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LILCO, April 1, 1988

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))	

LILCO'S DESIGNATION OF RECORD AND PRIMA FACIE CASE ON
THE LEGAL AUTHORITY ISSUES (CONTENTIONS 1-2, 4-8, AND 10)

Pursuant to the Board's order of February 29, 1988,^{1/} LILCO hereby designates portions of the record that support its prima facie case on the revised "legal authority" issues, Contentions EP 1-2, 4-8, and 10.^{2/}

Consistent with LILCO's understanding of the February 29 order, this pleading is intended to be an outline of LILCO's case, to be further developed, as necessary, by written testimony to be filed April 29, 1988. LILCO provides here an outline of its reasoning why the LERO Plan meets NRC requirements, particularly in light of the new emergency planning rule, 10 CFR § 50.47(c)(1), and the principal parts of the record that support that reasoning. LILCO understands that neither LILCO nor the Board will be limited in the future to the portions of the record cited in this pleading, since other parts of the record may prove to be relevant. See Transcript of Telephone Conference, February, 25, 1988, at 19,286-87.

^{1/} Confirmatory Memorandum and Order (Ruling on LILCO's Motions for Summary Disposition of Contentions 1, 2, 4, 5, 6, 7, 8 and 10, and Board Guidance on Issues for Litigation) (Feb. 29, 1988).

^{2/} In some cases LILCO has cited testimony adverse to its position, in order to show (for example) that an issue has been fully litigated. This does not mean, of course, that LILCO now accepts that adverse testimony as true.

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What additional facts are needed, if any, depends on what the State and County say they will do in a real emergency. Thus far they have not revealed what they would do. In their answers to LILCO's first set of interrogatories, they say that they have no witnesses so far; the time for them to answer LILCO's second set of interrogatories has not yet run. With only two weeks left in the discovery period, it is likely that the Interveners will not reveal their case in time for LILCO to confront it in the written testimony to be filed April 29. If not, then LILCO should be entitled to offer separate rebuttal testimony.

It is possible that some of the procedures cited below may change, probably in minor respects, in future plan revisions. If they do, LILCO will advise the Board and parties.

Background

By way of background and context, LILCO repeats here its fundamental argument:

1. Suffolk County and New York State, as well as all other government entities, will use their "best efforts" to protect members of the public. 52 Fed. Reg. 42,086 col. 1 (Nov. 3, 1987), to be codified at 10 CFR § 50.47(c)(1) (1988).
2. Suffolk County and New York State have available to them an emergency plan (the LERO plan) that meets NRC requirements but for the lack of State and County participation. CPID,^{3/} LBP-85-31, 22 NRC 410 (1985), and PID, LBP-85-12, 21 NRC 644 (1985), affirmed in most respects. ALAB-832, 23 NRC 135 (1986), ALAB-847, 24 NRC 412 (1986), review declined, Memorandum of Mar. 12, 1987 from John C. Hoyle for Board and Parties; ALAB-855, review declined, Memorandum of June 23, 1987 from Samuel J. Chilk for Board and Parties; CLI-87-12, 26 NRC 383 (1987).

^{3/} "CPID" refers to the Board's Concluding Partial Initial Decision, LBP-85-31, 22 NRC 410 (1985). "PID" refers to the Partial Initial Decision, LBP-85-12, 21 NRC 644 (1985).

3. Suffolk County and New York State have available to them a full complement of resources and utility and other personnel designated and trained to implement the plan without help (or a fortiori to advise government personnel on how the plan works). See, e.g., PID, 21 NRC at 895 (issue of strike by LERO employees).
4. Suffolk County and New York State must be presumed to generally follow the LERO Plan except to the extent they put forth timely, good-faith alternatives. 52 Fed. Reg. 42,086 col. 1 (Nov. 3, 1987), to be codified at 10 CFR § 50.47(c)(1) (1988).
5. Any such alternatives must be as good as or better than the LERO Plan; otherwise they are not the "best effort." 52 Fed. Reg. 42,086 col. 1 (Nov. 3, 1987), to be codified at 10 CFR § 50.47(c)(1) (1988).

Given these premises, which LILCO believes are not in dispute for the purposes of this proceeding, it follows that LILCO has carried its burden and is entitled to a full-power license. This is so only in a case, like the Shoreham case, where there is a complete utility-only plan that by itself meets NRC requirements, but for the nonparticipation of the state and county. Given such a plan and the new NRC rule (52 Fed. Reg. 42,086), the Intervenor must either generally follow the LERO Plan (which meets or exceeds NRC requirements) or do something better (which a fortiori would meet NRC requirements). For example, the Suffolk County Police testified at length that they would direct traffic better than LILCO if they were doing it. See, e.g., Roberts et al., ff. Tr. 2260, at 18 (more intersections should be manned). That is fine. The LERO Plan meets or exceeds NRC standards already. If the police have a better plan, it can only make things better.

The only way the Intervenor could (theoretically) win their case would be by proving that they would degrade the response below NRC standards, despite their best efforts, despite New York State's expertise, and despite the availability of the full complement of LERO personnel. LILCO submits that it is impossible to prove such a case. It is impossible to prove that the Intervenor would wilfully degrade the response

because that would not be "best efforts." It is impossible to prove they would degrade the response by incompetence because there is a utility person able to do (or to advise about) each act called for by the plan. Any argument the Intervenors might make to the contrary would be an improper challenge to the NRC regulation, prohibited by 10 C.F.R. § 2.758(a) (1987).

The Intervenors may argue that the LERO Plan has not been fully litigated because the Frye Board found "fundamental flaws" and because there are still three remand issues to be tried (hospital ETE's, school bus driver role conflict, and EBS) and another (reception centers) to be decided. This argument, while technically correct at present, is irrelevant, because it would not be true at the time of an emergency. Before Shoreham can operate at 100 percent power, those record shortcomings will have to be corrected, one way or another. Thus the argument that Suffolk County Police (for example) would not use the LERO Plan because it has allegedly been discredited by the Frye Board decision does not work for the circumstances of a real emergency, when the deficiencies would have been corrected.

General Principles

Some parts of LILCO's prima facie case go to general principles that apply to more than one of the contentions. We address those general principles immediately below.

Limits to the Board's Jurisdiction and Law of the Case

The first "general principle" is that issues already decided may not be relitigated. This is not a matter of discretion; the Board lacks jurisdiction to reopen settled issues:

Our earlier decisions make it abundantly clear that when a discrete issue has been decided by an appeal board and the Commission declines to review that decision, agency action is final with respect to the issue and our jurisdiction is terminated. This is the case even when other issues may still be before us.

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-782, 20 NRC 838, 841 (1984).^{4/}

Similarly, a board on remand has jurisdiction only over the issue remanded to it. Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 n.3 (1979).

In particular, the PID and CPID have been affirmed by the Commission and become final agency action except with respect to the legal authority and other remanded issues. The findings of the PID (21 NRC 644) and CPID (22 NRC 410), except as remanded, cannot be challenged now.^{5/} Memorandum and Order, LBP-87-26, 26 NRC 201, 226 (1987). For example, the Suffolk County Police have already testified that LILCO's traffic control plan is inadequate to meet NRC standards, and the NRC has decided otherwise. The Intervenor's are not permitted to argue again that the LERO Plan is inadequate.

^{4/} Where finality has attached to some but not all issues, appeal board jurisdiction to entertain new matters is dependent upon the existence of a "reasonable nexus" between those matters and the issues remaining before the board. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704, 707 (1979). There is no such nexus between the issues already decided and the legal authority issues now before the Board.

^{5/} It is also pertinent that in "Phase I" of this proceeding the Intervenor's settled a number of issues that bear on the present issues. Following Tr. 14,719 the Board will find settlement agreements resolving, among other things, issues about the following:

- the effect of weather on the sirens
- the adequacy of provisions in the onsite plan for using federal resources
- the number of radiological monitoring teams provided by LILCO
- communications from the Shoreham site

In particular, the Intervenor may not dispute the following propositions:

1. The LERO Plan meets NRC requirements, but for the Intervenor's nonparticipation (and but for the remand and exercise-related issues, which will be separately litigated and resolved). See generally PID, 21 NRC 644, and CPID, 22 NRC 410.
2. The LERO traffic control plan meets NRC requirements. PID, 21 NRC at 805-09.
3. The LERO early notification system (sirens and tone alert radios) meets NRC requirements. PID, 21 NRC at 709, 758-60.
4. The LERO prewritten EBS messages meet NRC requirements. PID, 21 NRC at 670, 698.
5. The LERO Plan for perimeter control meets NRC requirements. PID, 21 NRC at 804-05.
6. The LERO EBS meets NRC requirements, except for the remand issue of coverage. PID, 21 NRC at 763-64.
7. The LERO Plan for the ingestion pathway meets NRC requirements. PID, 21 NRC at 877-78; see also PID, 21 NRC at 884 ("The Board has no trouble finding that LILCO has the capability to perform the four specific tasks that have been identified as state functions."^{6/})
8. The LERO Plan for making protective action decisions meets NRC requirements. PID, 21 NRC at 775-81.
9. The LERO Plan for recovery and reentry meets NRC requirements. PID, 21 NRC at 880, 882.
10. The LERO Plan for removing road impediments meets NRC requirements. PID, 21 NRC at 719, 809-12.
11. The Shoreham 10-mile EPZ meets NRC requirements. PID, 21 NRC at 701-07; CLI-87-12, 26 NRC 383 (Nov. 5, 1987).

Even when a board still retains jurisdiction, it should adhere to its earlier decisions as the "law of the case," unless it "is convinced that its declared law is wrong and

^{6/} The Board went on, of course, to doubt that the four were all that the State would do. 21 NRC at 884-85. But the State had the chance to put on evidence about what it would do and declined to do so. Hence there was no evidence to support the Board's doubt. The contention at issue, Contention 92, was later summarily resolved. LBP-87-30, 26 NRC 425 (1987).

would work an injustice." Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 260 (1978).

The "Emergency Consensus"

Although they are precluded from doing so by the new NRC rule, the Intervenor may continue to argue that they would not cooperate with LILCO in a real emergency. The new rule precludes this argument because treating the utility like an enemy in a disaster would not be "best efforts." See 52 Fed. Reg. 42,086 col. 1 (Nov. 3, 1987), to be codified at 10 C.F.R. § 50.47(c)(1) (1988).

Totally apart from the new rule, the record in this case shows that people in an emergency put aside partisan differences and become cooperative. For example:

PID, 21 NRC at 674
PID, 21 NRC at 794
Cordaro et al., ff. Tr. 831, at 18-20
Cordaro et al., ff. Tr. 3857, at 25-27
Cordaro et al., ff. Tr. 6685, at 12
Tr. 870-71 (Dynes)
Cordaro et al. (Contention 65, Supp. II), ff. Tr. 3857, at 25-27
Cordaro et al., ff. Tr. 1470, at 129
Urbanik, ff. Tr. 3430, at 11, 12
Tr. 3450-51 (Urbanik)
LILCO Ex. 1 (reception center proceeding), at 47-48

Moreover, the Intervenor has admitted they would try to stay in contact with LILCO or LERO or both in an emergency. Admitted Fact 46.^{7/} (Of course they would; LILCO would be the one with the best information about the accident.) And, under the "best efforts" principle, it can be concluded that they would stay in contact for the purpose of helping people and not of hurling invective. Indeed, the Intervenor's statements that they would not cooperate with LILCO are a perfect illustration of how preemergency intentions are unreliable in predicting emergency behavior. See Tr. 1086-87, 1103-04 (Mileti), 1104 (Sorensen), 1105 (Johnson).

