

5643

DOCKETED
USNRC

'88 FEB 19 P3 52

February 16, 1988

DOCKETING & SERVICE
BRANCH

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)

SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN
OF SOUTHAMPTON RESPONSE TO THE LICENSING
BOARD'S FEBRUARY 1, 1988 MEMORANDUM AND
ORDER RULING ON LILCO'S MOTION FOR SUMMARY
DISPOSITION OF THE HOSPITAL EVACUATION ISSUE

Suffolk County, the State of New York and the Town of
Southampton (hereafter, "the Governments") hereby respond to the
Board's February 1, 1988 Order^{1/} inviting the Governments and the
Staff to submit, if they so choose, an additional response to
LILCO's Motion for Summary Disposition of the hospital evacuation

^{1/} Memorandum and Order (Ruling on Applicant's Motion of
December 18, 1987 for Summary Disposition of the Hospital
Evacuation Issue)(Feb. 1, 1988)(hereafter, "Feb. 1 Order").

DS03

issue.^{2/} The Feb. 1 Order does not specify precisely what the subject of this additional response should be; however, in light of the Board's rulings concerning the unavailability of Revision 9 of the LILCO Plan (see Feb. 1 Order at 4), the Governments assume that the Board intended to invite the Governments and the Staff to modify their prior responses to LILCO's Motion, if necessary, in light of the contents of Revision 9 pertaining to the evacuation of the EPZ hospitals.

LILCO's submission of Revision 9 has absolutely no effect on the Governments' previous views^{3/} that the LILCO Motion must be denied because, inter alia: (1) LILCO's new hospital evacuation "plan" continues to adopt the fundamentally ad hoc approach which was rejected by the Appeal Board and by the Commission (see Governments' Response at 14-17);^{4/} (2) LILCO has failed to bear its burden of establishing through its motion for summary disposition and supporting papers that there are no disputed issues of

^{2/} LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Dec. 18, 1987)(hereafter, "LILCO Motion").

^{3/} See 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"); 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 (Feb. 1, 1988) (hereafter, "Governments' Reply").

^{4/} CLI-87-12, 26 NRC ____, slip op. (Nov. 5, 1987); ALAB-832, 23 NRC 135 (1986).

material fact (see Governments' Response at 21-28); (3) LILCO's new hospital evacuation plan continues to include significant deficiencies which raise substantial issues of public health and safety, and which, therefore, preclude the grant of summary disposition (see Governments' Response at 33-38); (4) LILCO's new hospital evacuation plan is not sufficiently detailed -- nor has it been the subject of sufficient review -- to make it susceptible to delegation to the NRC Staff as a mere Staff "confirmation item" (see Governments' Response at 18-20; Governments' Reply at 14-19);^{5/} and (5) LILCO cannot reply upon 10 CFR § 50.47(c)(1) (see Governments' Response at 28-30).

There is no need to repeat these arguments here because they remain essentially unaffected by LILCO's further production of Revision 9. This is so for two reasons.

First, the Revision 9 statement of LILCO's hospital evacuation proposal is substantially the same as the description of it provided in the LILCO Motion. Thus, it suffers from all the substantive defects which the Governments have already identified.

^{5/} In any event, the Staff has forfeited all pretense to objectivity and neutrality in this proceeding, so that the delegation of decisional responsibility to the Staff would be highly improper and would constitute clear and reversible error. See Governments' Response at 20; Governments' Reply at 20-21 and attached Affidavit of Lawrence Coe Lanpher (Feb. 1, 1988).

Second, Revision 9 is just as ambiguous, conclusory, and lacking in detail, analyses and bases, as were LILCO's characterizations of that Revision in the LILCO Motion. As a result, the filing of Revision 9 has done nothing to resolve any of the material issues of fact which are in dispute on the hospital evacuation issue, or to fill the huge gaps in the necessary information, data, analyses and bases which underlie LILCO's conclusory assertions. See 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, Affidavit of Michael S. Miller; Affidavit of David Hartgen, attached to the Governments' Reply.

Thus, despite the publication of Revision 9, LILCO's Motion, and Revision 9 itself, still fail to provide the information, data, or bases necessary to permit any reasoned or intelligent evaluation of LILCO's new proposal, or a determination, particularly on a summary basis without hearing, that the flaws identified by the Appeal Board and the Commission have been corrected, that the deficiencies identified by the Governments have been addressed, or that there are no material facts in dispute. For example:

1. In Revision 9 LILCO still provides no basis, explanation, or support, for the validity or applicability to the

hospitals at issue, of its 14% vacancy rate assumption, which underlies its new hospital evacuation time estimates. See Governments' Response at 24; Miller Affidavit ¶¶ 7-8.

2. Revision 9 still fails to provide the raw data and analyses upon which LILCO's new evacuation time estimates for hospitals are based. See Governments' Response at 25; Miller Affidavit ¶ 10; Hartgen Affidavit ¶¶ 6-7. Indeed, Revision 9 adds totally new assumed "travel speeds," used in calculating the new estimates, without providing any bases, underlying data, or even textual explanation of their origin. See App. A at IV-186.

3. Revision 9, while reducing the list of "reception hospitals" from 26 to 23, still provides none of the additional information necessary to use such reception hospitals to calculate evacuation time estimates. See Governments' Response at 25-26; Miller Affidavit ¶ 10; Hartgen Affidavit ¶¶ 6-7. Thus, for example, no information is provided concerning: how many beds are available, or potentially available, for evacuees at such hospitals; how many of such beds would be available for hospital evacuees who would not arrive until after all the other special facility evacuees and homebound evacuees had already been evacuated to the same reception hospitals; or, how the assumptions, concerning which or how many hospital evacuees would be transported to which reception hospitals, were arrived at in

calculating the new hospital evacuation time estimates. See, e.g., LILCO Plan, App. A at IV-178.

