

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

JAN 30

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

SERVED JAN 30 1986

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

Docket No. 50-322 OL

DOCKET NUMBER 50-322-01-3
PROD & UTIL FAC.

RE-SERVED FEB 5 1986

MEMORANDUM AND ORDER

Background

Long Island Lighting Company's (LILCO) application for a full power operating license for its Shoreham Nuclear Power Plant, located in Suffolk County, New York, is pending before the NRC. In order for there to be an adequate record for safety review of LILCO's full power application, NRC regulations generally require, among other things, that an offsite emergency plan be developed, and that there be an exercise of the plan. See 10 CFR § 50.47 and Part 50, App. E. The exercises are generally supervised and conducted by the Federal Emergency Management Agency (FEMA), with participation by relevant state and local governments. In this case, however, the emergency plan before us for review was developed and proposed by LILCO because the State and County refused to develop one. The LILCO Plan for Shoreham provides for the lead role for offsite emergency response to be administered by the Local Emergency Response Organization (LERO), an

B603030098 B60211
PDR COMMS NRCC
CORRESPONDENCE PDR

organization comprised of primarily utility employees. In a December 26, 1985 motion, New York State, Suffolk County, and the Town of Southampton jointly moved the Commission to cancel a February 13, 1986 exercise of LILCO's emergency preparedness plan for Shoreham. LILCO and the NRC staff oppose the motion, and we deny it for the reasons explained below.

The movants have not identified any basis in NRC regulations for the filing of such a motion, which in effect attempts to interfere directly with the Commission's process for obtaining information necessary for its licensing decisions. Under NRC practice it is not clear that this type of motion is authorized or that we are obligated to respond in any formal way. On this basis alone the motion may be denied. Nevertheless, because we consider the upcoming exercise to be important in carrying out our safety responsibilities, we are responding to the motion in this Memorandum and Order.

The Nature of the Exercise

In the upcoming Shoreham exercise planned for February 13, 1986, FEMA intends to observe a number of LERO primary response capabilities. This observation will entail an examination of facilities, plans, and communications, but will not entail interaction with the public that would be affected in the event of an actual emergency. Specifically, FEMA plans to observe the following facilities and/or activities:

- LERO Emergency Operations Center
- Emergency Operations Facility
- Emergency News Center
- Reception Center
- Congregate Care Centers

- Emergency Worker Decontamination
- General Population Bus Routes
- School Evacuation
- Special Facilities Evacuation
- Mobility Impaired at Home
- Route Alerting
- Traffic Control Points
- Impediments to Evacuation
- Radiological Monitoring
- Accident Assessment

The Motion

The State, County and Town oppose the holding of this exercise of the LILCO plan for essentially two reasons: (1) they contend that various court decisions make clear that LILCO cannot implement its plan, so an exercise of the plan would be useless; and (2) they contend that, if the exercise is designed to test the implementability of the LILCO plan using a simulated State and County response which was never litigated before any NRC Board, it would be irrelevant to the licensing process for Shoreham, and thus the results of the exercise would be worthless for that reason as well. We reject both reasons.

As to the first argument, it is true that a New York State Court has held that, in the event of an actual emergency, certain elements of LILCO's emergency plan can only be implemented by New York State or Suffolk County authorities. Cuomo v. LILCO, No. 84-4605 (N.Y. Sup. Ct., Feb. 20, 1985). The exercise does not flaunt that decision; to the contrary, it presumes the validity of the limits on LILCO's authority to implement its plan as set forth

in that case; the only elements of LILCO's emergency plan which will be tested are those that LILCO may lawfully do on its own. The exercise of these elements of the LILCO plan will not, however, be useless. To the contrary, the exercise is expected to provide important and material information to the Commission. For example, as we noted when we directed the NRC staff to request FEMA to schedule an exercise, the exercise will assist us in determining whether any defects that exist as a result of "the limitations of LILCO's plan when executed under the state and county restrictions" (memorandum from S. Chilk to W. Dircks, dated June 4, 1985 at 1), are significant under our regulations. See 10 CFR 50.47(c)(1). Therefore, it is simply incorrect for the movants to argue that the exercise is useless because not all of the plan's elements will be tested.

As to the second argument, the LILCO Plan in part states that:

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.

Thus a fundamental factual premise for movants' second argument, i.e., that the plan litigated in the Shoreham licensing proceeding provides solely for a LILCO-only response, is incorrect. The plan provides for planned LILCO action in the event of an ad hoc State and County response to an actual emergency. Not only does the LILCO plan anticipate the possibility of such a response, such a response has been, in effect, promised by the State and County. The County Executive has stated that in the event of an actual radiological accident at Shoreham he would "respond to the best of [his] ability and in accordance with the duties and obligations placed upon [him] by Article 2-b of the Executive Law" (letter from P. Cochalan to T. Reveley dated June 26, 1985),

and Governor Cuomo has stated that in a radiological emergency, "both the State and the County would help to the extent possible; no one suggests otherwise." Governor's Press Release dated December 20, 1983.