^{7/} "Admitted Facts" refer to the numbered statements of fact attached to LILCO's Second Renewed Motion for Summary Disposition (March 20, 1987) and not contested by the Intervenor. See Memorandum and Order, LBP-87-26, 26 NRC 201, 225 (1987).

LILCO does not, however, designate the evidence and Board findings on the "emergency consensus" as part of its prima facie case, because they are to some extent redundant of the new rule. But we may have occasion to refer to them again if the Intervenor argue that they would be uncooperative in an emergency.

Cuomo v. LILCO

The lower courts' decisions in Cuomo v. LILCO, Consol. Index No. 84-4615 (N.Y. Sup. Ct. Suffolk Co. 1985), aff'd, 127 A.D.2d 626, 511 N.Y.S.2d 867 (2d Dep't 1987), which held that LILCO lacked "legal authority" to implement its emergency plan, have now been reversed as nonjusticiable: Cuomo v. LILCO, No. 3, ___ N.Y.S.2d ___ (Feb. 17, 1988).^{8/}

The reversal of Cuomo v. LILCO has implications for this litigation. First, it eliminates the basis for Contentions 1-10. Second, it means that there is no court decision holding that a private party may not take action without governmental permission in an emergency.

Delegation of Police Power

The demise of Cuomo v. LILCO also leaves the Intervenor with no court decision supporting their claim that a utility plan is an unlawful "delegation of the police power." Nevertheless, they may continue to argue it.

Accordingly, LILCO designates the following affidavits, which the Intervenor have not contradicted, to show that in fact private parties routinely do things like directing traffic:

^{8/} Moreover, the argument that using the emergency plan would violate the state statutes named in Contentions 1-10 is frivolous; for example, Contention 1 says essentially that directing traffic in an emergency is to commit the crime of "intentionally obstructing, impairing or perverting" the government. See N.Y. Penal Law § 195.05 (McKinney 1988 Supp.), cited in Contention 1.

Affidavit of Charles A. Daverio on LILCO Responses to Requests by Local Law Enforcement Officials for Public Safety Assistance (Dec. 16, 1987)

Affidavit of Jay Richard Kessler on Directing Traffic, Training Public Workers for Emergency Response, and Ordering Evacuations (Dec. 14, 1987)

Affidavit of John D. Leonard, Jr., in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 10, 1987)

See also:

Tr. 12,071-72 (Eabb) (private parties directed traffic during New York City blackout)

Many Resources Available
in Aftermath of an Emergency

Another principle for this proceeding is that there cannot be insufficient resources to respond to a radiological emergency, especially in the aftermath such as is addressed by Contentions 7, 8, and (the Intervenors now claim) 10.

There are two reasons for this conclusion. First, LILCO has on its own provided all the "resources" (people, buses, ambulances, radiological monitoring equipment, radios, sirens) to implement its plan fully.^{9/} See, e.g.:

PID, 21 NRC at 747-49 (Issue of attrition from LERO resolved in LILCO's favor)

PID, 21 NRC at 895 (Issue of strike by LERO workers resolved in LILCO's favor)

Second, the record shows without contradiction that any major radiological emergency would produce an enormous influx of aid, as the Three Mile Island accident did. See LILCO Ex. 1 (Crocker et al. direct testimony in reception centers remand), at 54; see

^{9/} Also, as the record in the reception centers remand proceeding shows, LILCO has agreements with many other organizations to provide help:

LILCO Ex. 1 at 52-53
Tr. 17,656-60 (Crocker, Dreikorn, Watts)
Tr. 17,724-27 (Linnemann, Crocker)

also Tr. 18,424 (Baldwin); Tr. 13,566 (Porter). In particular, following any major radiological emergency, many government entities would assist:

Tr. 10,590-10 (Weismantle)
Cordaro et al. (Ingestion Pathway), ff. Tr. 13,563, at 38-39
Tr. 13, 702-06 (Daverio, Watts)

Indeed, the record shows that there are typically too many helpers, not too few. Cordaro et al., ff. Tr. 831, at 17; Tr. 919, 1040-41 (Dynes). And of course, under the "best efforts" principle of 10 C.F.R. § 50.47(c)(1), the enormous resources of Suffolk County and New York State would be used to help protect the public.

The Federal Role

Much of the aid referred to above would come from the federal government.

See, e.g.:

PID, 21 NRC at 726-27 (communication with federal response agencies)
LERO Plan at 2.2-1 through 2.2-5
LERO Plan, Attachments 2.2.1 and 2.2.2

First, the DOE-RAP team is included in the plan and is stationed only six miles from the Shoreham plant:

PID, 21 NRC at 741-42 (communication with DOE-RAP Teams)
Plan, Attachment 2.2.1, p. 3 of 17 (DOE role)
Baldwin et al., ff. Tr. 12,174, at 9 (EBS); 27 (notification to DOE); 31 (Communication with FEMA et al.), 63 (tow trucks)
Baldwin et al., ff. Tr. 14,151, at 45 (dose assessment functions draw on DOE resources)
Baldwin et al., ff. Tr. 14,151, at 37-38 (communications with DOE-RAP field teams)
Baldwin et al., ff. Tr. 14,292, at 45 (corrected) (nomogram)
Baldwin et al., ff. Tr. 14,292, at 45 (corrected) (primary responsibility for field monitoring and interpretation of the data is assigned to DOE-RAP personnel)
Tr. 1155, 1174 (Weismantle)
Tr. 10,616 (Clawson)

Second, the federal government has a radiological response plan designed post-TMI to bring to bear the enormous resources of the federal government. The Federal

Radiological Emergency Response Plan (FRERP), 50 Fed. Reg. 46,542 (Nov. 8, 1985), assumes that the "resources of the Federal agencies will be made available during radiological assistance operations." Id. at 46,544 col. 2. This goes beyond radiological monitoring and assessment and includes the resources of FEMA, the NRC, EPA, the Department of Health and Human Services, DOE, the Department of Agriculture, the Department of Defense, the Department of Commerce, and the Department of the Interior. Id. at 46,551 col. 2. The FRERP provides that

The Department of Energy, during the initial phases of the emergency, and the EPA thereafter, will work with the appropriate State and local agencies to coordinate offsite radiological monitoring and assessment activities. DoE or EPA will assess monitoring data and present them to the CFA and appropriate State agencies.

Id. at 46,545 col. 2. See also Region I Radiological Assistance Program (July 15, 1985); Federal Radiological Monitoring and Assessment Plan (July 15, 1985).

Third, the NRC Staff testified that they would act as an independent decisionmaker:

The NRC Staff has testified that the NRC will readily step in to fulfill the role of independent decisionmaker. PID, 21 NRC at 686.

The Board rejected this testimony because the NRC's procedures were "ill-defined." Id. But the Appeal Board reversed, and LILCO's position prevailed, largely on the basis of "realism." ALAB-847, 24 NRC 412, 424-29 (1986), review declined in letter of March 12, 1987. The evidence is that the NRC Staff would be a resource for the State and County:

Schwartz & Sears, ff. Tr. 15,143
Tr. 15,242-43 (Sears) (NRC could order LILCO to sound sirens)
Tr. 10,510 (Weismantle), 10,513 (Cordaro)
Tr. 15,223-36 (Sears, Schwartz)

Intervenors' Familiarity
with the LILCO Plan

The Commission has said there are unanswered questions about the familiarity of

State and County officials with the LERO Plan. CLI-86-13, 24 NRC at 31 (1986). As with the other issues raised by Contentions 1-10, however, the existing record answers the questions.

There is evidence in the evidentiary record that the Suffolk County Police reviewed an early draft of what eventually became the LERO Plan:

LILCO Ex. 2, 12-18, 22
Tr. 4672-76 (Regensburg).

There is also evidence that Suffolk County Police officers reviewed the LERO Plan itself, for the purpose of testifying against it:

Roberts et al., ff. Tr. 2260
Regensburg et al., ff. Tr. 5416

Indeed, Suffolk County police officers have testified they are "familiar" with LILCO's plan. See, e.g.:

Affidavit of Richard C. Roberts (Feb. 10, 1988) at 1 (accompanying Intervenor's February 10, 1988 answers to LILCO's Motions for Summary Disposition)

(The Intervenor's argue, however, that their witnesses are "familiar" enough to testify but not to "implement" the plan.)

The record also shows that the State has experience in planning for other nuclear plants:

Admitted Facts 34, 35, 36, 37, 38, 39, 45, 50, 51, 61, 62
Cordaro & Weismantle, ff. Tr. 13,899, Att. 10^{10/}
New York State Ex. 1 (reception centers proceeding), at 1-3
and Exhibits 1-3 (professional qualifications of State REPG witnesses)

Moreover, it is contrary to the "best effort" principle (10 CFR § 50.47(c)(1)) and contrary to Commission precedent to suppose that the State and County would keep

^{10/} LILCO attempted to present testimony on the State plan in connection with Contention 92, but much of it was stricken. See Cordaro & Weismantle, ff. Tr. 13,899, at 3-4, 5-6, 8, 9-10, and Attachments 1-9, 11.

themselves wilfully ignorant of the LERO Plan after the Shoreham plant reached full-power operation:

[W]e are confident that if the Commission upholds the Licensing Board's finding that an adequate emergency plan is feasible with State and local participation, the State and County will accede to that judgment and will provide the participation needed to make the plan successful.

CLI-85-12, 21 NRC 1587, 1589 (1985).

Even if one assumes, however, that the State and County are unfamiliar with the LERO Plan on the day of some future accident, then their familiarity is still adequate because LERO and the federal government will provide the necessary "familiarity." The "best efforts" principle dictates that the State and County would give LERO people permission to do needed tasks or at least listen to the information LERO (and the federal agencies) could provide; clearly the State and County would not let their unfamiliarity harm the public.

As a general matter, the specific duties of emergency response personnel under the LERO Plan are not "complex":

PID, 21 NRC at 750 (general), 756 (traffic guides)
Baldwin et al., ff. Tr. 14,151, at 104 (specific duties of emergency response personnel are not in most cases complex)
Tr. 14,458 (Keller, McIntire)

The job of deciding on protective action recommendations (that is, whether to evacuate or shelter) can require professional judgment. Tr. 8789-815 (Cordaro et al.). But the Shoreham plant staff, LERO's outside consultants, the DOE, the NRC Staff, and other federal agencies provide many advisers to assist the State and County in exercising that judgment.

