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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,)	(EBS)
Unit 1))	

LILCO'S RESPONSE TO INTERVENORS' MOTION FOR RECONSIDERATION
OF BOARD'S FEBRUARY 24, 1988 ORDER RULING ON EBS CONTENTIONS

On March 7, 1988, the Intervenors filed their "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"). LILCO opposes that Motion.

I. Introduction

In its February 24, 1988 Memorandum and Order, the Board excluded bases 1.D, 1.E, 2.B, 2.C, 3 and 4 from the admitted EBS contentions. Memorandum and Order (Board Ruling on Contentions Relating to LILCO's Emergency Broadcast System), February 24, 1988. The Board also excluded all references to comparisons between WPLR and other radio stations no longer in the EBS and to coverage of the EBS outside the 10-mile EPZ. Id. at 3-4. The Board cited the following reasons for excluding this material: (1) there is no regulatory foundation for a requirement that an EBS cover areas beyond 10 miles, (2) the standards against which WPLR must be measured are the NRC regulations, not the capabilities of previous system members, (3) the excluded bases are not relevant to the EBS network's ability to accomplish its emergency task, i.e., to provide messages to the public in the 10-mile EPZ during an emergency, and (4) the excluded bases are outside the ambit of the previously litigated EBS issues that were reopened by the Commission in CLI-87-05. Id. at 3-8.

Intervenors move the Board to reconsider its rulings,^{1/} asserting that the Board's decision "is inconsistent with the Commission's remand Order, this Board's own rulings, the Atomic Energy Act's hearing requirements, and fundamental due process." Motion at 2. In particular, Intervenors assert in regard to the Board's exclusion of references to coverage outside 10 miles that the Board's ruling is inconsistent with the regulations, with LILCO's own Plan, and with its prior decision in the PID. Id. at 4-7. Moreover, Intervenors assert that the Board's ruling on basis 3 (shadow phenomenon) lacks analysis and is contrary to the PID. Id. at 7-9. Finally, Intervenors assert that the Board's exclusion of bases concerning listenership and credibility of the radio stations is "both factually and legally erroneous." Id. at 9.

The Board should deny Intervenors' Motion. It repeats the same arguments Intervenors made in their 42-page Response to LILCO's and the Staff's objections to the contentions. The Board properly rejected those arguments and need not consider them again here. See Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Unit 1), LBP-84-23, 19 NRC 1412, 1414 (1984) (Reconsideration not warranted in the absence of new arguments, new issues, or new information); see also Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-844, 24 NRC 216, 217 (1986). The February 24 Memorandum and Order accurately interprets the regulatory requirements, properly limits the scope of litigable issues under the Commission's reopening order and previous Licensing Board orders, and adequately explains the reasons for the Board's decision. There is no reason for the Board to reconsider its February 24 ruling.

^{1/} Intervenors do not seek reconsideration of the Board's exclusion of basis 4, concerning informal notification. Motion at 3. Nor, apparently, do the Intervenors seek reconsideration of the Board's exclusion of all references to WALK and other stations previously in the EBS, since the Motion does not mention that ruling.

II. Argument

A. The Board Properly Excluded Contentions Alleging Lack of Broadcast Coverage Beyond the 10-mile EPZ

The Board properly rejected any notion in the contentions that the EBS must provide coverage to areas outside the 10-mile EPZ. As the Board found, and as Intervenor do not now deny, the regulations do not expressly require that the EBS network cover areas outside 10 miles. Memorandum and Order at 3. Nor, in LILCO's view, do they implicitly require such coverage.

Title 10 C.F.R. § 50.47(b)(5) requires that

the content of initial and followup messages to responses organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

10 C.F.R. § 50.47(b)(5) (emphasis added). Similarly, NUREG-0654 provides that "the offsite response organization shall establish administrative and physical means, and the time required for notifying and providing prompt instructions to the public within the plume exposure pathway Emergency Planning Zone" NUREG-0654, Supp. 1, § II.E.6 (November 1987) at 11. Nowhere in 10 C.F.R. § 50.47(b)(5) or NUREG-0654 is it stated, or even suggested, that a licensee must show administrative and physical means to alert and provide instructions to people outside the 10-mile EPZ.^{2/}

Intervenors assert that the EPZ limitation in 10 C.F.R. § 50.47(b)(5) and NUREG-0654 § II.E.6 applies only to early notification, and that the absence of such a limitation in references to "initial and followup messages" in § 50.47(b)(5) and NUREG-0654

^{2/} Section 50.47(b)(6) also mentions communications "to the public": "Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public." 10 C.F.R. § 50.47(b)(6). As LILCO noted in its Objections to the EBS contentions, however, this section appears to be directed at communications among emergency response personnel and organizations. This view is supported by a review of the parallel Evaluation Criteria in NUREG-0654, which do not mention communications to the public. NUREG-0654, Supp.1, § II.F (November 1987) at 13.