In order to test LILCO's planned response to ad hoc governmental participation in an actual emergency and to add more realism to the exercise, federal employees will play the role of such officials during the exercise. Through this role-playing, the NRC is attempting to evaluate LERO's capability (1) to accommodate the presence of state and local officials, (2) to support those officials using the resources available through LERO, and (3) to provide those officials with sufficient information to carry out their state and county responsibilities. These "actors," however, will be instructed not to play decisionmaking roles, not to assume any command and control authority, not to interact with members of the public so as to lead anyone to believe that they are actually county officials, and not to actually perform any state or local functions exclusively reserved to state or county officials by state or county laws. The basis for the number of actors to be used in this aspect of the exercise and the detailed instructions they will be provided are based, primarily, on New York State plans for other nuclear power plants and the manner in which New York State personnel and other counties have participated in other New York facility exercises.

Thus, contrary to movants' assertion, the simulation to be performed during the exercise will test an actual and important aspect of LILCO's plan. Indeed, the exercise currently scheduled, including the role playing, corresponds exactly with the current status of emergency planning for Shoreham.

Conclusion

In sum, we find that the motion presents no reason why the exercise should be cancelled.¹ We further find that the conduct of this exercise, which is permitted by our regulations, is under current circumstances both lawful and necessary to fulfill our responsibility under the Atomic Energy Act to protect the health and safety of the public.² The exercise will allow us to evaluate whether the LILCO plan, as described above, is as good as LILCO claims it is or, conversely, is as bad as the State, County, and Town assert.

¹The County appears to assert (Motion, p. 21) that, in the event of a radiological accident at Shoreham, County personnel could not lawfully make use of the LILCO plan, even if this was under the circumstances the best way to protect the safety of the citizens of Suffolk County. We find this assertion to be too preposterous an abrogation of the County's obligations to its citizens to be taken seriously.

The motion also states that NRC may not request an exercise at a plant "which has been denied an operating license." (See, e.g. Motion at 3). However, the Commission itself has not reviewed the evidentiary record on the adequacy of LILCO's plan, and consequently there is no final agency action denying LILCO an operating license.

Movants also seem to argue that the Commission erred by failing to conduct a formal Commission meeting when it decided to request the exercise. See Motion at 7. No law requires such a meeting.

²Section 103d., 42 U.S.C. § 2132d., provides that:

... no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Section 161c., 42 U.S.C. § 2201c., authorizes the Commission to:

... make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder.

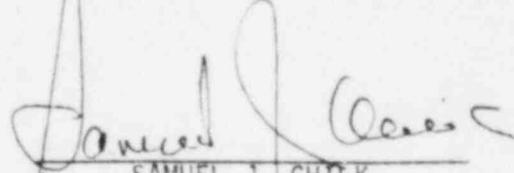
Accordingly, we decline movants' invitation to cancel the exercise based on movants' assertion that the exercise is useless because it cannot prove that LILCO's emergency plan is sufficient to meet NRC requirements. While, for the reasons set forth herein, we believe that the exercise is very useful, we obviously take no position on whether the exercise will satisfy our emergency planning requirements. For the past several years the State, County, and Town have been claiming that no adequate plan can be developed for Shoreham, and that the LILCO plan is inadequate. They are entitled, as litigants before us, to advocate that position; they are not, however, entitled to obstruct our inquiry into the facts necessary to enable us to resolve that assertion.³

³The motion did not inform us of a pending development directly related to the motion: a County law, now in effect and under County consideration when its motion was filed, that is apparently intended to make NRC participation in the exercise a crime should the County legislature disapprove of it. Because it has not been raised by the movants as a basis for their motion, we do not deal with the new local law in this Order.

Chairman Palladino and Commissioner Asselstine disapprove this order. Chairman Palladino provided dissenting views with which Commissioner Asselstine agreed. The additional views of the Commission majority are also attached.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 30th day of January, 1986.

DISSENTING VIEWS OF CHAIRMAN PALLADINO

I BELIEVE MY POSITION ON THE SCHEDULING OF AN EXERCISE AT THIS TIME IS WELL KNOWN. THAT POSITION IS AS FOLLOWS:

AFTER THINKING ABOUT THIS ISSUE A GREAT DEAL, I CONCLUDED THAT ONLY A POTENTIALLY WORKABLE PLAN SHOULD BE EXERCISED. GIVEN THE LICENSING AND APPEAL BOARD DECISIONS THAT LILCO DID NOT HAVE THE LEGAL AUTHORITY TO PERFORM MANY OF THE REQUIRED EMERGENCY RESPONSE FUNCTIONS SET OUT IN THE PROPOSED PLAN, I QUESTIONED THE USEFULNESS OF THE DRILL BEING PROPOSED. FURTHER, THE RESULTS OF A DRILL OF AN INADEQUATE PLAN MIGHT CREATE NEW HEARING ISSUES WHICH WOULD NEED TO BE ADDRESSED AND THAT MIGHT NOT ARISE IF ONE WERE TO EXERCISE ONLY AN ADEQUATE PLAN.