Summary of Record on General Principles

In short, LILCO designates the following portions of the record as its prima facie case that ample resources will be available as a general matter (including federal resources), that private parties can and do perform emergency tasks such as directing

traffic, that Suffolk County has some familiarity with the LERO Plan, and that New York State is familiar with the principles of making protective action decisions:

Affidavit of Charles A. Daverio on LILCO Responses to Requests by Local Law Enforcement Officials for Public Safety Assistance (Dec. 16, 1987)

Affidavit of Jay Richard Kessler on Directing Traffic, Training Public Workers for Emergency Response, and Ordering Evacuations (Dec. 14, 1987)

Affidavit of John D. Leonard, Jr. in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 10, 1987)

Tr. 12,071-72 (Babb)

PID, 21 NRC at 726-27, 741-42

LERO Plan at 2.2-1 through 2.2-5
LERO Plan, Attachments 2.2.1 and 2.2.2

FRERP, 50 Fed. Reg. 46,542 (Nov. 8, 1985)

Schwartz & Sears, ff. Tr. 15,143
Tr. 15,242-43 (Sears)
Tr. 10,510 (Weismantle)
Tr. 10,513 (Cordaro)
Tr. 15,223-36 (Sears, Schwartz)
LILCO Ex. 2, 12-18, 22
Tr. 4672-76 (Regensburg)
Roberts et al., ff. Tr. 2260
Regensburg et al., ff. Tr. 5416

Affidavit of Richard C. Roberts (Feb. 10, 1988) at 1

Admitted Facts 34-39, 45, 50, 51, 61, 62

Cordaro & Weismantle, ff. Tr. 13,899, Att. 10

CLI-85-12, 21 NRC 1587, 1589 (1985)

PID, 21 NRC at 750, 756

Baldwin et al., ff. Tr. 14,151, at 104

The parts of the record that make up LILCO's case on each numbered contention are given below. LILCO's "bare bones" designation of the record is contained in a section entitled "Summary of the Record" for each contention (or, in the case of

Contentions 1-2, each pair of contentions). The bare bones designation consists mostly of the LERO Plan and OPIP's, the PID, and the "Admitted Facts" from LILCO's Second Renewed Motion for Summary Disposition. Preceding each "Summary" section is a more detailed discussion of the record with additional citations not listed in the Summary. These additional citations are not a necessary part of LILCO's prima facie case but are useful to explain LILCO's case or to anticipate arguments the Intervenors may make.

1-2 Traffic Control

Contentions

The rewritten Contentions 1-2 read as follows:

- 1-2. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning guiding traffic, blocking roadways, erecting barriers in roadways, and channeling traffic.

Legal Standards

The applicable regulation for traffic control is 10 C.F.R. § 50.47(b)(10):

- (10) A range of protective actions have been developed for the plume exposure pathway EPZ

The guidelines are found under NUREG-0654 Planning Standard J (particularly J.8 and J.10.1) and Appendix 4.

Record

The "reasons for Traffic Guides" are discussed in the PID, 21 NRC at 791. The purpose of the traffic control plan is to minimize evacuation time by using special traffic control tactics. Traffic Guides are used to facilitate flow and will attempt to ensure compliance with the routes specified in the plan to the extent possible. PID, 21 NRC at 791.

The traffic control plan is

OPIP 3.6.3 Traffic Control.^{11/}

(Further details are given in Appendix A of the LERO Plan.) In particular, the 130 traffic control posts and the traffic movements to be facilitated and discouraged at each are in

OPIP 3.6.3 Attachment 4 (Traffic Control Posts Listing).

The posts are activated in order of importance:

OPIP 3.6.3 Attachment 7 (Order in Which Traffic Control Posts Are Activated During Evacuation)
Cordaro et al., ff. Tr. 7043, at 25-26.

Consistent with a best-effort response, Suffolk County, when notified of a Shoreham emergency, would either dispatch police officers to team with trained LERO Traffic Guides or authorize LERO Traffic Guides themselves to control traffic. To aid in coordinating this effort, the LERO Plan now provides for the dispatch of a trained LERO coordinator to the Suffolk County Police headquarters in Yaphank. This coordinator will carry diagrams explaining the traffic control movements at each point specified in the LILCO Plan. LERO Traffic Guides will also be dispatched to each traffic control point with dosimetry and the appropriate equipment for carrying out the traffic control strategies specified for that control point.

The participation of the Suffolk County Police Department is addressed by

OPIP 3.6.3 Attachment 15 (Participation of Suffolk County Police Department During a Radiological Emergency)
Babb et al., (Training), ff. Tr. 11,140 (Vol. V), Module 12, at 26-27 of 37
OPIP 3.6.3 at 3a-3c, 6
OPIP 3.1.1, Attachment 10, at 3.

Suffolk County has a large, well-equipped police force:

^{11/} "OPIP's" are the implementing procedures for the plan. They were entered into the record at Tr. 1204 (Rev.2) and again at Tr. 15,590 (Rev. 3).

Admitted Facts 1, 3, 4, 5, 53, 59, 60
Roberts et al., ff., Tr. 2260, at 2-4 (Suffolk County Police Department has about 2600 officers, 1800 of them assigned to the Patrol Division; Sixth Precinct has approximately 250 officers)
Regensburg et al., ff., Tr. 4442, at 18 (Police Department reached 99 off-duty officers in 43 minutes) Tr. 1238 (Dilworth) (at any time you have approximately 20-25 percent of your 2,600-odd officers on duty)
Tr. 1237-38, 1262-63, 1268 (Dilworth) (training, experience, and esprit of police)

Moreover, the police testified that police officers are better able to direct traffic than LILCO Traffic Guides would be:

Roberts et al., ff. Tr. 2260, at 35-36, 39-44, 48, 52-53
Tr. 2319-21 (Roberts, McGuire)
Cosgrove et al., ff. Tr. 13,083, at 19-23 (on-the-job experience needed to direct traffic)
Cosgrove et al., ff. Tr. 13,083, at 55, 63, 76-77 n.6 (training of rookie police officers described)
Tr. 13,091 (Cosgrove)
Tr. 13,112-16 (Cosgrove, Fakler) (police officers directing traffic)
Tr. 13,208-09 (Fakler)

This traffic plan was fully litigated. LILCO presented its testimony:

Cordaro et al. (Contention 65), ff. Tr. 2337
Cordaro et al. (23.C., D., H.), ff. Tr. 2337
Cordaro et al. (Joint Attachments), ff. Tr. 2337
Cordaro et al., (Supplemental on Contentions 23.D and 65), ff. Tr. 2337
Amendments, ff. Tr. 2337
Cordaro et al., ff. Tr. 3857.

The NRC Staff also testified to the adequacy of the plan:

Urbanik, ff. Tr. 3430.

The traffic plan was vigorously contested. The Suffolk County Police and Suffolk County's consultants testified that there were many shortcomings in the plan. See, e.g., Herr, ff. Tr. 2909; Roberts et al., ff. Tr. 2260; Pigozzi, ff. Tr. 2909; Polk, ff. Tr. 2909. For example, the police testified that LILCO's traffic channelization strategies would likely fail. Roberts et al., ff. Tr. 2260, at 17. Where these criticisms were correct, LILCO has changed the plan:

PID, 21 NRC at 809
Att. 2 to LILCO's Motion for Summary Disposition of Contentions 1 and 2 (Directing Traffic) (Dec. 18, 1987).

The Board considered the arguments and the evidence and decided that the traffic plan meets NRC standards:

PID, 21 NRC at 697-98, 785, 805-09.

In particular, LILCO's evacuation time estimates, calculated with the DYNEV model, were fully litigated. The model itself was accepted by the Board. PID, 21 NRC at 783, 785, 805-08. The evacuation time estimates are in

OPIP 3.6.1, Attachment 2.

The results of sensitivity studies, which examine the effects on evacuation time estimates of weather conditions, evacuees' compliance with routing assignments, and the "shadow phenomenon," are

OPIP 3.6.1, Attachment 7.

Additional details are found in Appendix A. The latest time estimates are described in

Affidavit of Edward B. Lieberman in Support of LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 - Immateriality (Dec. 14, 1987)

In outline, then, LILCO's prima facie case is this: LILCO has analyzed the traffic network, developed a traffic control plan, and calculated evacuation times. This work has been approved by the Board. PID, 21 NRC at 781-809. The traffic control plan requires 165 people to man 130 traffic posts. LILCO has recruited and trained such people, staffing at 150%. The jobs of the Traffic Guides are not particularly complex. PID 21 NRC at 756. Moreover, each guide has written instructions, including a diagram, to show him what to do. Admitted Fact 55. Without any participation by the State or County at all, LERO Traffic Guides can carry out the traffic control plan.

In addition, Suffolk County has a large police force. Admitted Facts 1, 3, 4, 53. These policemen are trained to direct traffic. Admitted Fact 60. A substantial number

of these police officers are on duty at all times. Admitted Fact 53. In addition, the police can mobilize off-duty officers, although they have represented that it can be difficult to reach them; in one drill, they reached about 99 off-duty officers in 43 minutes. Regensburg et al. (Contention 26), ff. Tr. 4442, at 18.

Finally, the LERO Traffic Guides are trained to cooperate with the police. Babb et al. (Training), ff. Tr. 11,140 (Vol. V), Module 12. Procedures have been provided for that very purpose.

There is, in short, no reason on the existing record, and no reason LILCO can imagine, why the LERO Traffic Guides alone, or with the Suffolk County police, using "best efforts," could not carry out the LERO traffic plan.

Moreover, even assuming that the participation of the police would degrade the response, such degradation would not materially affect the public health and safety. Even if no Traffic Guides at all are used, the evacuation time (for the entire EPZ) is only about 35 minutes greater than when they are used:

Affidavit of Edward B. Lieberman in Support of LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 -- Immateriality (Dec. 14, 1987), ¶ 7

The uncertainty for the evacuation time estimates in any event is about plus or minus 30 minutes:

PID, 21 NRC at 792, 808

Hence it is improbable that anything the police would do could significantly hurt the public.

Summary of Record on Contentions 1-2

In short, LILCO designates the following parts of the record in support of its prima facie case on Contentions 1-2:

PID, 21 NRC at 697-98, 781-809
OPIP 3.1.1, Att. 10, at 3-5
OPIP 3.6.1
OPIP 3.6.3

Plan, Appendix A

Admitted Facts 1, 3, 4, 5, 53, 59, 60

Roberts *et al.*, ff. Tr. 2260, at 2-4, 35-36, 39-44, 48, 52-53

Regensburg *et al.*, ff. Tr. 4442, at 18

Tr. 1237-38, 1262-63, 1268 (Dilworth)

Tr. 2319-21 (Roberts, McGuire)

Cosgrove *et al.*, ff. Tr. 13,083, at 19-23, 55, 63, 76-77 n.6

Tr. 13,091, 13,112-16, 13,208-09 (Cosgrove, Fakler)

Affidavit of Edward B. Lieberman in Support of LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 -- Immateriality (Dec. 14, 1987)

4. Road Obstructions

Contention

The rewritten Contention 4 reads as follows:

4. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning removing obstructions from public roadways, including towing private vehicles.

Legal Standards

NUREG-0654 Criterion J.10.k calls for:

- k. Identification of and means for dealing with potential impediments (e.g., seasonal impassability of roads) to use of evacuation routes, and contingency measures;

Record

The provisions in the LERO Plan for removing road obstructions are found for the most part in

OPIP 3.6.3 (specifically § 5.9 and Attachments 2, 8, 10, 14, 18, 22).

Contention 66 asserted that the removal of roadway obstacles would not be adequate. LILCO presented evidence that it was adequate:

Cordaro et al. (Contention 66), ff. Tr. 6685
Tr. 6726, 6734-35 (Lieberman)

FEMA agreed generally that the provisions for removing disabled vehicles were adequate:

Baldwin et al., ff. Tr. 12,174, at 63
Tr. 12,802-03 (Baldwin)

Suffolk County vigorously contested the adequacy of LILCO's plan. See, e.g.:

Monteith et al., ff. Tr. 6868.

