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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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BRANCH

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)

REPLY OF SUFFOLK COUNTY, THE STATE OF NEW YORK
AND THE TOWN OF SOUTHAMPTON TO THE NRC STAFF
RESPONSE IN SUPPORT OF LILCO'S MOTION FOR SUMMARY
DISPOSITION OF THE HOSPITAL EVACUATION ISSUE

I. INTRODUCTION

On December 18, 1987, LILCO moved for summary disposition of the hospital evacuation issue.^{1/} On January 15 and 19, respectively, the NRC Staff^{2/} and the Governments^{3/} filed responses to

^{1/} LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Dec. 18, 1987) (hereafter, "LILCO's Motion" or "Motion").

^{2/} NRC Staff Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Jan. 15, 1988) (hereafter, "Staff Response").

^{3/} Suffolk County, State of New York and Town of Southampton Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Jan. 15, 1988) (hereafter, "Governments' Response").

LILCO's Motion. The Staff supported LILCO's Motion. Therefore, in accordance with 10 CFR § 2.749(a), the Governments reply to the new facts and arguments proffered by the Staff.

The Staff's Response offers little in the way of new facts or argument. Rather, in a series of largely conclusory generalizations, the Staff gives sweeping support to almost every LILCO assertion. Indeed, the Staff is even willing to accept as adequate LILCO's characterization of Revision 9 pertaining to hospital evacuation before seeing, much less reviewing, Revision 9. Thus, the Staff is willing to take it on faith that whatever LILCO proposes will satisfy the regulations.

The Staff's position is preposterous. LILCO's 1984 hospital plan violated the regulations. That is the clear holding of the Appeal Board (see Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 NRC 135, 154-57 (1986)) and the Commission. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC __, slip op. (Nov. 5, 1987). In light of LILCO's past failure to satisfy the regulations -- and in light of the Staff's past misguided support for LILCO's defective plan -- there can be no possible basis to accept on faith that LILCO's next hospital effort will rectify the violations. Indeed, as demonstrated in the Governments' January 15 Response, there are strong initial indications that LILCO's new "plan" will be no better than the last one. See

Governments' Response at 14-20. ALAB-832 and CLI-87-12 attest to LILCO's past failures to satisfy the regulatory requirements. There can be no basis for finding that LILCO's yet-to-be reviewed Revision 9 makes past deficiencies insignificant and appropriate for Staff delegation. Indeed, given the Staff's unflinching support for whatever LILCO asserts on hospitals, there can be no basis for any delegation to the Staff, even assuming that some issues were appropriate for such delegation. The issues related to the adequacy of the hospital plan are not appropriate for delegation in any case; but, as demonstrated below, the Staff has given up any claim of fairness or impartiality and has become LILCO's advocate, thus making it clear that in no circumstance would any delegation be appropriate.

Many of the matters raised by the Staff were dealt with by the Governments in their January 15 Response. The Governments will not repeat those views here but, as appropriate, will reference the Board's attention to that Response. That Response makes clear that the Motion must be rejected for multiple reasons, including:

- The Motion is premised upon a purportedly new hospital evacuation scheme. Given this new scheme, LILCO cannot rely upon its 1984 scheme -- or the reversed April 1985 Partial Initial Decision ("PID") findings thereon -- in

purported support of LILCO's new 1988 scheme. Governments' Response at 4.

-- LILCO's new scheme has been presented only in skeletal form. Many essential details have not been provided. Summary disposition cannot be considered in these circumstances. 10 CFR § 2.749(c); see Governments' Response at 11-14 and Affidavit of Michael S. Miller attached thereto.

-- LILCO's Motion relies upon the PID in significant respects. However, the PID portions relied upon by LILCO have been reversed in most instances. Summary disposition based upon a reversed decision is not possible. Governments' Response at 16.

-- The deficiencies in LILCO's planning clearly are significant. There has been no showing that the radiation doses which must be assumed to occur in a serious accident do not constitute a health hazard. Governments' Response at 33-34. The Motion clearly must be rejected.