§ II.E.5 means that those provisions must be construed broadly to cover "the public" outside the 10-mile EPZ. Motion at 3-4. This argument should be rejected. Where the NRC and FEMA intended to set specific requirements for coverage capability, they did so, by requiring "physical and administrative means" of providing emergency instructions to the populace in the 10-mile zone. See 10 C.F.R. § 50.47(b)(5) and NUREG-0654, Supp.1, § II.E.6. Nowhere do the regulations or guidance require such "physical and administrative means" to provide emergency messages to people beyond 10 miles, and certainly not to the entire 50-mile ingestion pathway.^{3/}

The Board correctly summarized the planning basis reflected in the regulations as follows:

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 1.D.d.

Memorandum and Order (Feb. 24, 1988) at 4. Intervenors' disagreement with this statement, and their assertion that both the 10-mile and 50-mile EPZ's require detailed planning, Motion at 4, must be dismissed as a challenge to the regulations and contrary to the Commission decision in CLI-87-12. The regulations clearly call for a generic

^{3/} The Suffolk County Legislature recently passed a resolution requesting that the Long Island members of the EBS withdraw from the system. While LILCO does not condone this attempt to interfere with legitimate contractual relationships, the resolution is relevant for its statement of the Legislature's view of the regulatory requirements. That view is stated in one of the resolution's introductory paragraphs:

WHEREAS, Federal Regulations require any emergency evacuation plan for such a nuclear power station to include a network of radio stations to be heard within a ten mile radius of the Shoreham plant so as to alert residents as to the necessity to evacuate or shelter themselves in the event of an accident at the plant;

See Sense 7-88, Memorializing Resolution Requesting Long Island Radio Stations to Decline Participation in LILCO/Shoreham Evacuation Plan, March 1, 1988 (attached to this Response). Clearly, the County government's position on EBS requirements conflicts with that being presented here by its lawyers.

10-mile plume exposure pathway EPZ, and require detailed emergency plans only within that zone. See 10 C.F.R. § 50.47(b); NUREG-0654 § 1.D. "The choice of the size of the Emergency Planning Zones represents a judgment on the extent of detailed planning which must be performed to assure an adequate response base"; the 10-mile EPZ was established in part because "detailed planning within 10 miles would provide a substantial base for expansion of response efforts in the event that this proved necessary." NUREG-0654, § 1.D, at 11-12. Intervenors' argument that LILCO must demonstrate EBS coverage to the ingestion pathway is a bald challenge to the regulations.

In essence, what the Intervenors have tried to do under the guise of these EBS contentions is to reargue a position that they lost before the Commission little more than four months ago. That is, they seek to expand the 10-mile EPZ to assure an adequate base for ad hoc response beyond ten miles and to accommodate the large shadow evacuation that Intervenors claim will materialize. These arguments were laid to rest by the Commission in CLI-87-12.

In CLI-87-12, the Commission upheld the Licensing Board's exclusion of contentions 22.B and 22.C, which alleged, respectively, that the EPZ should be expanded to provide an adequate base for ad hoc emergency response efforts beyond 10 miles in very severe accidents, and that the EPZ should be expanded to minimize the occurrence and effects of the so-called shadow phenomenon. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 25 NRC _____, slip op. at 1 (Nov. 6, 1987). The Commission held that the two excluded contentions constituted a challenge to the regulations' generic premise that detailed planning is only required within the 10-mile EPZ, and that such planning would provide an adequate base for ad hoc expansion of response efforts beyond 10-miles. Id. at 13-17. Here, Intervenors argue that detailed planning, including EBS coverage, is required in both the 10- and 50- mile EPZs. Motion at 4. The regulations and CLI-87-12 preclude this interpretation.

Intervenors also argue that "to suggest that the ability to communicate such information to persons outside the 10-mile EPZ is not required, is inconsistent with LILCO's own Plan and with its position throughout this litigation." Motion at 5. This argument stems from the fact that the LILCO Plan, and some of the sample EBS messages, contain information addressed to persons outside 10 miles. Such information is included in the Plan in recognition that some people beyond 10 miles will in fact hear the messages, because the EBS broadcast signal will not stop at the EPZ perimeter as if it were a solid wall. In any case, the fact that the Plan contains such provisions does not mean that the regulations require them; the Plan contains many protective measures that the regulations do not require. See, e.g., PID at 760 ("the inclusion of the tone alert radio system in the Plan is simply a commendably prudent addition to the requirements").^{4/}

The Board properly excluded consideration of EBS coverage outside the 10-mile EPZ. Its statement, that "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," is understandable, because no such requirement exists.