Suffolk County police also testified to their own experience in responding to accidents and breakdowns:

Roberts et al., ff. Tr. 2260, at 55 (During 1982 the Suffolk County police responded to approximately 10,000 incidents such as accidents and breakdowns just on the Suffolk County portion of the Long Island Expressway; accidents and breakdowns occur every day)

Roberts et al., ff. Tr. 2260, at 57-59 and Attachment 8 (discussing most likely spots for accidents and breakdowns)

The Board found LILCO's plan adequate:

PID, 21 NRC at 809-12
PID, 21 NRC at 719 (mobilization of tow trucks)

It is inconsistent with the "best efforts" assumption to assume that Suffolk County would intervene at the height of an emergency and prevent the use of emergency equipment LERO has provided. Cf. Memorandum and Order (Granting LILCO's Summary Disposition Motion on Contention 9) at 11 (March 11, 1988).

Summary of Record on Contention 4

The record supporting LILCO's prima facie case on Contention 4 is as follows:

PID, 21 NRC at 719, 809-12
OPIP 3.1.1, Att. 10, at 3
OPIP 3.6.3
Cordaro et al. (Contention 66), ff. Tr. 6685
Tr. 6726, 6734-35
Baldwin et al., ff. Tr. 12,174, at 63
Tr. 12,802-03 (Baldwin)
Roberts et al., ff. Tr. 2260, at 55, 57-59

5. Sirens and EBS

Contention

The rewritten Contention 5 reads as follows:

5. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning the activation of sirens and the directing of emergency broadcast system messages.

Confirmatory Memorandum and Order at 2 (Feb. 29, 1988).

Legal Standards

The applicable regulatory requirement is 10 C.F.R. § 50.47(b)(5), which provides as follows:

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all organizations; the content of initial and followup messages to response 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.

Pertinent regulatory guidelines include:

10 C.F.R. Part 50, Appendix E, § IV.D.3

NUREG-0654, Supp. 1, Criteria E.5 and E.6.

LERO Plan

A description of the means by which the general public will be informed of a Shoreham emergency is given in the LERO Plan at

Section 3.3, page 3.3-4.

The Suffolk County Executive will be advised of the status of a Shoreham emergency and will be requested to give LERO permission to activate the sirens and broadcast EBS messages, as necessary, in accordance with

OPIP 3.1.1 Attachment 10 (Suffolk County^{12/} Interface Procedure).

The method by which the sirens are physically activated is provided in

OPIP 3.3.4 Prompt Notification System Activation.

The procedures for the activation of the Emergency Broadcast System are found in

OPIP 3.8.7 Emergency Broadcast System Activation.

In particular, coordination between the local EBS (WPLR) and the New York State EBS is addressed in

OPIP 3.8.2 § 5.1.4.

Details of the emergency procedures for WPLR are provided in

OPIP 3.8.2 Attachment 1 (WPLR Shoreham EBS Procedure).

Prewritten EBS messages are found in

OPIP 3.8.2 Attachment 4 (EBS Sample Messages).

Record

In Contentions 24.T and 55-59, Intervenor asserted that, for a variety of reasons, the LERO Plan would not provide adequate notification to the public in an emergency. In Contention 15.E., Intervenor further argued that LILCO's prewritten EBS messages were not credible.

LILCO's written testimony on the public notification system was

Cordaro et al., ff. Tr. 4842.

LILCO's written testimony on the credibility of its EBS messages was

Cordaro et al., ff. Tr. 10,396, at 104-05.

^{12/} This procedure assumes that the County is the lead agency in responding to a Shoreham emergency. The LERO Plan has the flexibility, however, to deal with an emergency in which the State assumes command and control.

Suffolk County's testimony on Contentions 24.T and 55-59 was

Regensburg et al., ff. Tr. 5416.

The County's testimony on Contention 15.E was

Purcell et al., ff. Tr. 10,727, at 70-72.

The Board rejected all of Intervenors' various contentions regarding the adequacy of LILCO's prompt notification system (PNS). In dismissing Contention 55, in which Intervenors alleged that delays would occur in the sounding of the sirens, the Board concluded that it could "see no reason to believe that the procedures of the LERO Plan would result in significant delay of the sounding of the PNS." PID, 21 NRC at 758. The Board further found that Contention 56, which challenged the adequacy of LERO's route alert driver system, was without merit, noting that this backup notification method was a "worthwhile and desirable addition to the requirements." PID, 21 NRC at 759.

Contention 57 and Contention 58 concerned the adequacy of tone alert radios for special facilities and LERO's procedures for verifying the notification of these facilities. The Board rejected both contentions. The Board found that (1) the "inclusion of the tone alert radio system in the Plan is simply a commendably prudent addition to the requirements," 21 NRC at 760, and (2) LERO's procedure for verifying the notification of special facilities was "an effort to exceed compliance with the strict requirements . . . ," which the Board could not fault "for being less immediate than the primary means of notification." PID, 21 NRC at 761.

The Board also dismissed Contentions 24.T and Contention 59 and approved LERO's plans for notifying boaters. Calling LERO's notification procedures a "system which layers backup upon backup," the Board concluded that the possibility of any "miniscule erosion of the multiple backup structure . . . seems to [the Board] inconsequential." PID, 21 NRC at 762-63.

With respect to Contention 15.E, the Board concluded that Intervenor's criticisms of portions of LILCO's EBS messages were "bald, unsupported assertions" and that Intervenor had "not met their burden of going forward with them." PID, 21 NRC at 698.

The record thus establishes that LILCO's prompt notification system is adequate and that LILCO is capable of activating the system without significant delay.^{13/} The only remaining question is how much delay, if any, can be expected in alerting the public given the "best efforts" participation of the State and County in the notification process. See CLI-86-13, 24 NRC at 31 (1986). The answer is that any additional delay occasioned by the need to obtain permission to sound the sirens and broadcast a prewritten message over the EBS will not preclude meeting the "about 15 minutes" requirement of Appendix E, § IV.D.3.

As noted above, Attachment 10 of OPIP 3.1.1 is an "interface" procedure that instructs the LERO Director of Local Response to contact the Suffolk County Executive upon the Notification of an Unusual Event or the declaration of some higher Emergency Classification Level (ECL).^{14/} At an Alert or higher ECL, the interface procedure provides, in part, as follows:

^{13/} The applicable regulatory guideline, 10 C.F.R. Part 50, Appendix E, § IV.D.3, provides in pertinent part that the "design objective of the prompt public notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes."

^{14/} The notification of the Suffolk County Executive occurs in addition to the notification of the New York State and Suffolk County Warning Points by the Shoreham Control Room. See Shoreham Nuclear Power Station Emergency Preparedness Plan, EPIP 1-5 § 5.1.6. The adequacy of LILCO's methods of onsite notification was a "Phase I" issue, resolved in LILCO's favor. Moreover, LILCO's onsite notification capability has been successfully demonstrated in such circumstances as bomb threats. See, e.g., Affidavit of Douglas M. Crocker in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 15, 1987); Affidavit of James W. Devlin in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 11, 1987).

- A. Advise the Suffolk County Executive of the status of the emergency. Briefly explain the emergency classification system as established by the NRC and read him the description of the applicable Emergency Classification Level (ECL). Tell the Suffolk County Executive that consistent with N.Y. Exec. Law Art. 2-B, LERO is placing its personnel and resources at the County's direction to assist in implementing the emergency response as set out in the offsite utility plan.

...

- C. Explain that conditions at the plant, and meteorological considerations such as wind speed and direction, indicate that certain protective measures should be implemented. Describe the protective measures that need to be implemented

- D. Obtain the Suffolk County Executive's approval of the protective action recommendation. Request permission to activate the Prompt Notification System and broadcast an EBS message containing the protective action recommendation.

...

- E. Immediate upon completing Step D, above:

1. Ask the Suffolk County Executive to stand by while you initiate activation of the siren system and the EBS. Suggest that, if he prefers, he should proceed immediately to the LERO EOC in Brentwood. If the Suffolk County Executive does choose to go to the LERO EOC immediately, give him your mobile phone number. End the call.

2. Implement OPIP 3.3.4.

...

In short, once the Suffolk County Executive has concurred with the need (if such a need exists) to sound the sirens and broadcast an initial message over the EBS,^{15/} the

^{15/} The "familiarity of State and County officials with the LILCO plan," CLI-86-13, 24 NRC at 31, would be of little or no importance in this circumstance, since the LERO Director would be providing the Suffolk County Executive with all the information that the County Executive would need (indeed, all the information which any county official could expect to be provided at any other nuclear plant site) to make the necessary initial decision about notifying the public. The information which the LERO Director would have would be the data transmitted to him from the Shoreham Control Room using the New York State Radiological Emergency Data Form. See, e.g., Tr. 4874-75 (Renz). This Data Form is identical in all material respects to that used at every other nuclear plant site in New York. See Admitted Facts 32 and 33. FEMA's witnesses testified that if government officials chose to receive LILCO's messages, those officials would be able to understand them, given the use of the standard Data Form. See Baldwin et al., ff. Tr. 14,151 at 106.

"about 15 minutes" regulatory clock begins to run. At that point, the LERO Director would end the call and proceed to implement the procedures for sounding the sirens and activating the EBS.^{16/} Thus there is no inherent possibility of delay beyond that which the Board has already considered insignificant. See PID, 21 NRC at 758.

Summary of Record on Contention 5

The parts of the record that LILCO designates as establishing the adequacy of LILCO's early warning siren system and EBS are the following:

Cordaro et al., ff. Tr. 4842
Cordaro et al., ff. Tr. 10,396, at 104-05
Baldwin et al., ff. Tr. 14, 151, at 106

Affidavit of Douglas M. Crocker in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 15, 1987).

Affidavit of James W. Devlin in Support of LILCO's Motions for Summary Disposition of Contentions 1-10 (Dec. 11, 1987).

PID, 21 NRC at 698, 756-63

Admitted Facts 6, 7, 14-28, 30-33

Plan and Procedures
Plan Section 3.3
OPIP 3.1.1 Attachment 10
OPIP 3.3.4
OPIP 3.8.2
OPIP 5.4.1 Attachment 10

6. PARS

The rewritten Contention 6 on protective action decisions and recommendations reads as follows:

^{16/} The sirens are activated by a digital encoder system at the LERO EOC, the Shoreham Control Room, or LILCO's Brookhaven Substation. See Admitted Fact 7. The LERO Director has with him at all times a package containing the activation codes for the siren system and the EBS, along with prewritten EBS messages. See OPIP 5.4.1 Document Control, Attachment 10. The LERO Director is therefore capable of implementing OPIP 3.3.4 from any place on Long Island, 24 hours a day.

6. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning the making of decisions and official recommendations to the public on appropriate actions necessary to protect the public health and safety.

Confirmatory Memorandum and Order at 2-3 (Feb. 29, 1988).

Legal Standards

The applicable regulatory requirements include 10 C.F.R. § 50.47(b)(10):

(10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

Pertinent regulatory guidelines include

NUREG-0654 § I.H
NUREG-0654, Supp. 1, Criteria J.9 and J.10.