-- There are multiple facts in dispute, which necessarily bar the grant of summary disposition. Governments' Response at 21-28 and attached Statement Of Material

Facts As To Which There Exists A Genuine Issue To Be Heard On Matters Raised By LILCO's Motion For Summary Disposition Of The Hospital Evacuation Issue (hereafter, "Statement of Material Facts").

The Staff offers three basic arguments in support of LILCO's Motion. First, the Staff argues that the hospital evacuation issue on remand is a limited issue, and thus, is susceptible to summary disposition. See Staff Response at 4 ("matters to be decided on hospital evacuation are limited"). Second, the Staff argues that the deficiencies in LILCO's hospital evacuation plan are "not significant" within the meaning of 10 CFR § 50.47(c)(1). See Staff Response at 7. Finally, the Staff argues that even if the Board concludes that the deficiencies are significant, the changes LILCO has promised to incorporate in Revision 9 are sufficient to eliminate those deficiencies. See Staff Response at 9.

The Board must reject the Staff's position in its entirety. The Staff has misconstrued the record, misstated legal principles, disregarded material facts in dispute, and ignored the seriousness of the deficiencies in LILCO's Plan. The Governments set forth these errors below.

II. THE APPROPRIATENESS OF SUMMARY DISPOSITION

The Staff's initial argument is that the hospital evacuation issue is appropriate for summary resolution because the issue on remand is limited. The Staff attempts to "prove" the issue is limited by comparing it to the issues presented in the remanded school bus driver role conflict proceeding. See Staff Response at 4.4/ The Staff then attempts to buttress this assertion with the argument that the hospital remand orders of the Appeal Board and the Commission did not specifically require additional hearings and the receipt of new evidence. Id.

The Staff's argument about the "limited" nature of this remand proceeding is wrong. While the Staff attempts to suggest that this proceeding concerns only Contention 72.D (concerning LILCO's failure to explain how and when a hospital evacuation might be ordered) (Staff Response at 1), it is clear that the

4/ The Staff goes to great lengths to distinguish the hospital evacuation issue on remand from the school bus driver role conflict issue, where the Board recently denied LILCO's motion for summary disposition and ordered the commencement of discovery. Staff Response at 4. The Staff's comparison is meaningless. The Staff supported LILCO's motion for summary disposition on the school bus driver role conflict issue and urged that the Governments were not entitled to any hearing. See NRC Staff's Response to LILCO's Motion for Summary Disposition of Contention 25.C ("Role Conflict" of School Bus Drivers) (Nov. 13, 1987). The Staff's position was rejected by the Board. Memorandum and Order (Ruling on Applicant's Motion of October 22, 1987 for Summary Disposition of Contention 25.C Role Conflict of School Bus Driver), slip op, (Dec. 30, 1987) (hereafter, "Dec. 30 Bus Driver Order"). It ill-behooves the Staff to pretend to be a reliable interpreter of these Appeal Board and Commission orders when it is clear that the Staff's past interpretation has been rejected.

Appeal Board and Commission actually reversed the PID on all hospital-related issues, i.e., Contention 72.D, plus other issues as well: LILCO's failure to include evacuation time estimates (72.A); the lack of reception hospitals (72.C); and the ad hoc nature of LILCO's hospital "plan" (72.E). See ALAB-832, 23 NRC at 156-57; CLI-87-12, slip op. at 22.

Thus, contrary to the Staff assertion, there is nothing limited at all about the hospital issue. There had been a complete lack of acceptable hospital planning by LILCO. This led to Appeal Board and NRC reversal of the PID. Thus, there must be a full and complete examination of all issues.

The Governments have demonstrated that there are numerous material issues in dispute which preclude summary resolution of the hospital evacuation plan issue at this time. The Governments will not recite here the list of material issues in dispute;^{5/} however, the material issues include: whether LILCO's proposal adequately identifies the circumstances under which EPZ hospitals will be evacuated; whether LILCO has identified a sufficient number of beds at reception hospitals; whether LILCO has accurately estimated the total ambulatory, wheelchair-bound and stretcher-bound population of the EPZ hospitals; whether the assumptions underlying LILCO's hospital evacuation time estimates are valid, accurate and appropriate; and whether LILCO satisfies

^{5/} See Governments' Response at 21-28 and Statement of Material Facts (attached thereto).