^{4/} Intervenors also assert that the Board's ruling is inconsistent with the following language from the PID: "The Board finds no barriers to LILCO's ability to warn the public through EBS messages . . ." Motion at 6. The full quote from the PID is as follows:

The Board finds no barriers to LILCO's ability to warn the public through EBS messages or indeed to telephone individual farmers and food processors with appropriate messages concerning the withholding of food products from the market. LILCO has compiled lists of producers and processors for this purpose.

PID at 877. See also PID at 876 ("LILCO will communicate recommended protective actions to farmers, food processors, and other food chain establishments by telephone and by EBS bulletins"(emphasis added). Clearly, the PID, when quoted in full context, is consistent with the Board's challenged finding that the LILCO Plan's EBS provisions "reference[s] merely one method of preparing for the necessity of an expanded response, if conditions requiring it materialize." Memorandum and Order at 4.

B. The Board Properly Excluded Intervenors' Shadow Phenomenon Contention

Basis 3 of Intervenors' contention alleged that substantial shadow evacuation would occur as a result of alleged gaps in nighttime EBS coverage west of the 10-mile EPZ, low credibility of an out-of-state radio station, unavailability of emergency information from "familiar" stations, and the substantial likelihood of distorted information. Contentions at 8-9; Memorandum and Order at 7. The Board properly rejected this basis on the ground that it is outside the scope of litigable issues in this proceeding. Memorandum and Order at 7.^{5/}

The history of litigation on EBS issues is set forth in detail in LILCO's November 6, 1987 Motion for Summary Disposition of the WALK Radio Issue and in LILCO's January 27, 1988 Objections to the EBS contentions. It is sufficient to note here that the Commission reopened the EBS issue with instructions for the Board to admit new contentions "only to the extent they assist in focusing further the litigation on earlier-admitted issues." CLI-87-05, 25 NRC ____ (June 11, 1987), slip op. at 10. In denying LILCO's summary disposition motion, the Board explained that the "earlier-admitted issues" concerned the adequacy of the emergency plan's provision for radio transmission of EBS messages and activation of tone alert radios." Memorandum and Order (Ruling on Applicant's Motion of November 6, 1987 for Summary Disposition of the WALK Radio Issue), December 21, 1987, at 5.

^{5/} The Board ruled as follows:

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 Intervenors' 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.

Memorandum and Order at 7.

The shadow phenomenon was never among the "earlier-admitted" EBS issues. As LILCO pointed out in its Objections to the contentions, and as the Board recognized in its February 24 ruling, intervenors have raised the shadow phenomenon issue on at least four prior occasions in this case: in Phase I, in the 1983-1984 emergency plan hearings, in the 1987 Exercise hearings, and in the reception center hearings last summer. LILCO's Objections to Intervenor's Emergency Planning Contention (Jan. 27, 1988) at 16. Intervenor's attempt to raise it again in connection with the narrowly-tailored EBS issues in this reopened proceeding is a gratuitous effort to expand the proceeding beyond its intended scope. The Board properly rejected that attempt.^{6/}

C. The Board Properly Excluded Contentions Concerning Listenership and Credibility

The Board properly excluded bases 1.D, 1.E and 2.B (concerning listenership and credibility of LILCO's EBS stations) because the allegations contained therein are (1) not relevant, (2) not within the scope of earlier-admitted issues, and (3) not rooted in NRC regulations. Memorandum and Order at 5-7. Intervenor's assertion that the Board's ruling is erroneous because (1) the contention did contain citations in support of bases 1.D and 1.E, (2) the Board's decision does not contain any analysis, and (3) the excluded bases are in fact relevant. Motion at 9-12. Intervenor's arguments are wrong and should be dismissed.

With regard to bases 1.D and 1.E, the Board ruled that "no particular regulatory requirement is cited here or elsewhere in support of these particular allegations." Memorandum and Order at 5. Intervenor's retort is that a litany of citations was indeed provided in the first paragraph of the contention. Motion at 9-10.^{7/} That much is true;

^{6/} The Board could have rejected the shadow contention for the additional reason that it is premised on the assumption that the EBS must provide coverage to areas outside the 10-mile EPZ. As discussed above, that premise is wrong; the regulations contain no such requirement.