LERO Plan

The LERO Plan describes the means by which protective action recommendations are determined. For instance, the Plan at 3.6-1 provides that U.S. EPA guidelines are to be used in developing the appropriate action levels:

A - Protective Action Guides (PAGs)

The U.S. EPA document entitled "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents", EPA 520/1-75-001 (September 1975) provides guidance in the development of action levels for the implementation of protective actions.

During a radiological emergency an estimate is made of the radiation dose which affected population groups may potentially receive; i.e. the projected dose, refer to Section 3.5, Accident Assessment. A protective action is an action taken to avoid or to reduce the projected dose when the benefits derived from such an action are sufficient to offset any undesirable features of the protective action. For protective actions to be most effective they must be implemented as soon as possible.

The Plan at 3.6-2 describes the specific standards to be followed in developing protective action recommendations for the plume exposure EPZ:

Plume Exposure Limits

Plume exposure PAGs for protective response actions for the general public are taken from the EPA document, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents", EPA-520/1-75-001 (September 1975). PAGs for the initial protective actions are 1 rem projected dose to the whole body and 5 rem projected dose to the thyroid. The PAGs for emergency workers are 5 rem whole body and 25 rem thyroid, except for lifesaving missions. Under such circumstances, the PAG is 75 rem to the whole body. There is no lifesaving PAGs for the thyroid because, under these extreme conditions, total loss of the thyroid function could be permissible. It should be emphasized that exposure of emergency workers to this extent would occur only for the most compelling reasons, such as lifesaving missions, refer to Section 3.9, Radiological Exposure Control. The PAGs for plume exposure are summarized in Table 3.6.1, and are explained in Procedure 3.6.1, Protective Action Recommendations.

The Plan at 3.6-4 provides that protective actions will be determined and implemented in a coordinated effort involving responsible officials from the State and County:

The Director of Local Response in coordination with State and County officials, based on the input from SNPS, the Radiation Health Coordinator, Evacuation Coordinator, DOE-RAP, NRC and FEMA representatives, will make the final decision regarding which protective action will be implemented.

The specific procedures for determining protective action recommendations for the plume exposure pathway are contained in

OPIP 3.6.1 Plume Exposure Pathway Protective Action Recommendations.

The EPA Protective Action Guidelines are provided in

OPIP 3.6.1 Attachment 4 (EPA PAG Guide).

A description of predetermined protective action recommendations in the event of General Emergency classifications is found in

OPIP 3.6.1 Attachment 5.

If it becomes necessary to make an immediate protective action recommendation upon initial notification of the accident, the Suffolk County Executive will be briefed on the status of the emergency and the need for a protective action in accordance with

OPIP 3.1.1 Attachment 10 (Suffolk County Interface Procedure).

Record

The adequacy of the LERO Plan with respect to protective action recommendations was addressed in the litigation of a cluster of five contentions: 61 (sheltering), 60 and 63 (selective sheltering and selective evacuation), 64 (wind shifts), and 49 (nomogram). LILCO's written testimony on Contention 60, 61, 63, and 64 was

Cordaro et al., ff. Tr. 8760.

LILCO's written testimony on Contention 49 was

Cordaro et al., ff. Tr. 13,909.

LILCO's oral testimony on these contentions was

Tr. 8761-894 (Cordaro et al.).

Suffolk County's testimony on Contention 61 was

Finlayson et al., ff. Tr. 12,320.

The County's testimony on Contentions 60, 63, and 64 was

Harris and Mayer, ff. Tr. 9777.

Intervenors presented no testimony on Contention 49, which was rewritten by the Board. See Order Ruling on LILCO's Motion for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49 (April 20, 1984).

The Board found in LILCO's favor on all of these contentions. Rejecting Intervenors' concerns raised in Contention 60 that, for various reasons, sheltering was not a viable protective action on Long Island, the Board noted that "in most cases a sheltering recommendation is a last resort to be taken when no other action will result in a smaller dose." PID, 21 NRC at 774. The Board further found with regard to a related

issue that "LILCO's Plan is adequate to provide reasonable assurance that transients will receive notification of a sheltering recommendation." PID, 21 NRC at 775.

With respect to Contentions 60 and 63, LILCO's witnesses testified that selective sheltering and selective evacuation options were added to the LERO Plan so that it would conform specifically to the New York State Radiological Emergency Preparedness Plan (the "New York State Plan"), which includes such strategies. Cordaro *et al.*, ff. Tr. 8760, at 10-11, 34. Absent instruction from New York State officials, LERO would recommend sheltering or evacuation for entire populations within given zones, not just for radiosensitive persons within those zones. *Id.* at 11, 34. The Board found that while guidelines for selective sheltering and evacuation were not set forth in the LERO Plan

it was never really intended that they should be The bare provision for selective action, keyed to instructions from the State Commissioner of Health, was included in the Plan merely to provide for cooperation with that official in the event that New York State should decide to help in an emergency. We do not see the absence of such guidelines as a failure to meet 10 C.F.R. § 50.47(b)(10) or NUREG-0654, § II.J.9.

PID, 21 NRC at 776-77.

Contention 64 alleged that because the wind shifts quickly on Long Island, the LERO Plan should mandate automatic evacuation of all zones within a 7 to 10 mile radius of Shoreham. The LERO Plan instead provides for evacuation based on combinations of "keyhole" segments, which vary depending on wind direction. The Board approved of this provision, finding that

no change in the emergency plan is needed Even if shore breezes or wind shear induced changes in plume direction some distance away, accommodation could be made at the time of the emergency. The notion that a large circular zone should always be evacuated seems to the Board to be inconsistent with the notion of the "range of protective actions" mentioned in 10 C.F.R. § 50.47(b)(10).

PID, 21 NRC 779.

Contention 49 alleged that the nomogram, the procedure by which the thyroid dose is calculated by relating iodine to total fission products, was not realistic. Intervenor contended that the inherent inaccuracies in this method were unacceptably large; LILCO's witnesses admitted that the nomogram could introduce a 50% error. Tr. 13, 926-27 (Watts). The Board found in LILCO's favor, concluding:

If a backup manual method of the sort involving the nomogram were to involve uncertainties of the order of 50%, the Board would not deem that excessive.

PID, 21 NRC at 781.

Intervenors, raising a question of "conflict of interest," further challenged (in Contention 11) the ability of LERO's command and control personnel to make proper protective action recommendations. LILCO's testimony on Contention 11 was

Cordaro et al., ff. Tr. 10,196.

Suffolk County's testimony was

Purcell et al., ff. Tr. 10,727

LILCO's witnesses testified in particular that LERO has formalized the decisionmaking process with detailed procedures. See Cordaro et al., ff. Tr. 10,196 at 13-15.^{17/}

The record indicates that the federal Department of Energy would participate in the decisionmaking (as an advisor and monitor). Its performance has been fully litigated. Most of the Intervenors' contentions about DOE were summarily resolved as raising no litigable issues:

Order Ruling on LILCO's Motion for Summary Disposition of Contentions 24.B, 33, 45, 46 and 49 (Apr. 20, 1984).

^{17/} The Board found for Intervenors on Contention 11. PID, 21 NRC at 686. The Appeal Board reversed, finding, in part, that "the regulations and applicable regulatory guidance effectively rebut the notion that utility officials must be categorically excluded from exercising any command and control responsibilities." See ALAB-847, 24 NRC 412, 428 (1986).

The DOE's role was considered, however:

PID, 21 NRC at 677 (DOE personnel from Brookhaven National Laboratory are part of a Federal Radiological Monitoring and Assessment Plan (FRMAP); there are 40 DOE personnel to fill the eight positions specified in the LERO Plan).

PID, 21 NRC at 694; Cordaro et al., ff. Tr. 10,396, at 79-80. (DOE-RAP teams will monitor and follow their own procedures, as part of a "cooperative venture" with LILCO).

PID, 21 NRC at 693; Cordaro et al., ff. Tr. 10,396, at 74-75. (DOE personnel would be present in the EOC exchanging information with LILCO-LERO personnel).

It has thus been established in the record that LILCO and LERO personnel are capable of making proper protective action recommendations. The only remaining questions with respect to Contention 6 are: (1) how familiar are State and County officials with the LERO Plan? and (2) how much delay can be expected in making decisions and recommendations on protective actions, given the "best efforts" participation by the State and County? See CLI-86-13, 24 NRC at 31.

As for the familiarity question, the Protective Action Guidelines (PAGs) in the LERO Plan are the same U.S. EPA PAGs which are contained in the New York State Plan. See New York State Plan, Part II, § I, Procedure H, Attachment 3. Since the criteria are the same, State personnel would be able to participate meaningfully in the development of protective action recommendations. Since there are other nuclear plants in New York, the State obviously has personnel who are qualified to make protective action decisions based on dose projections and other data. See Admitted Facts 35 and 36. As previously noted, LILCO added the selective sheltering and selective evacuation options to the LERO Plan so that it would conform to the New York State Plan in those respects as well. See Cordaro et al., ff. Tr. 8760, at 10-11, 34.^{18/}

^{18/} The Commissioner of the Suffolk County Department of Health Services, who has been a witness on several occasions in the Shoreham proceeding, is also familiar with the portions of the LERO Plan which concern protective action recommendations. See, e.g., Harris (Role Conflict), ff. Tr. 1213, at 3; Harris and Mayer, ff. Tr. 9574, at 3.

As for the potential delay which might arise out of the need to include State and County officials in the decision-making process, what must be taken into account is that, under the LERO Plan, protective action recommendations will be determined based on input from several sources, including LILCO's onsite experts, the LERO Radiation Health Coordinator and Evacuation Coordinator, DOE's RAP teams (from Brookhaven National Laboratory), NRC officials at Shoreham, and FEMA representatives. See LERO Plan at 3.6-4. Some delay is probably inevitable in any circumstance where specific protective actions must be determined using multiple sources of information. The pertinent question is: how much additional delay would occur due to the participation of State and County officials and would such additional delay somehow limit or lessen the range of protective action options?

The answer, given that the cognizant government officials would respond using their "best efforts," is that any additional delay would be negligible and that no protective actions would be foreclosed. In the case of a gradually escalating Shoreham emergency, State and County officials would certainly be able to participate in the formulation of protective action recommendations. For instance, it is unlikely that State officials would be hampered by their own unwillingness to plan in advance specifically for a Shoreham emergency. As has been shown, the New York State Plan and the LERO Plan use the same guidelines for making protective actions; State officials would therefore be able to apply to Shoreham the experience and expertise which they have developed through their training for emergencies at other nuclear power plants in New York. County officials, though perhaps somewhat less prepared than their State counterparts,^{19/} would be able to rely on the advice and assistance of the NRC and DOE

^{19/} Of course, New York State has provisions for assuming command and control of the emergency response if the local government is unable to do so. See Admitted Fact 38.

representatives, in addition to LERO, LILCO, and State experts.^{20/}

Even in the event of a fast-breaking emergency requiring an immediate decision on protective actions, there is little or no potential for additional delay. The "best efforts" governmental response in such a circumstance would be to follow the recommendation of LILCO's onsite experts. The onsite recommendation is based on plant conditions and meteorological data, which at first only the plant operator is in a position to assess. Further, the onsite recommendation is based on Emergency Action Levels (EALs) which, as previously noted, are in the onsite plan and which are approved by the NRC. See, e.g., Tr. 2004-05 (Weismantle). The responsibility of the nuclear facility operator to make an initial recommendation is expressly recognized in NUREG-0654, which states:

An additional emergency activity for which facility licensees have primary responsibility is accident assessment. This includes prompt action to evaluate any potential risk to the public health and safety, both onsite and offsite, and timely recommendations to State and local governments concerning protective measures.

