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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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 INTERVENORS'  
MOTION FOR RECONSIDERATION OF THE FEBRUARY 24, 1987  
ORDER CONCERNING EMERGENCY BROADCAST SYSTEM CONTENTION

I. INTRODUCTION

On March 7, 1988, Intervenors moved this Board to reconsider those portions of its February 24, 1988 Order <sup>1/</sup> denying admission of the bases 1.D, 1.E, 2.B, 2.C and 3 for Intervenors' proposed contention regarding LILCO's revised emergency broadcast system. <sup>2/</sup> For the reasons stated below, Intervenors' Motion should be denied.

II. BACKGROUND

The record on the Emergency Broadcast System (EBS) under the LILCO offsite emergency response Plan was reopened by the Commission

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- 1/ Memorandum and Order (Board Ruling on Contentions Relating to LILCO'S Emergency Broadcast System) ("Order").
  - 2/ Suffolk County, State of New York and Town of Southampton Motion for Reconsideration of this Board's Memorandum and Order Ruling on Contention Relating to LILCO's Emergency Broadcast System ("Motion").

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in CLI-87-05. <sup>3/</sup> The Commission ruled that while it was premature to consider any new contentions regarding this system until LILCO filed its revised plan, the Licensing Board was instructed "to admit 'new' contentions only to the extent they assist in focusing further the litigation on earlier-admitted issues, and only after LILCO provides updated information on public notification procedures." 25 NRC at 890.

LILCO filed its updated information on the emergency broadcast system, accompanied by a motion for summary disposition of this issue on November 6, 1987. The Licensing Board denied summary disposition and, pursuant to CLI-87-05, provided Intervenors an opportunity to submit contentions regarding the adequacy of the revised EBS. <sup>4/</sup> The Board specifically ruled that its consideration of forthcoming contentions would be guided by the Commission's remand instructions and the only public notification procedures that were previously litigated in this proceeding "concerned the adequacy of the emergency plan's provision for radio transmission of EBS messages and activation of tone alert radios. Any new contentions must focus on these issues as they are impacted by LILCO's new arrangements for conducting emergency notifications." Order at 1, quoting Memorandum and Order, December 21, 1987, at 5.

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<sup>3/</sup> Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-05, 25 NRC 884 (1987).

<sup>4/</sup> Memorandum and Order (Ruling on Applicant's Motion of November 6, 1987 for Summary Disposition of the WALK Radio issue), December 21, 1987.

Intervenors filed a single new contention with numerous bases on January 12, 1988. <sup>5/</sup> The Board issued its Order on February 24, 1988 wherein it admitted the contention and bases 1.A, 1.B, 1.C, 1.F and 2.A, while denying admission of bases 1.D, 1.E, 2.B, 2.C, 3 and 4. Intervenors now seek admission of denied bases 1.D, 1.E, 2.B, 2.C and 3 in their request for reconsideration, but do not seek reconsideration of the denial regarding basis 4.

### III. DISCUSSION

#### A. Board Did Not Err in Limiting Consideration of the Emergency Broadcast System to the Plume Exposure EPZ

The Board denied admission of bases 2.C and 3, noting that there is no requirement in NRC regulations or case law which imposes an obligation on an Applicant to communicate EBS messages to members of the public outside the EPZ. Order at 3.

Intervenors continue to argue that detailed emergency planning is required in areas beyond the plume exposure EPZ, under 10 C.F.R. § 50.47(b)(10) and NUREG-0654 section II.J.11. See Motion at 4. The language in neither section supports that argument. Each of those sections merely provides, inter alia, that protective actions for the ingestion pathway shall be developed. The requirement for prompt notification of the public is set forth in 10 C.F.R. § 50.47(b)(5) and NUREG-0654, section II.E.6. These sections call for prompt notification

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<sup>5/</sup> Emergency Planning Contention Relating to LILCO'S New Emergency Broadcast System Proposal, January 12, 1988.

of the public in the plume exposure EPZ and not in the ingestion pathway EPZ.