^{7/} Intervenor's apparent argument is that the Board failed to recognize that the citations in paragraph one of the contention are intended to apply throughout the contentions. This

the contention in fact cites many regulatory and guidance provisions. The fact is, however, that none of them is on point; they do not say anything about the listenership or credibility of EBS stations. Intervenors' self-serving attempt to graft onto the regulations a requirement of their own making, that the system must be shown capable of actually accomplishing notification and instruction, is creative, but finds no support in NRC regulations or FEMA guidance.

Intervenors claim they do not understand the Board's ruling because the Board failed to give its reasons. Motion at 10. They further complain that the Board did not address Intervenors' arguments and instead simply disagreed with Intervenors on the merits of the contention. Id. These assertions are not correct.

The Board rejected these bases on three separate grounds: they are irrelevant, outside the scope of earlier-admitted issues, and not supported by the regulations. Memorandum and Order at 5-7. The Board explained 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." Id. at 5. Clearly, the Board did not make a "merits" decision. It simply ruled that further inquiry into the contention's merits would serve no valid purpose.

Finally, Intervenors repeat previous arguments that listenership and credibility are relevant considerations in evaluating the EBS. Motion at 10-11. The Board properly considered and rejected these arguments, and adequately explained its rationale. Memorandum and Order at 5-7. There is no reason for the Board to repeat that process.

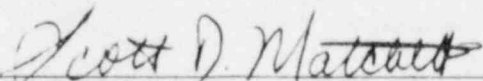
(footnote continued)

obviously is not the case. In rejecting basis 2.B, which contains exactly the same allegations as bases 1.D and 1.E, the Board found that the issues raised are not addressed by NRC regulatory requirements. Memorandum and Order at 7.

III. Conclusion

For the reasons stated above, the Board should deny Intervenors' Motion to re-consider the EBS rulings.

Respectfully submitted,



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DATED: March 17, 1988

Introduced by Legislator Thiele

MEMORIALIZING RESOLUTION REQUESTING
LONG ISLAND RADIO STATIONS TO DECLINE
PARTICIPATION IN LILCO/SHOREHAM
EVACUATION PLAN

WHEREAS, the Suffolk County Legislature consistently expressed its opposition to the imposition of an evacuation plan for the Shoreham Nuclear Power Station through Resolution Numbers 456-1982 and 111-1983; through numerous court challenges upholding and sustaining the validity of such resolutions; and through a united legal challenge before the Nuclear Regulatory Commission (NRC), the Federal Emergency Management Administration (FEMA), and the State Public Service Commission (PSC); and

WHEREAS, several radio stations throughout Long Island have apparently agreed to participate in a February FEMA drill with LILCO by broadcasting emergency messages in the event of an accident at the Shoreham Nuclear Power Plant as part of such test; and

WHEREAS, Federal regulations require any emergency evacuation plan for such a nuclear power station to include a network of radio stations to be heard within a ten mile radius of the Shoreham plant so as to alert residents as to the necessity to evacuate or shelter themselves in the event of an accident at the plant; and

WHEREAS, the participation of such radio stations assists LILCO in its efforts to open the Shoreham Nuclear Power Station while simultaneously hindering the County's efforts to prevent such an opening of the Shoreham Nuclear Power Plant; now, therefore, be it

RESOLVED, that this Legislature hereby requests all radio stations on Long Island which have agreed with LILCO to broadcast emergency messages in the event of an accident at the Shoreham Nuclear Power Station to terminate such participation forthwith; and, be it further

RESOLVED, that the Clerk of this Legislature is hereby directed to forward copies of this resolution to the following Long Island radio stations contemplating such participation:

WRIV-AM
WRHD-AM
WRCH-FM
WLIH-AM
WGLI-FM
WLNG-AM/FM

Dated:

This is to Certify That I, ELISABETH Taibbi, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of SENSE resolution with the resolution now on file in this office, and which was duly adopted by the County Legislature of said County on March 1, 1988, and that the same is a true and correct transcript of said SENSE resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Elisabeth Taibbi

LILCO, March 17, 1988

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CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S REPLY TO INTERVENORS' MOTION FOR RECONSIDERATION OF THE BOARD'S RULING ON THE HOSPITAL EVACUATION ISSUE and LILCO'S RESPONSE TO INTERVENORS' MOTION FOR RECONSIDERATION OF BOARD'S FEBRUARY 24, 1988 ORDER RULING ON EBS CONTENTIONS were served this date upon the following by Federal Express as indicated by an asterisk, or by first-class mail, postage prepaid.

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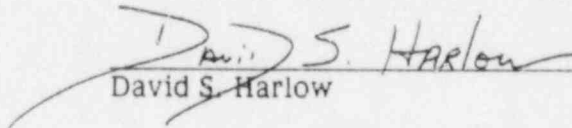
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DATED: March 17, 1988