NUREG-0654 § I.H (emphasis added). As a consequence, it is extremely unlikely that there would be any appreciable delay in making a protective action recommendation, even in the unlikely event of a rapidly-escalating accident. Under a "best efforts" response, government officials would not deliberate unnecessarily over what was the

^{20/} During a gradually escalating accident, discussions among LERO personnel and government officials about protective action recommendations are likely to take place face-to-face, at the LERO EOC. LERO's ability to coordinate emergency response activities with (simulated) State and County officials at the LERO EOC was successfully demonstrated (EOC Objective 9) during the February 13, 1986 FEMA-graded exercise. See FEMA Post-Exercise Assessment (FEMA Ex.1 in the -05 exercise proceeding), at 31-32 (April 17, 1986). Working space, desks, and telephones would be provided to government officials, as noted in OPIP 3.1.1 Attachment 10. In addition, the Radiological Emergency Communications System (RECS) links together the Shoreham Control Room, the LERO EOC, Suffolk County Police Department Headquarters in Yaphank, and the Suffolk County EOC (at the Suffolk County Department of Fire, Rescue, and Emergency Services in Yaphank). See Admitted Facts 8 and 10.

proper course of action but would instead defer in the first instance to the onsite recommendation.

Summary of Record on Contention 6

The parts of the record that LILCO designates as establishing the adequacy of the LERO Plan with respect to making protective action recommendations are the following:

Cordaro et al., ff. Tr. 8760
Cordaro et al., ff. Tr. 10,396
Cordaro et al., ff. Tr. 13,909
Tr. 8761-894 (Cordaro et al.)
Tr. 2004-05 (Weismantle)

PID, 21 NRC at 677, 693-94, 770-81
Order Ruling on LILCO's Motion for Summary Disposition of
Contentions 24.B, 33, 45, 46 and 49 (Apr. 20, 1984)

Admitted Facts 8, 10-13, 34-39, 44-52

Plan and Procedures
Plan Section 3.6
OPIP 3.6.1
OPIP 3.1.1 Attachment 10

7. Ingestion Pathway

Contention

The rewritten Contention 7 on "ingestion pathway" reads as follows:

7. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning the making of decisions and official recommendations to the public concerning protective actions for the ingestion exposure pathway.

Legal Standards

The relevant guideline is NUREG-0654, Supp. 1, Criterion J.11:

11. The offsite response organization shall specify the protective measures to be used for the ingestion pathway, including the methods for protecting the public from consumption of contaminated foodstuffs. This shall include criteria for deciding whether dairy animals shall be put on stored feed. The offsite plan

shall identify procedures for detecting contamination, for estimating the dose commitment consequences of uncontrolled ingestion, and for imposing protection procedures such as impoundment, decontamination, processing, decay, product diversion, and preservation. Maps for recording survey and monitoring data, key land use data (e.g., farming), dairies, food processing plants, warehouses, water supply intake and treatment plants and reservoirs shall be maintained. Provisions for maps showing detailed crop information may be by [sic] including reference to their availability and location and a plan for their use. The maps shall start at the facility and include all of the 50-mile ingestion pathway EPZ. Up-to-date lists of the name and location of all facilities which regularly process milk products and other large amounts of food or agricultural products originating in the ingestion pathway Emergency Planning Zone, but located elsewhere, shall be maintained.

LERO Plan

The LERO Plan at 3.6-7a states that the controls in the ingestion pathway procedure "are designed to keep radioactive material out of the human food chain and from being consumed by people both in and out of the ingestion exposure pathway EPZ."

The federal government will assist LERO in this process:

In accordance with the Federal Radiological Emergency Response Plan (FRERP), 49 Fed. Reg. 35896 (1984), the federal government will assist LERO in developing and implementing protective actions with respect to impoundment, decontamination, processing, decay, product diversion, and preservation.

LERO Plan at 3.6-7a. In particular, the United States Department of Agriculture (USDA) and the Federal Drug Administration (FDA) could be called upon to provide assistance. Id. at 3.6-8.

According to the plan, various maps are kept at the EOC which contain the necessary information needed to implement the LERO ingestion pathway procedure and on which the data being collected by the different LILCO and federal monitoring teams are recorded. For example, ingestion pathway food producing and processing facilities are indicated on four large 50-mile EPZ maps according to food type. Id. at 3.6-8a.

Also, LERO has several USGS topographic maps of New York State that are used to record surveying and monitoring data. Id. at 3.6-8a.

LERO's procedure for the ingestion pathway exposure EPZ is OPIP 3.6.6, Ingestion Pathway Protective Actions. This procedure provides for sample collection and analysis, dose assessment, protective action implementation, and communication with food growers and food chain establishments. The procedure also contains lists of the dairy, duck, beef, fruit, and other farms, food processors, and milk dealers in New York State in the 50-mile EPZ for Shoreham. OPIP 3.5.2, Assessment and Dose Projection (airborne and waterborne), would also be used during an ingestion pathway response to a Shoreham emergency.

OPIP 3.1.1, Attachment 10, is the procedure that sets out the necessary interface between LERO and the governments for ingestion pathway activities. It requires that the Director of Local Response "coordinate emergency response activities with the Suffolk County Executive or his designated representative" and that he obtain the permission of the County Executive "before making recommendations to the public concerning ingestion exposure pathway" OPIP 3.1.1, Att. 10 § 3.J.

Record

Contention 81 alleged that the LERO Plan had insufficient procedures to implement the protective actions in OPIP 3.6.6 and that it did not contain adequate plans for the 50-mile ingestion exposure pathway. LILCO's written and oral testimony on ingestion pathway was

Cordaro et al., ff. Tr. 13,563, at 1-39, Att. 1-7
Tr. 13,564-750.

FEMA's written and oral testimony on ingestion pathway was

Baldwin et al., ff. Tr. 12,174 at 86-90
Tr. 14,244-87.

The Intervenors provided no testimony on the ingestion pathway issue.

The Board resolved the ingestion exposure pathway issue (Contention 81) in LILCO's favor. PID, 21 NRC at 875-78. The Board found that there was "no remaining controversy over whether the Plan, if implemented, makes adequate provision for protection of public health in the ingestion pathway EPZ." Id. at 875. Specifically, the Board said:

The LILCO Plan contains protective actions to be chosen on the basis of monitoring, sampling, and analysis, which if implemented would be effective in preventing the public from eating contaminated foodstuffs.

Id. at 876. The Board also found that LILCO's plan to compensate farmers and other foodchain establishments for loss of food was an effective means of controlling the distribution of contaminated foodstuffs. Relying upon FEMA's testimony, the Board added:

According to FEMA, farmers will have a difficult time of disposing of food harvested at the time of an emergency because the situation will be one in which buyer resistance prevents the sale of fresh food products even if a farmer or processor were inclined to ignore LILCO's advice and such sales. That fact, combined with LILCO's offer to purchase food, provides a strong incentive to sell contaminated foods to LILCO, thereby preventing their entry into commerce. Tr. 14,256-58 (Keller).

Id. at 877. The Board concluded that it was "clear from the record that LILCO has a plan for management, monitoring, issuing of warnings, and means of implementation through notification of producers and through purchase of possibly contaminated food in the ingestion pathway EPZ." Id. The Board also found that LILCO's lack of "legal authority" to impose the terms of its plan on farmers and food processors was not a fatal flaw since it was reasonable that they would be eager to sell to LILCO.

In addition, the record shows that much of the New York State Radiological Emergency Preparedness Plan's procedures for ingestion pathway are similar to LERO's. For example, New York State uses like procedures to prevent the contamination of milk. Cordaro et al., ff. Tr. 13,563, at 11. New York State relies on the same FDA protective action guidelines that LERO uses to analyze the results of milk samples. Id. at

12. Also, New York State recommends that the public wash fruit and vegetables to protect against contamination, the same as LERO does. Id. at 21.

The record also shows that much of the information LERO relies upon in making protective action decisions is already within the State's control. For example, LERO maintains a comprehensive list of the names, addresses, and telephone numbers of commercial dairy farmers in New York State within the Shoreham 50-mile EPZ. This list is based upon information compiled on a semiannual basis by the New York State Department of Agriculture and Markets. Id. at 10, 13. LERO also maintains a list of the names, addresses, and telephone numbers of all types of farmstands for those portions of the State within the Shoreham 50-mile EPZ. This information is based in part on a publication published by the State Department of Agriculture and Markets. Id. at 23.

Furthermore, it is clear from the record that LERO's procedure contains more information about the ingestion pathway than the State's plan and procedures have for other sites. For example, the New York State Plan does not have farmstand information or procedures for notifying those farmstands. Id. at 25.

The above information from the record shows that in many ways the State already has the information it needs to participate in a Shoreham emergency response and that it could easily participate in making protective action decisions because of the similarities between its and LERO's procedures.

Another significant aspect of an ingestion pathway response is federal participation. Substantial federal resources are available to assess what actions should be taken and to implement those actions. As the record indicates, DOE would provide dose assessment and environmental survey personnel from the Brookhaven National Laboratory and other locations to monitor the ingestion pathway exposure. Id. at 35. Other federal resources probably would be committed to survey and monitor the ingestion pathway exposure pathway as was done during the Three Mile Island accident in 1979.

Id. at 38-39. Thus, additional help would also be available from NRC, EPA, FDA, and other federal agencies. Id. at 39. See also Tr.14,252-53 (FEMA). These federal resources are available to respond to any radiological emergency. As a matter of fact, New York State is familiar with these resources and relies upon them in its State Plan:

Technical Federal support is an integral part of New York State's ingestion pathway response. In the early hours or [sic] a radiological emergency, support will be provided through the U.S. Department of Energy's Radiological Assistance Plan (RAP). Technical expertise with sophisticated monitoring, sampling and laboratory analysis capability will be provided from the Brookhaven Area Office with USDOE and Brookhaven National Laboratory staff. Advance RAP teams are also available [sic] from the Knolls Atomic Power Laboratory, West Valley Demonstration Project, Environmental Measurements Laboratory and the Pittsburgh Naval Laboratory. USDOE will provide sophisticated aerial monitoring capability and plume modeling using ARAC. USDOE resources from Region 1 will be supplemented as required from other DOE facilities including the National Laboratories. If the emergency conditions warrant, the Federal Radiological Monitoring and Assessment Plan (FRMAP) will be implemented to obtain Federal interagency technical support.

February 10, 1988 Admitted Fact 40, Affidavit of Papile, Baranski, and Czech (February 10, 1987) ("REPG Affidavit") (accompanying Intervenor's February 10, 1988 answer to LILCO's Motions for Summary Disposition). It is obvious from the record that the State relies upon the very same federal resources for monitoring and surveillance as LERO does. Thus, the State has familiarity with how LERO would conduct a major part of a Shoreham ingestion pathway response.