10 CFR § 50.47(b)(10) when it relies upon a planning approach which fails to include a range of protective actions, including evacuation of at least a portion of the hospital population early in an emergency in order to achieve dose savings. The Staff's Response provides no basis to find that these and the other disputed issues identified by the Governments can be resolved summarily.

II. Significance of Deficiencies

The Staff argues that the significance of deficiencies in LILCO's 1984 hospital evacuation plan can be determined "only in the totality of the circumstances" and that where defects are not significant, they do not present an impediment to licensing. Staff Response at 6. The Staff's views must be rejected. The Staff misstates the legal standard and also fails to make any showing that the deficiencies in LILCO's 1984 planning are insignificant for a hospital patient who is denied the prompt protective action of evacuation due to LILCO's failure to have planned.^{6/}

^{6/} The Governments must stress also that the Staff, like LILCO, has ignored the fact that LILCO no longer relies on its 1984 plan. LILCO has scrapped that plan and now proposes new procedures in Revision 9. The Board, therefore, cannot possibly consider making a Section 50.47(c)(1) analysis concerning a 1984 plan which no longer is being relied upon. See Governments' Response at 29-30. When the NRC suggested in CLI-87-12 that Section 50.47(c)(1) consideration might be appropriate, it obviously did not contemplate that LILCO would alter the prior plan.

First, the Staff's "totality of the circumstances" standard ignores a critical legal principle. One only looks at the totality of the circumstances" in a 10 CFR § 50.47(c)(1) context after there has first been a determination that the deficiencies are the type that potentially are appropriate for Section 50.47(c)(1) resolution. Section 50.47(c)(1) may be applied where the deficiencies "only reflect the actual state of preparedness which may be easily remedied" 47 Fed. Reg. 30232, 30234 (1982); see Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-809, 21 NRC 1605, 1612, vacated as moot, CLI-85-16, 22 NRC 459 (1985).

The deficiencies at issue in LILCO's 1984 Plan as found by the Appeal Board and the NRC do not "only reflect the actual state of preparedness" Rather, they reflect LILCO's basic failure to plan at all -- LILCO's improper reliance on an ad hoc response, as alleged in Contention 72. Thus, the deficiencies are per se unsuited to potential Section 50.47(c)(1) resolution. See Governments' Response at 34-35.

Similarly, there has been no showing that the 1984 LILCO Plan deficiencies can be "easily remedied." Since LILCO's Motion was filed before Revision 9 was issued and since neither the Staff, the Governments, nor the Board has had the opportunity to address Revision 9 in the context of the Motion, there can be no

basis to find that the past deficiencies can be remedied at all, much less "easily."

Second, the Staff's Section 50.47(c)(1) "analysis" of the significance of the deficiencies in LILCO's hospital evacuation plan is wholly devoid of merit. The Staff simply revives LILCO's oft-expressed contention that the alleged remoteness of the likelihood of an accident requiring evacuation of the entire plume exposure EPZ, together with the shielding to be expected by hospital buildings, frees LILCO of the obligation to provide a detailed and implementable plan to evacuate the EPZ hospitals. See Staff Response at 8. The Appeal Board has expressly rejected this contention, and the Commission has concurred. CLI-87-12, slip op. at 22 (emphasis added) ("Even though sheltering will quite likely be the preferred protective action for EPZ hospitals in the event of a serious accident, evacuation should not be prejudiced by the failure to plan in advance."); ALAB-832, 23 NRC 135 at 156 (" . . . the regulations do come into play and counter any thesis that such transportation requires no pre-planning but can be left to ad hoc resolution once the emergency has occurred.").