4. Revision 9 still fails to provide any basis or explanation for LILCO's assumption that it would be possible to obtain, dispatch, manage and direct all the ambulances, ambulettes, and buses necessary to evacuate the hospitals after the evacuation of the other special facilities in the EPZ and that these actions would and could be completed according to the assumptions upon which LILCO's new hospital evacuation time estimates are based. See Governments' Response at 26; Miller Affidavit ¶ 10; Hartgen Affidavit ¶ 6. See, e.g., LILCO Plan, App. A at IV-178.

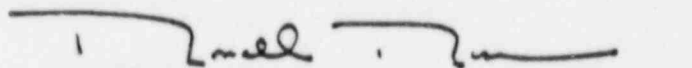
5. LILCO fails to specify ambulance route assignments and the details for prioritizing reception hospital selection and evacuation vehicle dispatch and management. See Governments' Response at 16, 26-27; Miller Affidavit ¶ 10; Hartgen Affidavit ¶ 6.

Thus, the publication of Revision 9 not only fails to address the fatal defects in the substance of LILCO's hospital evacuation proposal which require its denial as already demonstrated in the Governments' Response and Reply; it also fails to address or to cure the additional fatal defects identified in LILCO's Motion -- specifically, the lack of

necessary facts and information to permit a finding that there are no material facts in dispute, much less a rational ruling on the adequacy or implementability of LILCO's Revision 9 hospital proposal. Indeed, as demonstrated above, the statements in the Miller Affidavit and the Hartgen Affidavit concerning the inability of the Governments to present facts to controvert many of the statements and conclusions upon which LILCO's Motion and Revision 9 are premised, remain essentially unaffected by the publication of Revision 9. Thus, the LILCO Motion must be denied for all the reasons stated in the Governments' Response and Reply.

Respectfully submitted,

E. Thomas Boyle
Suffolk County Attorney
Building 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788



Karla J. Letsche
Ronald R. Ross
KIRKPATRICK & LOCKHART
1800 M Street, N. W.
South Lobby - Ninth Floor
Washington, D. C. 20036-5891

Attorneys for Suffolk County

Richard Zahnleuter (1222)

Fabian G. Palomino
Richard J. Zahnleuter
Special Counsel to the Governor
of the State of New York
Executive Chamber, Room 229
Capitol Building
Albany, New York 12224

Attorneys for Mario M. Cuomo,
Governor of the State of New York

Stephen Latham (11901)

Stephen B. Latham
Twomey, Latham & Shea
Post Office Box 398
33 West Second Street
Riverhead, New York 11901

Attorney for the Town of
Southampton

February 16, 1988

DOCKETED
USNRC

'88 FEB 19 P3:52

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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 the SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON RESPONSE TO THE LICENSING BOARD'S FEBRUARY 1, 1988 MEMORANDUM AND ORDER RULING ON LILCO'S MOTION FOR SUMMARY DISPOSITION OF THE HOSPITAL EVACUATION ISSUE have been served on the following this 16th day of February, 1988 by U.S. mail, first class. In addition, copies of the SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON RESPONSE TO THE LICENSING BOARD'S FEBRUARY 1, 1988 MEMORANDUM AND ORDER RULING ON LILCO'S MOTION FOR SUMMARY DISPOSITION OF THE HOSPITAL EVACUATION ISSUE will be served on the members of the Licensing Board by hand delivery on February 17, 1988.

James P. Gleason, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James P. Gleason, Chairman
513 Gilmoure Drive
Silver Spring, Maryland 20901

William R. Cumming, Esq.
Spence W. Perry, Esq.
Office of General Counsel
Federal Emergency Management Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

W. Taylor Reveley, III, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Fabian G. Palomino, Esq.
Richard J. Zahnleuter, Esq.
Special Counsel to the Governor
Executive Chamber, Rm. 229
State Capitol
Albany, New York 12224

Joel Blau, Esq.
Director, Utility Intervention
N.Y. Consumer Protection Board
Suite 1020
Albany, New York 12210

E. Thomas Boyle, Esq.
Suffolk County Attorney
Bldg. 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788

Mr. L. F. Britt
Long Island Lighting Company
Shoreham Nuclear Power Station
North Country Road
Wading River, New York 11792

Ms. Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Alfred L. Nardelli, Esq.
New York State Department of Law
120 Broadway, 3rd Floor
Room 3-116
New York, New York 10271

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Mr. Jay Dunkleburger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

David A. Brownlee, Esq.
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, Pennsylvania 15222

Anthony F. Earley, Jr., Esq.
General Counsel
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Ms. Elisabeth Taibbi, Clerk
Suffolk County Legislature
Suffolk County Legislature
Office Building
Veterans Memorial Highway
Hauppauge, New York 11788

Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, New York 11901

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
1717 H Street, N.W.
Washington, D.C. 20555

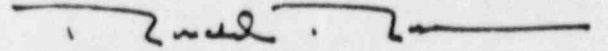
Hon. Patrick G. Halpin
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, New York 11792

George E. Johnson, Esq.
Edwin J. Reis, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Mr. Stuart Diamond
Business/Financial
NEW YORK TIMES
229 W. 43rd Street
New York, New York 10036

Douglas J. Hynes, Councilman
Town Board of Oyster Bay
Town Hall
Oyster Bay, New York 11771



Ronald R. Ross
KIRKPATRICK & LOCKHART
1800 M Street, N.W.
South Lobby - 9th Floor
Washington, D.C. 20036-5891