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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

'88 FEB 24 P2:22

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

SERVED FEB 24 1988

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit 1)

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

(ASLBP No. 88-561-02-OLR)

February 24, 1988

MEMORANDUM AND ORDER
(Board Ruling on Contentions Relating to
LILCO'S Emergency Broadcast System)

In a Memorandum and Order of December 21, 1987, the Board authorized the filing of new contentions on LILCO's amended emergency broadcast system (EBS). Directed by a Commission Order (CLI-87-05) to reopen the record of this proceeding to consider the matter, the area prescribed by the Board for contentions was specified as follows:

The issues concerning public notification procedures that were previously litigated in this proceeding concerned the adequacy of the 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.

LILCO had amended its plan to include three additional radio stations located in Connecticut, in place of five stations that withdrew as participants in the EBS. Therefore, the contentions, to be relevant

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and admissible must challenge with basis and specificity the adequacy of LILCO's new arrangement for transmitting EBS messages and activating tone alert radios to conduct emergency notification.

Suffolk County, the State of New York and the Town of Southampton (Intervenors) submitted one contention with four individual subparts, each of which is to be read as forming the basis for the contention. Admission of the contention(s) is opposed by Applicant and Staff. For purposes of our decision, we treat Intervenors submission as a filing of a single contention, with a number of distinct bases.

Decision

We set forth below, in summary form, Intervenors' contention with the basis supplied for each:

LILCO's new provisions for transmitting emergency messages and activating tone alert radios are inadequate and do not comply with regulatory requirements (10 C.F.R. 50.47(a)(1)(b)(5) and (6); Appendix E II.D.2 and 3; NUREG-0654 II.E.5 and E.6 and Appendix 3 and FEMA REP-10).

The basis is that WPLR (LILCO's primary EBS station) could not function effectively or adequately because

- A. WPLR's broadcast signal is too weak to carry a strong and clear message throughout the EPZ and surrounding areas. Intervenors assert its strength to be less than 30% of its predecessor's primary station--WALK;
- B. The hilly geography of Long Island combined with the directional location of WPLR's transmitters diminish the strength of its broadcast signal;
- C. Having no AM broadcasting ability, unlike its predecessor WALK, LILCO fails to comply with regulatory requirements that there be a capability to issue emergency messages on a 24-hour basis;
- D. WPLR is not an effective EBS station since it only has a

listenership rate of 1% in Suffolk County. WALK's rate was 10%;

- E. With WPLR's location in Connecticut, its weak broadcast signal, its geographic and transmitting complications and a low listenership rate, the public in and around the EPZ would not consider, unlike WALK radio, WPLR's emergency information credible, authoritative, accurate or reliable; and
- F. WPLR is based in Connecticut and LILCO's plan is therefore not in compliance with regulatory requirements. See e.g. 10 C.F.R. Part 50, Appendix E IV.D.2.

We address, as a preliminary matter, several issues which received lengthy treatment in comments submitted by Intervenors and LILCO: first, the references in several of the bases supporting Intervenors' contention to the phrases "around the Shoreham EPZ" and "surrounding areas to the EPZ," and secondly, to alleged deficiencies in the new communication system in comparison with WALK radio station and other stations in the previous network, WALK was previously the local lead station whose withdrawal from LILCO's EBS system occasioned the current proceeding.

On the phrases referred to, Intervenors' basic position is that the regulatory communication responsibility to provide emergency information to members of the public imposes a duty on the EBS which is not limited to the 10-mile EPZ. The Board knows of no requirement in NRC regulations or case law construing them which imposes an obligation on an Applicant to communicate through EBS messages to members of the public outside the EPZ. See 10 C.F.R. 50.47(b)(5). The Intervenors suggestion that references "to the public" without the qualifying phrase "within the EPZ," as found in 10 C.F.R. (b)(6) and NUREG-0654 IIE 5,

indicate an intent not to limit Applicant's communication responsibility to the EPZ is an interpretation with which we do not agree. NRC's regulatory scheme for emergency planning is premised on detailed planning within the EPZ to the degree that an expansion of response effort can be implemented beyond it if proven necessary. See NUREG-0654 I.D.d. And although LILCO's emergency plan, as pointed out by Intervenor, calls for EBS messages to be developed for the public in areas where ingestion pathway protective action limits may have been exceeded, we reach the conclusion that this references merely one method of preparing for the necessity of an expanded response, if conditions requiring it materialize.

In regard to comparisons made to WALK radio, the issues to be contested in this proceeding only concerns the ability of LILCO's present system to meet regulatory requirements and criteria, and not standards set by a part of the EBS no longer existing in its emergency plan. Accordingly, Intervenor's comments concerning the public outside the EPZ and comparisons to WALK Radio and others will not be considered in this decision.

Contention: Bases 1 A-F

With the exception of the phrases and comparisons in the contention and basis referred to above, the following parts of the contention are admitted to the proceeding, Intervenor having submitted relevant issues with bases of reasonable specificity as required by 10 C.F.R. § 2.714(b): 1.A, 1.B, 1.C and 1.F. In connection with 1.F, however,

there is no need to consider this issue at a forthcoming hearing as it involves a legal issue susceptible of being handled by briefs.

- * According, 1.F should be included as part of the parties' proposed findings and conclusions of law submitted after the formal hearing record is closed. The other parts of intervenors' basis 1.A -1.C raise justiciable issues on whether LILCO's new EBS is adequate and complies with NRC regulatory requirements. The remaining bases of the contention, 1.D and 1.E, allege contentions that are neither relevant nor do they assist in focusing the matter of this proceeding, viz. the adequacy of LILCO's new EBS system. 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. No particular regulatory requirement is cited here or elsewhere in support of these particular allegations. Intervenors cite in their response, the existence of an obligation on the part of a radio station to have "the capability of accomplishing" the communication of vital emergency information to the public. See Intervenors Response at 31. However, even accepting that criterion, it is not clear to us how the listenership rate and public perception concerning one station in an EBS system has any bearing on the system's ability to accomplish its overall emergency tasks and assignments.