Third, in addressing the significance of the deficiencies in LILCO's hospital evacuation planning, the Staff fails to set forth any rationale why the deficiencies are "not significant" within the meaning of 10 CFR § 50.47(c)(1). Instead, the Staff

merely cites NRC precedent for the proposition that where defects are not significant, they do not present an impediment to licensing. See Staff Response at 6 (citations omitted). The argument simply begs the question whether the defects in LILCO's planning are in fact "not significant." As demonstrated by the Governments on January 15, however, the exposures potentially affecting hospital patients clearly are significant; LILCO's "plan" to ignore dose-saving planning options (part of the "range of protective actions" required by Section 50.47(b)(10)) and to "accept" doses up to five rems because they are not "excessive" is a violation of the emergency planning rules. Governments' Response at 33-34.

The NRC rules require LILCO to assume that a serious accident occurs. In a serious accident, exposures above the 1-5 rem PAG limit clearly may occur at the EPZ boundary, even assuming significant dose reductions via sheltering. Neither LILCO nor the Staff have attempted -- nor could they -- to show that exposures in the 1-5 rem range are "insignificant." They clearly are significant, particularly since sound emergency planning principles require LILCO to attempt to avoid doses altogether. For this reason, LILCO's Motion must be rejected. See Governments' Response at 32-34, 35-36.^{7/}

^{7/} It is no help either for LILCO and the Staff to state in gross generalization that it might be harmful to attempt to move hospital patients. The hospital patients in the EPZ do not represent a single stereotype. They include new mothers and infants who may be very sensitive to radiation and for whom
(footnote continued)

Fourth, the Staff concedes that LILCO's previous hospital evacuation plan consisted of an ad hoc approach. See Staff Response at 8. The Staff argues, however, that factual "findings" in the PID support its argument that any deficiencies in LILCO's ad hoc evacuation plan are not significant since sheltering remains the primary protective action response. See id. ("evacuation as only an ad hoc back-up measure . . . not a deficiency in the LILCO plan 'significant for the plant in question'").

This argument is nothing more than a repackaging of LILCO's assertion that it need not provide detailed planning for evacuation of the EPZ hospitals because the likelihood of an accident requiring evacuation of the EPZ hospitals is remote. As noted by the Appeal Board in ALAB-832, the argument flies in the face of established Commission authority that the likelihood or probability of actually having to implement an evacuation during an emergency is irrelevant to the determination whether an emergency plan is adequate and in compliance with NRC regulations. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 713 (1985), review declined,

(footnote continued from previous page)
prompt movement would present no significant health risk at all. Yet, LILCO simply ignores these patients in its 1984 "plan." There is no plan at all to provide prompt protective actions for these persons.

CLI-86-5, 23 NRC 125 (1986); Cincinnati Gas and Electric Co.
(Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 774
n.19 (1983).^{8/}

Finally in making its "not significant" argument, Staff relies upon the PID, despite the fact that it is clear that the portions relied upon have been reversed. For instance, the Staff states:

As this Board has already concluded "LILCO's Plan for protective actions for hospital patients is a reasonable one."

Staff Response at 7 (quoting PID, 21 NRC at 849). It is seriously misleading for the Staff to suggest that this "conclusion" has any validity since the Appeal Board and the NRC found that LILCO's Plan violates the regulations. A plan that violates the regulations is hardly "reasonable" and defects in such a plan can hardly be found to be insignificant.

III. The Effect of Revision 9

The Staff's final argument is that even if the Board determines that the deficiencies in LILCO's 1984 hospital evacuation

^{8/} The Governments have discussed this authority in detail previously and do not repeat that discussion here. See Governments' Response at 31-32 and n.17.

plan are significant, LILCO "has demonstrated that Revision 9 will sufficiently supplement its plan to eliminate those deficiencies." Staff Response at 9. Therefore, the Staff contends that it is appropriate to delegate the remaining hospital evacuation issues to the Staff for confirmation. Id.