The record also shows that during an ingestion pathway response at the other nuclear power plant sites in the State, the State Disaster Preparedness Commission would:

- ° activate appropriate State agencies' field staff;
- ° collect, transport and analyze ingestion pathway samples;
- ° assess and evaluate the potential impact of ingestion pathway contamination;

- ° alert local governments of the emergency and the potential for adverse public health impact.

February 10, 1988 Admitted Fact 45, REPG Affidavit at 26-27, citing the State Plan at K-1. Apparently the State is prepared to perform these functions for the areas of the State that are covered by the ingestion pathways of other nuclear power plants. In fact, FEMA testified that plans for a 50-mile EPZ are normally implemented by state government, including New York State. Tr. 14,250-51 (FEMA). Thus, it follows that the State is prepared to do the same within the 50-mile EPZ for Shoreham since "almost all of the Shoreham 50-mile ingestion pathway EPZ is within the ingestion pathways of two other nuclear power plants (Indian Point and Millstone) that the State procedure does address." LILCO's Motion for Summary Disposition of Contentions 7 and 8 (Ingestion Pathway and Recovery and Reentry) (December 18, 1987) at 18 n.12. See also February 10, 1988 Admitted Fact 37, REPG Affidavit at 25.

The record also shows that the State is responsible for command and control during any ingestion pathway response for all nuclear power plant other than Shoreham having a 50-mile EPZ covering portions of the State. The State Plan at K-5 says:

In the event of a nuclear power plant incident, Command and Control Operations are managed from the State EOC in Albany. From this location, the Chairman of the DPC as the Governor's designee and other State officials direct the emergency management response and recovery operations. The Command Room is augmented by State and District EOC operations, radiological assessment and evaluation, communications and public information. These components provide the necessary information to Command Room personnel to facilitate the State's decision making.

February 10, 1988 Admitted Fact 47, REPG Affidavit at 27. State agencies that participate in assessing the impact of an ingestion pathway incident include the State Departments of Health, Agriculture and Markets, Environmental Conservation, State Police, and Transportation, the State Emergency Management Office (SEMO), and the Radiological Emergency Preparedness Group (REPG). February 10, 1988 Admitted Fact

46, REPG Affidavit at 27. Clearly, the State knows how to make an ingestion pathway response and has the resources readily available to do so.

Summary of Record on Contention 7

The parts of the record that, in combination with the "best efforts" rule, resolves Contention 7 on ingestion exposure pathway are the following:

Cordaro *et al.*, ff. Tr. 13,564, at 1-39 Att. 1-7
Tr. 13,564-750
Baldwin *et al.*, ff. Tr. 12,174, at 86-90
Tr. 14,244-67

PID, 21 NRC at 875-78

February 10, 1988 Admitted Facts 37, 40, 45, 46, 47 (REPG Affidavit)

Plan and Procedures (Rev. 9)
Plan Section 3.6-1 to -3, 3.6-7a to -8a
Fig. 3.6.1
Table 3.6.4
OPIP 3.1.1 Attachment 10
OPIP 3.6.6

8. Recovery and Reentry

Contention

The rewritten Contention 8 on "recovery and reentry" reads as follows:

8. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning the making of decisions and official recommendations to the public concerning recovery and reentry.

Legal Standard

The relevant guideline is NUREG-0654, Supp. 1, Criterion M.1, M.3-4:

1. The offsite response organization, as appropriate, shall develop general plans and procedures for reentry and recovery and describe the means by which decisions to relax protective measures (e.g., allow reentry into an evacuated area) are reached. This process should consider both existing and potential conditions.

3. The offsite plan shall specify means for informing members of the offsite response organization that a recovery operation is to be initiated, and of any changes in the organizational structure that may occur.
4. The offsite plan shall establish a method for periodically estimating total population exposure.

LERO Plan

According to the LERO Plan at 3.10-1, the purpose of LILCO's offsite recovery and reentry operations is "the restoration of the area to its pre-emergency conditions following a radiological emergency at the Shoreham Nuclear Power Station." The LERO Recovery Action Committee would be formed and would make "the necessary recommendations to State and County officials" and would "assist State and County officials to plan and implement actions for the restoration of the affected areas to their pre-emergency conditions." Id. "Long Term Operations," according to the LERO Plan at 3.11-1, "are comprised of the establishment of Federal assistance, a radiation monitoring program and a medical follow-up after protective actions are relaxed." Any federal assistance that would be "provided would be coordinated by the Federal Emergency Management Agency in accordance with the Federal Radiological Emergency Response Plan." Id.

LILCO's procedure for recovery and reentry is OPIP 3.10.1, Recovery/Reentry. OPIP 3.10.1 § 5.1 provides that a Recovery Action Committee would be formed "to gather information to assist decision making regarding recovery/re-entry and to implement re-entry upon authorization by the Director of Local Response." The Recovery Action Committee would be comprised of various LERO members and federal, state, and county representatives. OPIP 3.10.1 § 5.1. OPIP 3.6.1, Plume Exposure Pathway Protective Action Recommendations, also would be used.

OPIP 3.1.1, Attachment 10, the governmental interface procedure, requires that the Director of Local Response "coordinate emergency response activities with the Suffolk County Executive or his designated representative." OPIP 3.1.1, Att. 10 § 3.J. Specifically, he would obtain the permission of the County Executive "before making recommendations to the public concerning . . . implementing recovery and reentry activities . . ." Id.

Record

Contention 85 alleged that the LERO Plan contained no procedures to provide for or to implement recovery and reentry. Contention 88 alleged that the LERO Plan lacked dose criteria to be used to decide if it was safe for the public to reenter evacuated areas and that the Plan's methods of estimating dose were inaccurate. LILCO's written and oral testimony on recovery and reentry was

Cordaro et al., ff. Tr. 15,282, at 1-12, Att. 1 (Contention 85)
Cordaro et al. (Supp.), ff. Tr. 15,282, at 1-4, Att. 1 (Contention 85)
Cordaro et al. (Revised), ff. Tr. 15,284, at 1-11, Att. 2-4 (Contention 88)
Cordaro et al. (Updated), ff. Tr. 15,284, at 1-2 (Contention 88)
Tr. 15,285-382

FEMA also presented written and oral testimony on the adequacy of LERO's recovery and reentry procedures. That testimony was

Baldwin et al., ff. Tr. 12,174, at 91-92 (Contention 85 and 88)
Tr. 14,328-339

Suffolk County presented oral and written testimony on recovery and reentry at

Minor, ff. Tr. 15 384, at 1-7 (Contention 85 and 88)
Tr. 15,385-89

The Board resolved the "recovery and reentry" issues (Contentions 85 and 88) in LILCO's favor. PID, 21 NRC at 878-82. In finding that Contention 85 was without merit the Board said:

A plan to form an expert committee at the time of an accident to make decisions according to predetermined guidelines constitutes a reasonable plan for recovery and reentry. It is not necessary to preplan at this state for contingencies that a committee can resolve at the time of an accident when it has the necessary information for decisionmaking.

Id. at 880. The Board added that none of the problems posed by Suffolk County were "novel or technically obscure" and that their management depended on "situation-specific information." To that end the Board said that there was "no advantage to public health and safety to solve them now in the abstract rather than at the time of the emergency when the specific facts of the situation are known." Id.

In deciding that Contention 88 was without merit, the Board concluded that LERO's criteria for recovery and reentry and its plans for estimating population doses also were adequate. Id. at 882.

The record shows that OPIP 3.10.1 has "detailed procedures for initiating recovery operations and facilitating reentry of the public into previously evacuated areas." Cordaro et al., ff. Tr. 15,282, at 6 (Cont. 85). Recovery and reentry activities in OPIP 3.10.1 include environmental surveillance and ingestion pathway monitoring which is coordinated by LERO's Radiation Health Coordinator. Id. at 7-8. LERO's procedure also contains specific "reentry procedures for three general classes of emergency situations, depending on the existence and amount of radioactive surface contamination." Id. at 8. The three emergency situations are (1) a radiological emergency that does involve a radiological release, (2) an emergency that involved a release with no offsite surface contamination or with a level of contamination acceptable under OPIP 3.10.1, and (3) an emergency that results in unacceptably high levels of surface contamination. Id. at 8-9. In addition, OPIP 3.10.1 provides a controlled method for temporary reentry into an evacuated area "to attend to matters of some urgency, such as firefighting or livestock feeding." Id. at 10.

The record also demonstrates that LERO's reentry procedure, OPIP 3.10.1, contains the appropriate radiological criteria for deciding whether it is safe for the public to reenter evacuated areas. Cordaro et al. (Revised), ff. Tr. 15,284, at 6-8 (Cont. 88). LERO uses 500 millirem or less as the threshold contamination level for reentry which is the same criteria used by New York State. Id. at 7-8.

LERO also has a detailed procedure, OPIP 3.10.2, which it uses to calculate total population dose to assess "the potential long-term health consequences, if any, of the radiological release." Cordaro et al. (Supp.), ff. Tr. 15,282, at 3-4 (Cont. 85).

The State Plan also calls for the establishment of a recovery committee. Cordaro et al., ff. Tr. 15,282, at 11-12 (Cont. 85). The responsibilities of the State Recovery Committee are similar to the responsibilities of the LERO Recovery Action Committee. Those responsibilities include:

[D]irecting State resources and recovery activities and for assisting in the total cooperative effort involving any or all of the other organizations having recognized roles in recovery. During recovery operations the Committee is responsible for developing practical time parameters and activities consistent with this plan, and insures that there are adequate communications systems and processes for all State activities. The Committee reports to the DPC and keeps it apprised of all matters relating to the recovery effort.

February 10, 1988 Admitted Fact 13, REPG Affidavit at 20, citing the State Plan at IV-1. According to the Record, the State Commissioner of Health has lead responsibility for conducting radiation monitoring and medical follow-up for the general public:

A radiation monitoring program for contaminated areas will be established by the State Commissioner of Health. This monitoring program may be long term depending upon the type, levels, and extent of the contamination. The monitoring will also take into account the nature of the contamination as well as the area affected. Future activities affecting release of radiation (venting, etc.) will also require monitoring. Other State agencies will cooperate and assist the Department of Health in monitoring for long term effects. Monitoring Programs initiated during the response phase will continue during recovery until acceptable levels are reached.

Medical follow-up to monitor the effects of radiation on the public and emergency workers after the incident may be established, if required. Currently, the State Department of Health conducts an ongoing study of selected health statistics for counties with and without nuclear facilities as part of its epidemiological program. This program will be enhanced in the event of a radiological emergency.

February 10, 1988 Admitted Fact 31, REPG Affidavit at 24. These monitoring programs are also similar to those provided in LERO's recovery and reentry procedure.

Summary of the Record on Contention 8

The parts of the record that, in combination with the "best efforts" rule, resolves Contention 8 on recovery and reentry are the following:

Cordaro et al., ff. Tr. 15,282, at 1-12, Att. 1 (Contention 85)
Cordaro et al. (Supp.), ff. Tr. 15,282, at 1-4, Att. 1 (Contention 85)
Cordaro et al. (Revised), ff. Tr. 15,284, at 1-11, Att. 2-4 (Contention 88)
Cordaro et al. (Updated), ff. Tr. 15,284, at 1-2 (Contention 88)
Tr. 15,285-382

51D, 21 NRC at 878-82

February 10, 1988 Admitted Facts 13, 31 (REPG Affidavit)

Plan and Procedures (Rev. 9)
Plan Sections 3.10-1 to -2, 3.11-1 to -2
OPIP 3.1.1, Attachment 10
OPIP 3.10.1

10. Access Control

Contention

The rewritten Contention 10 on "access control" reads as follows:

10. Whether LILCO's emergency plan and the best efforts response of the State and County governments will satisfy regulatory requirements concerning establishing and maintaining perimeter/access control to evacuated areas.

