ignoring any subsequent corrective actions.⁶ Southern California Edison Company, et al. 17 N.R.C. 346, 379 (1983).

5/ Direct Testimony of Philip McIntire concerning Contentions 23, 25, 65 and Direct testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski and Philip H. McIntire Concerning Phase II Emergency Planning.

6/ FEMA expects to submit its Review of the LILCO Transition Plan, Revision 4 to the NRC on or before November 15, 1984.

A review of the Licensing Board's partial initial decision in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1) LBP-81-59, 14 NRC 1211, 1462-66 (1981) clearly demonstrates that the Licensing Board did not state, contrary to the intervenors assertion, that "there is no presumptive effect to be accorded to the FEMA testimony". Rather the TMI Licensing Board recognized that 10 C.F.R. § 50.47 (a)(2) provides that "a FEMA finding will constitute a rebuttable presumption on question of adequacy and implementation capability" of an offsite emergency plan, but denied the section was applicable to the TMI restart proceeding before it.

In addition, the intervenors state that FEMA has "basically performed only a 'paper review' of the plan, which was not particularly helpful to the Board", but a careful review of the NRC's own regulations 10 C.F.R. 50.47 (a)(2) clearly indicates that the NRC envisioned that review would be based on the plans. "A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability."

The criteria that FEMA is to apply in its review is principally contained in NUREG 0654-FEMA/NRC Rev. 1. This document contains a series of planning objectives and a listing of specific criteria for preparation and evaluation of the planning and preparedness activities of offsite components.

FEMA's own rule 44 C.F.R. 350 established policy and procedures for the review of offsite emergency plans and preparedness for coping with offsite effects of radiological emergencies which may occur at nuclear power plants. It describes the process by which FEMA makes findings and determinations as to the adequacy of offsite plans and prescribe standards for these plans. The standards used for review and approval of plans under this FEMA rule are contained in NUREG-0654 FEMA REP.1, Rev.1.

FEMA's 350 process requires a plan review, an exercise and a public meeting as a prerequisite for its approval of offsite plans. FEMA's approval of offsite plans and preparedness is considered independently of any rule of the NRC with respect to its licensing proceedings (44 CFR 350).

As the Appeal Board in Southern California Edison Company et al. recognized:

The Memorandum (of Understanding) recognizes the distinct possibility that a final FEMA finding may not always be available in a timeframe compatible with the schedule of Commission licensing proceedings. It therefore provides that FEMA will offer preliminary views on the state of offsite emergency preparedness "based upon plans currently available to FEMA." 45 Fed. Reg. at 82714 (emphasis added). The Memorandum states further that to support its findings and determinations, "FEMA will make expert witnesses available before . . . NRC boards and administrative law judges." Ibid. The clear import of the Memorandum is that FEMA will provide Commission licensing proceedings, through FEMA witnesses, the benefit of its most current evaluation of State and local emergency planning. There is no hint of "freezing" either FEMA or the licensing proceeding to earlier and likely outmoded information. Southern California Edison Company, et al., 17 N.R.C. 346 at 379-80 (1983).

The Board was aware of the parameters under which FEMA's testimony was prepared. FEMA's witnesses clearly stated that their prefiled testimony was based on a review of Revision 3 of the LILCO Transition Plan. At the time of their appearance before the Board FEMA had not completed its review of Revision 4. FEMA's witnesses repeatedly testified that certain aspects of the plan are normally verified at an exercise. The survey of the LERO training programs was undertaken by Mr. Keller before the panels last appearance in order to assist the Board.

CONCLUSION

To attempt to dismiss FEMA's testimony as it relates to major components of the plan because additional testimony was received on sections of a later revision of the plan, or because a testing effort as envisioned by the Intervenors was not undertaken circumvents the process and FEMA's role in it.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

'84 NOV -9 AM 1:20

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the Federal Emergency Management Agency's Comments On The Proposed Findings Of Fact And Conclusions Of Law On Offsite Emergency Planning has been served on the following by deposit in the United States mail, first class, on this 6th day of November 1984.

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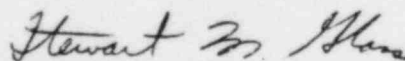
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