The Board must reject the Staff's analysis for three reasons. First, the Staff plainly is wrong when it asserts that matters related to LILCO's emergency planning for hospital evacuation have advanced to the stage where remaining matters can be delegated to the Staff for confirmation. Second, the Staff's actions in this case -- particularly the Staff's acknowledged support for LILCO's licensing efforts -- render the Staff unsuited for the delegation of confirmatory items. Finally, the Staff ignores that there are material facts in dispute. The Staff's reliance upon an affidavit purporting to agree that LILCO's new hospital evacuation time estimates are reliable is to no avail. The affidavit is conclusory, unreliable, and itself raises a substantial question regarding the data made available to the NRC Staff.

A. Delegation to the NRC Staff

The Staff's Response misstates the cited authority regarding the appropriateness of delegating matters to the Staff for confirmation and understates the scope of the outstanding hospital evacuation issues. Even the authority cited by the

Staff makes clear that "delegation to the staff of post-hearing verification of certain emergency planning measures can be proper, depending on exactly what is left for verification." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1600 (1985) (emphasis added). Matters which may properly be left to the Staff are limited to minor procedural deficiencies or issues where on-the-record proceedings would not be helpful for resolution of the issue.^{9/}

The cases cited by the Staff do not support delegating the outstanding hospital evacuation issues to the Staff for resolution. For example, the Waterford decision concerned, inter alia, the installation and testing of the siren system. See Louisiana Light and Power Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1104-05 (1983). The intervenors in that case were not challenging the adequacy of the warning system itself or the Staff and FEMA review process. See id. at 1105. Further, the Appeal Board noted that there was no evidence in the record to assume that the siren system would not function as proposed. Id. The sole objection at issue was to the mere fact of post-hearing Staff verification of the installation of the siren system.

^{9/} See, e.g., Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 and n.8 (1974); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LEP-82-39, 15 NRC 1163, 1216 (1982), aff'd, ALAB-717, 17 NRC 346 (1983).

The case at hand is sharply different. The Governments have challenged all aspects of the adequacy of LILCO's proposed hospital evacuation plan. See PID, 21 NRC at 1017-18 (setting forth Contentions 72.A, 72.C, 72.D, and 72.E).^{10/} The Governments have alleged, among other things, that: LILCO does not identify adequate personnel and resources to evacuate the EPZ hospitals; LILCO does not have adequate provisions for vehicles to transport evacuees from the EPZ hospitals; LILCO does not have adequate procedures to determine how and when to evacuate; and LILCO's plan is ad hoc, which is contrary to the regulations. See Contention 72; Governments' Response at 14-20 and Statement of Material Facts. It is the Licensing Board, not the Staff,

^{10/} The Detroit Edison decision cited by the Staff similarly illustrates why LILCO's hospital evacuation plan is not properly susceptible to Staff confirmation. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1064-68 (1983). In Detroit Edison, although the draft County Plan was not final, it had already been exercised; it had been the subject of a so-called "final" FEMA finding; and the intervenor had forsaken the opportunity to contest whether the draft emergency plan could be implemented. 17 NRC at 1066-67. In those circumstances, the Board ruled that the intervenors' "bare bones" claim that the licensing board erred by issuing a decision in the absence of a final Monroe County plan was unpersuasive (id. at 1067); the draft plan in question was sufficiently developed to support a conclusion that the state of emergency preparedness provided reasonable assurance that adequate protective measures could and would be taken in the event of a radiological emergency at the Enrico Fermi plant. Id. at 1066-67.

By contrast, LILCO's hospital evacuation "plan" does not even approach the level of development present in Detroit Edison. The 1988 hospital plan has neither been exercised, nor has it been the subject of FEMA findings. Indeed, it has never even been looked at. Rather, it has simply been outlined in the LILCO papers supporting a motion for summary disposition. Thus, Detroit Edison only further illustrates why LILCO's hospital evacuation plan is not susceptible to Staff confirmation, and therefore, why summary disposition must be rejected.

which has the duty to make findings on critical issues of health and safety prior to the issuance of an operating license.^{11/} See Governments' Response at 19.

The Staff also understates the scope and importance of the outstanding hospital evacuation planning issues. For example, the Staff states that letters of agreement are merely a confirmatory item since the only issue concerning the letters is their existence. Staff Response at 10. The Staff is in error on three counts.