The issue is the control of access to the EPZ "during the time when people are supposed to stay out." Memorandum and Order at 39 (Sept. 17, 1987).

Legal Standards

The relevant guideline is NUREG-0654, Supp. 1, Criterion J.10.j:

- 10. The offsite response organization's plans to implement protective measures for the plume exposure pathway shall include:

....

- j. Control of access to evacuated areas and organization responsibilities for such control;

Also, NUREG-0654, Supp. 1, Criterion A.2.a provides as follows:

- 2.a. The offsite response organization shall specify the functions and responsibilities for major elements and key individuals by title, of emergency response This description [of these functions] shall specify those functions which require State and local authorization before implementing, such as:

....

- x. Performing access control at an EOC, relocation centers and the EPZ perimeters; . . .

LERO Plan

As Attachment II to the January 22, 1988 cover letter to Revision 9 of the Plan indicates, the following sections of Rev. 9 are affected by A.2.a:

<u>NUREG-0654 Supp. 1</u>	<u>Plan and Procedures</u>
A.2.a	Plan Sec. 1.4, 2.1, 2.2 Fig. 2.1.2 OPIP 3.1.1 Att. 1, 10

In particular, Rev. 9 at 1.4-2a provides for the eventuality of a Suffolk County Police role in providing access control:

Suffolk County Police will support an evacuation by manning Traffic Control Posts in coordination with LERO Traffic Guides and also provide access control at the EPZ perimeter.

Plan (Rev. 9) at 1.4-2a. The Plan continues:

LILCO expects that Suffolk County personnel will continue to perform their normal functions as follows in accordance with referenced sections of THE SUFFOLK COUNTY CHARTER:

....
Police Actions - Article XII Section 1208(c) [of the Suffolk County Charter] It shall be the duty of the police department to preserve the public peace, prevent crime, detect and arrest offenders, protect the rights of persons and property and enforce all laws and ordinances applicable to the county.

Id. at 1.4-2b.

Record

The Board declined to admit a contention alleging that "[t]he LILCO Plan appears to rely upon local law enforcement agencies to provide security in evacuated areas" and that since "LILCO has no agreements with police departments to provide such security," there can be no assurance that the LERO Plan or the protective actions contemplated in the plan can or will be implemented. Revised Emergency Planning Contentions at 67-68 (July 26, 1983). The Board likewise rejected a contention that LILCO will be "unable to provide adequate security in evacuated areas" Id. at 113-14. Special Prehearing Conference Order (Ruling on Contentions and Establishing Schedule for Discovery, Motions, Briefs, Conference of Counsel, and Hearing), slip op. at 15, 20 (Aug. 19, 1983).

Contention 23.H alleged that the LERO Plan failed to provide adequate EPZ perimeter control. LILCO's written testimony on perimeter control was

Cordaro et al., ff. Tr. 1470, at 124-28 (Contention 23.H)
Cordaro et al., ff. Tr. 1470, at 129 (Contention 65.C.2).
Cordaro et al. (Contentions 23.C., D., and H.), ff. Tr. 2337, at
19-23
Cordaro et al. (Contention 65), ff. Tr. 2337, at 62-63
Cordaro et al. (Joint Attachments), ff. Tr. 2337, Att. 16

In particular:

LERO plans to assign personnel at all major entrances to the EPZ to guide traffic entering and leaving the EPZ at those locations. In addition, each such guide will be given written directions to deploy traffic cones in a manner that will indicate to the public that entry into the EPZ at this point is discouraged.

Cordaro et al. (23.C., D., and H.), ff. Tr. 2337, at 21.

The Board resolved the "EPZ Perimeter Access Control" issue (Contention 23.H) in LILCO's favor. PID, 21 NRC at 804-05. The Board found LILCO's plan reasonable:

The Board finds the LILCO plans for EPZ perimeter control reasonable. We cannot accept that citizens are so contrary in behavior that they will first evacuate a safe place against public instruction and then clamor in large numbers to enter an unsafe place again in conflict with public information.

PID, 21 NRC at 805. Also, the issue of the "permeability" of the EPZ boundary was raised under Contention 22.D. The Board found that permeability is not a significant issue because "it is unlikely that a substantial number of persons would voluntarily enter the EPZ during a radiological emergency." PID, 21 NRC at 703.

The Intervenors now argue that long-term access control (after people have already evacuated) is the issue raised by Contention 10. They claim this is entirely different from the already-litigated issue of access control during an evacuation.

It is hard to see why. If, as the Board has found, LILCO's plans for perimeter control during an evacuation are reasonable, there is no apparent reason why the same plans cannot be continued in time (or modified as necessary) and the individual Traffic Guides relieved for later shifts.^{21/}

Access control under the LERO Plan is done by Traffic Guides in coordination with the police. There are 165 Traffic Guides deployed at 130 posts if the entire EPZ is evacuated (OPIP 3.(.3, Att. 4), and LERO is staffed at 150% of need. The number of such posts around the perimeter of the evacuated area (even if it is the entire EPZ) is necessarily fewer than 130. The Suffolk County Police could certainly find the manpower in the aftermath of an emergency to man posts around the perimeter of the

^{21/} The Commission identified an unresolved question about how much delay can be expected in achieving effective access controls. CLI-86-13, 24 NRC at 31 (1986). The answer, based on this record, is "none."

evacuated area (which for planning purposes is no larger than the EPZ); if they needed help, LERO Traffic Guides or other qualified LERO workers would be available, as would State Police.^{22/}

The record shows that Suffolk County has a large, well-equipped police force:

Admitted Facts 1, 3, 4, 5, 53, 59, 60
See also Tr. 1222-23 (Dilworth) (nonpolice traffic guides used
in nonemergency situations)

Moreover, the County Police have listed intersections they believed would have to be manned to achieve perimeter control:

Roberts *et al.*, ff. Tr. 2260, at 65-68 and Attachment 12

The record also establishes that "[t]here is no basis to assume that the Suffolk County police . . . would refuse to provide reasonable and appropriate protection in the event of any type of emergency":

Special Prehearing Conference Order (Ruling on Contentions and Establishing Schedule for Discovery, Motions, Briefs, Conference of Counsel, and Hearing), slip op. at 15 (Aug. 19, 1983).

Finally, the record shows that people have considerable incentive to avoid radiologically contaminated areas. Although Intervenors now argue that flocks of people would rush into contaminated areas like moths to a flame, throughout this proceeding they have argued that people are so terrified of radiation that they will have difficulty with simple tasks like driving a car or lifting their arms (see, *e.g.*, Saegert, ff. Tr. 2259, at 12-13, 14, 16-19; Tr. 18,023-29 (Saegert)). This Intervenor testimony is largely incorrect and has been rejected by the NRC. But it is accepted that people fear radiation. For example:

^{22/} The New York State Plan provides for State Police to assist with access control:

(b) The Division of State Police assists in notification and providing control with local law enforcement agencies, enforces emergency highway traffic regulations, and assists in ensuring the security of evacuated areas.

New York State Plan at III-11.

PID, 21 NRC at 662-63
NUREG-0396, Appendix I, at I-1.

It follows that people have a strong incentive to avoid, for example, contaminated food:

PID, 21 NRC at 877

In contrast to the Intervenor, LILCO has argued that the key to emergency management is to give people good emergency information so that they can accurately assess the risk and make sound decisions. People are almost never forced by the authorities to protect themselves:

Cordaro et al., ff. Tr. 1470, at 119 (virtually all evacuation is voluntary)

Accordingly, if the public is made aware of where the evacuated areas are (and that is the purpose of having a well-defined EPZ and ERPA's and a notification and EBS system), it is unlikely that many people will invade the contaminated areas. The mere possibility that someone may do so, despite the plan, does not violate NRC regulations.

As for making clear where the evacuated areas are, the EPZ boundaries have been litigated and, as modified by the Board, approved:

PID, 21 NRC at 707.
CLI-87-12, 26 NRC 383 (Nov. 5, 1987)

Likewise, LILCO's methods for informing the public of the zones has been litigated:

PID, 21 NRC at 765-66 (various means of giving information about zone boundaries and evacuation routes)
PID, 21 NRC at 768-70 (brochure)

In short, LILCO's plan for access control to the EPZ has been litigated and found acceptable; it can easily be continued in time given the large pool of resources available in the aftermath of an emergency; and the public can be expected to avoid contaminated areas of their own free will once they are informed where those areas are.

Summary of Record on Contention 10

The parts of the record that, in combination with the "best efforts" rule, resolve Contention 10 on access control are the following:

The record designated above for Contentions 1-2
PID, 21 NRC at 703, 804-05
Roberts et al., ff. Tr. 2260, at 65-68 and Attachment 12
Cordaro et al., ff. Tr. 1470, at 124-29
Cordaro et al. (Contentions 23.C., D., and H.), ff. Tr. 2337, at
19-23
Cordaro et al. (Contention 65), ff. Tr. 2337, at 62-63
Cordaro et al. (Joint Attachments), ff. Tr. 2337, Att. 16

Special Prehearing Conference Order (Ruling on Contentions
and Establishing Schedule for Discovery, Motions, Briefs,
Conference of Counsel, and Hearing), slip op. at 15, 20
(Aug. 19, 1983)

Admitted Facts 1, 3, 4, 5, 53, 59, 60

Plan and Procedures
Plan Sections 1.4, 2.1, 2.2
Figure 2.1.2
OPIP 3.1.1, Att. 1, 10

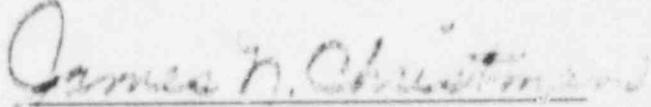
Conclusion

In this "designation of the record" LILCO has laid out the essential reasoning of its prima facie case on Contentions 1-10, including the principal parts of the existing record that support it. The gist of that case is as follows: LILCO has provided the State and County a tool: an emergency plan that meets federal requirements in all significant respects save the participation of the State and County. LILCO has also provided people and equipment to implement the Plan. LERO could therefore respond to an emergency even without the State and local governments. But over and above the LERO resources, the response would be enhanced by the additional resources of the State and County. Suffolk County police know how to direct traffic, and New York State officials know how to make protective action decisions in a radiological emergency. The entire resources of LILCO, LERO, and the federal government will be available

to advise them. Using their "best effort," it is inconceivable that the State and County would significantly degrade a response to a Shoreham emergency.

With this, LILCO submits that it has met its burden of proof and demonstrated that its plan, with the best efforts of Suffolk County and New York State, complies with NRC requirements.

Respectfully submitted,


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DATED: April 1, 1988

LILCO, April 1, 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 DESIGNATION OF RECORD AND PRIMA FACIE CASE ON THE LEGAL AUTHORITY ISSUES (CONTENTIONS 1-2, 4-8, AND 10) were served this date upon the following by by Federal Express as indicated by two asterisks, or by first-class mail, postage prepaid.

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