Intervenors also misconstrue the Board's ruling concerning protective actions for the ingestion pathway in the PID. <sup>6/</sup> In fact, the Board pointed out that Intervenors' challenge to the adequacy of the ingestion pathway portions of the Plan focused only on LILCO's ability to impose protective action recommendations on producers or processors of food. 21 NRC at 875. No other part of the Plan (including the emergency broadcast system and the broadcasting of emergency information) was at issue regarding the ingestion pathway protective actions. Id.

Similarly, Intervenors are wrong in suggesting that the Board was referring to a geographical restriction when it ruled that basis 3 on shadow evacuation "would have no place before us in our restricted coverage of LILCO's new EBS system." Order at 7. The Board stated that its denial of these bases for the contention was based on its responsibility, as delineated by the Commission, to assure that any new contention focuses on issues admitted earlier in the proceeding. Id. at 6-7. "Shadow evacuation" was not part of the former contentions on public notification. There is no basis for the assertion that the Board was referring to any other type of restriction other than the one imposed on it by the Commission in CLI-87-05 regarding the scope of admissible contentions.

Moreover, Intervenors' argument that prompt notification is required for the entire ingestion pathway EPZ challenges the assumption

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6/ LBP-85-12, 21 NRC 644 (1985).

underlying the Commission's emergency planning regulations themselves. As this Board correctly stated, the emergency planning regulations are premised on detailed planning within the EPZ, allowing for an expansion of response effort if such becomes necessary. Order at 4. <sup>7/</sup>

Intervenors' continued attempts to expand the requirements for detailed emergency planning beyond the plume exposure EPZ are not supported in the regulations or the record of this proceeding. Thus, the Board was correct in denying admission of bases 2.C and 3 of the contention, which allege inadequacies in EBS coverage for the public outside the 10 mile EPZ, as beyond the scope of litigable issues defined by CLI-87-05.

B. The Board Did Not Err in Ruling Irrelevant the Issues of Listenership and Credibility of the EBS.

The Board ruled that bases 1.D and 1.E were neither relevant nor did they assist in focusing on the adequacy of LILCO's new EBS system. Order at 5. The Board also rejected basis 2.B for similar reasons discussed below.

Intervenors argue that the Board did not seriously consider their arguments concerning listenership and credibility. Motion at 10. Intervenors ignore the Board's discussion on the admissibility of bases 1.D, 1.E and 2.B when they suggest that the Board did not consider

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<sup>7/</sup> See also, Southern California Edison Co., (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 533, 535 (1983).

their February 5, 1988 response <sup>8/</sup> to Staff and LILCO objections relating to the EBS contention. Id. The Board explicitly refers to Intervenor's argument in ruling that the "listenership rate of a lead radio station like WPLR and the public perception of that station are not issues designed to supply requisite information concerning the adequacy of the EBS system to operate in an emergency." Order at 5.

Similarly, Intervenor's claim that the Board has impermissibly made a decision on the merits in deciding the relevance of bases for the contention is not well taken. See Motion at 10. Rather, as the Board correctly found, basis 2.B (and 2.C) are "not remotely connected to contentions 20 and 57, the subject of previous litigation nor do they assist in evaluating the adequacy of the new EBS system. Neither are these issues addressed by NRC regulatory requirements." Order at 7.

The technical capacity to broadcast information during an emergency is at issue, and bases for the contention addressing that issue have been admitted. The average market share which any given station commands at any given time, however, is not germane to a determination as to that station's capacity to broadcast information during an emergency. Thus, the Board correctly denied admission of bases 1.D, 1.E, and 2.B.

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<sup>8/</sup> Governments' Response to Staff and LILCO Objections to the Emergency Planning Contention Relating to LILCO's New Emergency Broadcast Proposal, February 5, 1988.

III. CONCLUSION

The Licensing Board correctly denied admission of bases 1.D, 1.E, 2.B, 2.C, 3 and Intervencers' Motion for reconsideration should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard G. Bachmann', written in a cursive style with a long horizontal flourish extending to the right.

Richard G. Bachmann  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 22nd day of March, 1988.