First, the Staff is wrong when it asserts that LILCO has identified in its Plan those hospitals it intends to call upon in the event of an emergency requiring evacuation. See Staff Response at 10. In fact, the LILCO Plan simply lists 26 hospitals without any indication of their willingness, availability, or capability to receive evacuees from the EPZ hospitals. See Governments' Response at 16, 25-26. Moreover, LILCO's Motion has indicated that Revision 9 will delete an unstated number of

^{11/} See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 737 (1975); Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951-52 (1974); Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973). See also Public Service Company of Indiana (Marble Hill Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978) (Staff Counsel urges that factual determinations related to the issue of an applicant's financial obligations should not be left to the Staff because "delegating open matters to the staff for post-hearing resolution is a practice frowned upon by both the Commission and this [Appeal] Board").

hospitals from the list currently in the Plan. Motion at 20; Affidavit of Edward B. Lieberman ¶ 4(a) attached thereto. Thus, LILCO has not even identified the number of potential reception hospitals.

Second, the Staff assumes that the letters of agreement are needed solely for the purpose of identifying reception hospitals. Staff Response at 10. Letters of agreement are also needed prior to Board resolution of the hospital evacuation issue in order to determine whether there is pre-emergency assurance that identified reception hospitals have sufficient resources and capabilities to accommodate all EPZ hospital evacuees.^{12/}

Finally, it is clear that there are disputed issues of material fact regarding letters of agreement. See Statement of Material Facts ¶¶ 9-10, 12, 14-15, 19-20. Summary disposition must be rejected.

Similarly, the Staff understates the unresolved issues related to transportation requirements. The Staff is incorrect in stating that the only matter at issue is the verification that Revision 9 will contain the information promised by LILCO. See Staff Response at 12. The issue presented is whether, consistent with regulatory requirements, and ALAB-832 and CLI-87-12, LILCO has devised a detailed and implementable plan for evacuating

^{12/} The Governments treat in detail the need for letters of agreement in their Response. See Governments' Response at 37-38.

patients in the EPZ hospitals, and thus that a range of protective actions complying with 10 CFR § 50.47(b)(10) is in place. LILCO has ignored this obligation previously, and it continues to indicate adherence to its view that it need not devise an adequate evacuation plan for the EPZ hospitals. Material facts clearly are in dispute. See Governments' Response, Statement of Material Facts in Dispute ¶¶ 4, 11. The resolution of these matters requires decision on serious health and safety issues; the Staff cannot be delegated such responsibility.

Moreover, the Staff's position on delegating the hospital evacuation issue to it for resolution is flawed by the Staff's tacit assumption that the Governments must accept the accuracy and validity of the so-called supplemental information to be provided by LILCO. The Staff would deny the Governments the opportunity to conduct inquiry regarding the adequacy of the supplemental information. Clearly, this position wholly denies the Governments the hearing rights to which NRC regulations and the Atomic Energy Act entitle them. See 10 CFR § 2.749(c); Affidavit of Michael S. Miller (attached to Governments' Response). The Staff's view is wholly untenable, particularly since it violates this Board's prior guidance. See Memorandum and Order (Ruling on Applicant's Motion of November 6, 1987 for Summary Disposition of the WALK Radio Issue), slip op. at 3-4 (Dec. 21, 1987) ("It can hardly be considered as acceptable

procedure that LILCO's plan revisions, unreviewed by other parties and FEMA, . . . could be the subject of a summary disposition resolution"); Dec. 30 Bus Driver Order, slip op. at 5 ("[new school evacuation proposal presented] material issues only resolvable in a future contested forum").

B. The Staff is Disqualified from Being Delegated Confirmation Functions

Even assuming that LILCO's hospital plan deficiencies were mere "confirmation" items, it is clear that the Staff cannot be delegated responsibility in this instance. First, the Staff has consistently -- before the Licensing Board in 1984 and then before the Appeal Board, NRC, and now the Licensing Board again -- given full support to whatever hospital plan has been devised by LILCO. The Staff, in short, has totally allied itself with LILCO, dispensing with any pretense of objectivity. Delegating responsibility to the Staff would be like delegating decision-making to LILCO. Public health and safety require more.