Contention: Bases 2. A-C

- With the same contention as in 1 above, the following bases (in summary form here) have been submitted:

LILCO's ERS network could not and would not function adequately or effectively to transmit messages on emergency information to the public in the EPZ and surrounding areas because:

- A. There is a portion of the population in and around the EPZ that might not receive emergency information due to significant gaps in the EPZ's network coverage.
- B. As a result of three of the radio stations being located in Connecticut, WPI's relatively weak broadcast signal within Suffolk County and the EPZ, and low listenership of EPZ residents to all stations in EBS system (about 4% in Suffolk County), the public would not consider emergency information or instructions over that network as credible, authoritative, accurate or reliable. Four stations in previous EBS network were relied on regularly for emergency information (school closings, etc.) and had a higher degree of visibility, credibility, and familiarity to residents in Suffolk County and the EPZ.
- C. Since the network has virtually no nighttime coverage in the ingestion pathway west of the 10-mile EPZ, LILCO's plan is in violation of 10 C.F.R. 50.47(a)(1), (b)(6), (b)(10) and NUREG-0654, II.E.5 and J.11. This is failure to provide any means for notification and communication of emergency information to a segment of the population at risk and also would result in an inability to control the content and flow of emergency information, a basic premise of LILCO's public information portion of the plan.

The Board views the Contention with basis 2.A, which deals with adequate transmission coverage within the EPZ, as raising a litigable issue. However, we reject the bases in 2.B concerning the public's weak perception of the present EBS network and in 2.C on the alleged responsibility to transmit emergency information outside the EPZ. We need not repeat here our reasoning supplied on similar issues raised in 1.E and 1.F, but we emphasize our responsibility assigned by the

Commission to assure that new contentions focus on the issues admitted earlier in the proceeding. The bases stated in 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.

Contention: Basis 3

Gaps in LILCO's EBS coverage result in large segments of the population just outside the EPZ having no access to emergency information and the resultant confusion, rumor generation and dissemination of inaccurate information would lead to a large evacuation shadow of residents outside the EPZ perceiving themselves at risk. There would also be significant evacuation shadow within the EPZ due to gaps in coverage, low public perception of out of state stations and substantial likelihood of distorted and conflicting emergency information.

The alleged impact of the deficiencies recounted here raise the specter of evacuation shadow, a subject raised by a number of other contentions in this proceeding, but not the ones at issue here. Even if there were validity to the Intervenor's claim--that a significant shadow would develop as a result of the conditions cited--that issue would have no place before us in our restricted coverage of LILCO's new EBS system. The contention on the grounds of this basis is denied admission.

Contention: Basis 4

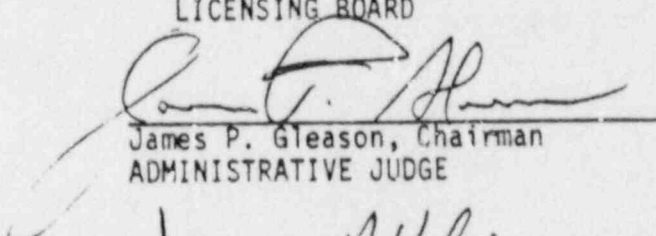
LILCO's asserted reliance on so-called "informal alerting systems" (word of mouth communications) among the public to supplement the EBS system could and would not compensate for inadequacies and ineffectiveness of the system. Such a proposal is speculative and unreliable and fails to satisfy the requirements of 10 C.F.R. 50.47(b)(5) and (b)(6), Appendix E IV.D.3, NUREG-0654 II.E.5 and E.6, and Appendix 3 thereto, and FEMA REP-10.

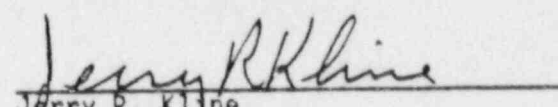
It appears to the Board that this issue, calling into question an informal alerting system, is an effort to project an anticipatory defense into a litigable matter. Whatever its purpose, however, the basis fails to raise an issue that has any foundation in earlier admitted contentions with which we are concerned nor does it suggest any relevance to the adequacy of the present emergency plan for transmitting emergency or other EBS messages. The basis for the contention here is denied.

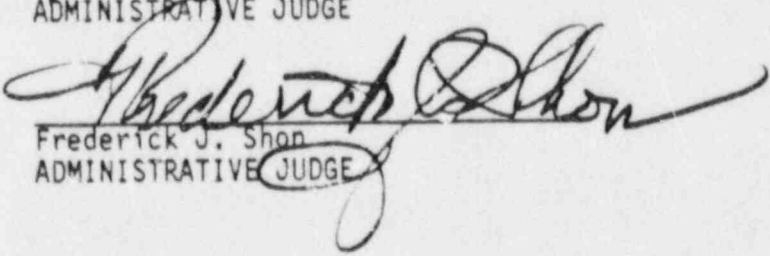
ORDER

That Intervenors' contention with bases 1.A, 1.B, 1.C, 1.F and 2.A is admitted, and a period of discovery of 15 days from receipt of this Order is authorized. Intervenors' contention with bases 1.D, 1.E, 2.B, 2.C, 3 and 4 is denied.

THE ATOMIC SAFETY AND
LICENSING BOARD


James P. Gleason, Chairman
ADMINISTRATIVE JUDGE


Jerry R. Kline
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 24th day of February, 1988.