I BELIEVE THAT AN EXERCISE AT SHOREHAM WHICH INVOLVES PARTICIPATION OF THE STATE, SUFFOLK COUNTY, AND THE UTILITY COULD PROVIDE, ON THE OTHER HAND, USEFUL INFORMATION ON THE ADEQUACIES OF EMERGENCY PREPAREDNESS AT SHOREHAM THAT WOULD BE OF USE AND INTEREST TO ALL PARTICIPANTS.

UNTIL THE COMMISSION COMPLETES ITS REVIEW OF THE EMERGENCY PLANNING LEGAL AUTHORITY ISSUES AND DEPENDING UPON THE OUTCOME OF THAT REVIEW, I WILL CONTINUE TO HOLD THE ABOVE-STATED VIEW. I WOULD ADD THAT I HAVE NOT PREJUDGED, AND DO NOT INTEND TO

PREJUDGE, ANY OPEN ISSUE IN THE SHOREHAM OPERATING LICENSE
PROCEEDING.

Additional Views of Majority

While we share our colleagues' views that the February 13, 1986, exercise would be more useful to us in discharging our regulatory responsibilities were Suffolk County and New York State to participate (and indeed we would be inclined to postpone the exercise were state and local participation certain in the near future), we are aware of nothing which suggests that there is any realistic chance of that occurring. Given the intransigence of these governmental bodies we believe our responsibilities require that we proceed with an exercise without them.

For the reasons stated herein, we simply disagree with the view that this exercise will not provide useful information. Whether the LILCO plan adequately accounts for a promised, but ad hoc, governmental response (the "realism" argument) is a matter on which we express no opinion at this time. As noted in our opinion, however, we expect the upcoming exercise to provide us with important factual information to help us resolve this issue.

Shoreham

United States Senate

WASHINGTON, D.C. 20510

February 4, 1986

Dear Mr. Chairman:

For some time I along with many others have been urging on you my view that the exercise of the emergency plan for the Shoreham nuclear plant, scheduled for February 13, 1986, in collaboration with the Long Island Lighting Company, would be profoundly unwise, probably illegal, and a waste of public funds. I have argued particularly, though not exclusively, against the "simulation" by federal officials of hypothetical behaviors of state and local officials responsible for the health and safety of Suffolk residents. This purported substitute for local participation is extravagantly ill-conceived.

Perhaps you are being advised that the local opposition to the Shoreham plant threatens the future of nuclear power in this country. May I respectfully offer my judgement that the reverse is more nearly true. If anything like the future of nuclear power in the United States is at stake, the cause is the actions of befuddled administrators who are forcing this ill-conceived exercise on the people of Long Island while they hope no one else is watching. They are wrong. As a member of the Nuclear Regulation Subcommittee of the Committee on Environment and Public Works, I can assure you that this fiasco will be taken as prima facie evidence of elemental incompetence on the part of those responsible for nuclear regulation in the Federal Government.

Put plain, if you believe that the extraordinary simulation planned for February 13 is a real test of a real question, then the you will believe anything. If this is true then the nation is in danger as well as the people of Long Island, then we had best close the Commission down.

I beg of you to consider how much is at issue. Considering the potentially enormous stakes, one would have hoped that the exercise planned for February 13 would have yielded by now to some more sensible course.

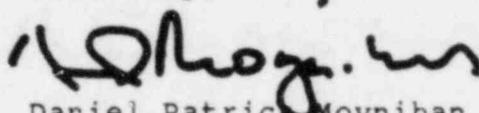
Since that hope has been disappointed thus far, I write to advise you that I am in the process of having embodied in a formal Declaration and Remonstrance setting out the legal and prudential considerations that should inform the ultimate exercise of judgment. The document should be ready for submission to you and others no later than February 10, 1986. While it might prove to reveal no surprises, it will at least marshal in one package the relevant considerations, submitted in the understanding that those who govern judiciously accept the

~~860210044~~ 2pp.

2-4-86

obligation to weigh and reconsider critical issues. You may wish in the meantime at least to postpone the February 13 exercise. Or you may be persuaded even now that the exercise is a serious mistake. In any event, I believe this Declaration and Remonstrance should be lodged with you for your convenience and as a record of the matters you have been called upon to consider.

Sincerely,



Daniel Patrick Moynihan

Honorable Nunzio J. Palladino
Nuclear Regulatory Commission
1717 H Street, NW
Washington, DC 20555