Second, recent events underscore that the Staff has lost any pretense of independence. A secret meeting was held on January 14, 1988, between officials and counsel for LILCO and four attorneys for the NRC Staff. The Governments were not invited to attend this meeting, nor were they provided any prior notice that it would take place. Indeed, the Staff explicitly

decided not to invite the Governments. LILCO used the secret meeting to lobby the Staff for continued support of LILCO's effort to license Shoreham. Indeed, Staff counsel confirmed to Governments' counsel the Staff's support for LILCO. See Affidavit of Lawrence Coe Lanpher, attached hereto. This incident, which is cited merely as an example, demonstrates that the Staff has forfeited any claim to be acting as an objective and independent party to this licensing proceeding. It cannot be entrusted with the duty to review LILCO's hospital evacuation plan for conformity to the regulations.

C. The Urbanik Affidavit Is Unreliable and Highlights the Need for Discovery

The NRC Staff's Response is supported by the Affidavit of Dr. Thomas Urbanik, II. The affidavit purports to establish that LILCO's hospital evacuation time estimates were calculated in accordance with the guidance of NUREG 0654 and are suitable for inclusion in the Plan in accordance with the remand instructions of the Appeal Board and the Commission. In fact, the affidavit provides no basis for supporting LILCO's Motion.

First, the affidavit is conclusory and does not demonstrate the personal knowledge and competence required by 10 CFR § 2.749(a). Second, the affidavit purports to authenticate the calculation of evacuation time estimates in accordance with NUREG 0654. See Urbanik Affidavit ¶¶ 3, 4. As the Governments have demonstrated in their January 15 Response, however, the

LILCO Motion and supporting papers are so lacking in data that they do not permit verification of the new hospital evacuation time estimates. Governments' Response at 25. For example, LILCO has not identified specific reception hospitals and the accompanying routes which the evacuation vehicles must travel. In the absence of such input data, no person can reach a reliable conclusion how LILCO's evacuation time estimates can be reviewed. See Affidavit of David T. Hartgen, attached hereto, ¶¶ 6-7. Thus, material facts remain in dispute. Dr. Urbanik's affidavit cannot be accepted.^{13/}

Third, there still remains the issue whether, aside from the manner in which the time estimates were calculated, they conform to NUREG 0654 and 10 CFR Part 50, Appendix E. The Urbanik Affidavit speaks only of the methodology by which the time estimates were calculated. Urbanik Affidavit ¶ 4. The matter of whether the estimates demonstrate that LILCO's hospital evacuation plan is acceptable is not addressed by the NRC Staff and is not a matter properly left to the Staff for resolution. Rather, this is a contested matter of plan adequacy which the Licensing Board itself must resolve, consistent with its obligation to make findings on critical issues of health and safety prior to the issuance of an operating license.

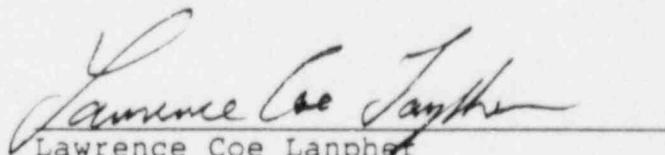
^{13/} Either the NRC Staff and Dr. Urbanik have been provided details of LILCO's Plan which have been withheld from the Board and the other parties, or else Dr. Urbanik's review of LILCO's evacuation time estimates was based on incomplete data and thus is devoid of probative value. See Affidavit of David T. Hartgen ¶¶ 5-7. Summary disposition must be denied; discovery on this matter is the appropriate next step in developing the record.

IV. CONCLUSION

For the reasons set forth above, the Staff's Response in support of LILCO's motion for summary disposition of the hospital evacuation issue should be rejected by the Board.

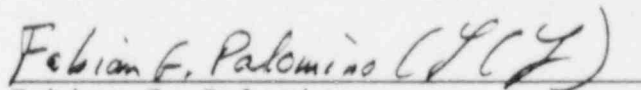
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