

6768

DOCKETED
DATE

'88 JUL 14 P5:28

July 12, 1988

OFFICE OF
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power)
Station, Unit 1))
_____)

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

RESPONSE OF SUFFOLK COUNTY, STATE OF
NEW YORK, AND TOWN OF SOUTHAMPTON
IN OPPOSITION TO LILCO'S SECOND MOTION
FOR SUMMARY DISPOSITION OF THE EBS ISSUE

I. Introduction

Suffolk County, the State of New York, and the Town of Southampton (the "Governments") hereby respond to LILCO's Second Motion for Summary Disposition of the EBS Issue, dated June 20, 1988 ("LILCO's Motion"). LILCO is once again using a motion for summary disposition as a vehicle both to introduce a new and significantly different Emergency Broadcast System ("EBS") scheme and, at the same time, is attempting to foreclose any meaningful

8807220072 880712
PDR ADOCK 05000322
G PDR

DS03

scrutiny of the details of that scheme. As with LILCO's prior attempt to obtain summary disposition of its previous EBS proposal,^{1/} this attempt must similarly fail.

In fact, there are even more reasons for denying LILCO's latest attempt for summary disposition of the EBS issue than was the case with LILCO's last attempt. LILCO's Motion outlines an EBS proposal that not only has not been the subject of analysis or review, but is materially different in every way from the proposal that has previously been before the Board and the other parties to this proceeding. The EBS proposal that is outlined in LILCO's Motion initially relies on the New York State EBS network, rather than LILCO's own EBS network, to broadcast emergency information to the public. More particularly, LILCO is now relying on WCBS-AM (New York, New York), rather than WPLR-FM (New Haven, Connecticut), to serve as its lead EBS radio station; according to LILCO, WCBS will activate the State EBS, even though WCBS has not agreed to do so, or to participate in any way in the implementation of LILCO's Plan. LILCO's new EBS proposal therefore envisions a new lead station that has not agreed to participate. It also involves a revised network of secondary broadcast stations, and relies upon two new stations -- WCBS and WALK -- rather than WPLR to activate the tone alert radios that have been, or will be, installed by LILCO at special facilities throughout the Shoreham 10-mile EPZ.

^{1/} LILCO's Motion for Summary Disposition of the WALK Radio Issue, dated November 6, 1987.

LILCO's latest EBS proposal leaves many questions unanswered, including the continued participation of its previous lead EBS station, WPLR, and the role, if any, to be played by its local or backup EBS network for Shoreham. LILCO's Motion also raises questions concerning the adequacy of the coverage of LILCO's supposed new lead station, WCBS; moreover, there is the question whether WCBS will even participate in the implementation of LILCO's Plan. What is known is that, to date, WCBS has not agreed to participate. Nonetheless, despite all these outstanding issues and questions, and others that are addressed below, LILCO cavalierly asks the Board to close its eyes to these matters, and to dispose summarily of the EBS issue. This is something the Board cannot do, for the many reasons discussed below.

LILCO bases its Motion on several factors. First, LILCO claims that there is no longer an admitted EBS contention, because it is no longer relying on WPLR and the local Shoreham EBS. LILCO's Motion at 3. Second, LILCO states that there is no admitted contention challenging the adequacy of the State EBS network. Id. Third, LILCO alleges that an admissible contention challenging the adequacy of the State EBS cannot be framed, because the coverage issue has previously been resolved. Id. at 4-9. Finally, LILCO claims that the Governments are precluded from raising interface issues concerning WCBS, e.g. how the

State or County or LILCO would contact WCBS, now WCBS would be activated, etcetera, because these issues are encompassed within realism/"best efforts" Contention 5. Id. at 9-10.

None of these factors is persuasive; indeed, even a cursory review of these factors makes clear that LILCO's Motion must be summarily rejected as wholly lacking in merit. Moreover, this Board should not tolerate LILCO's latest attempt to foreclose any meaningful review or analysis of its EBS proposal. What LILCO is asking this Board to do, in essence, is to find that the adequacy of its totally new proposal, which (i) is still being developed; (ii) is significantly different from the latest version of its Plan; (iii) does not meet regulatory requirements according to LILCO's own engineering consultants; (iv) has as its lead station WCBS, which has not agreed to participate; and (v) has not been scrutinized or tested, is the proper subject for a motion for summary disposition. These reasons, even if considered singularly, defeat LILCO's Motion. When considered together, they highlight and illustrate the plain absurdity of LILCO's attempt to resolve summarily the EBS issues pending before this Board.

First, LILCO's Motion is contrary to this Board's Memorandum and Order, which rejected LILCO's previous attempt to dispose summarily of the EBS issue. See Memorandum and Order (Ruling on Applicant's Motion of November 6, 1987 for Summary Disposition of the WALK Radio Issue) (Dec. 21, 1987) (hereafter, "December 21

Order"). In its December 21 Order, this Board stated that "summary disposition motions assume other parties in a proceeding have had an opportunity to determine and respond to matters potentially in controversy." December 21 Order at 4. Because LILCO is now introducing a completely new and different EBS proposal, the Governments, however, have had no opportunity to "determine and respond to matters potentially in controversy." Moreover, even if the Governments had had that opportunity, it would be extremely difficult, if not impossible, to determine at this time what matters are potentially in controversy, because the EBS proposal that LILCO describes is highly ambiguous and unclear. For example, based upon LILCO's Motion, it is not clear whether LILCO still relies on WPLR and/or a backup or local EBS Shoreham network. Such matters as this must be clarified, and an opportunity given to the Governments to respond, before summary disposition could even be considered by the Board.

Thus, before this matter proceeds further, LILCO should be required to define more precisely its new EBS proposal. Until such time as LILCO does so, its ambiguous proposal, coupled with its failure to provide the Governments with a fair opportunity to analyze and review those matters "potentially in controversy," compel summary rejection of LILCO's Motion.

Second, the Governments agree with LILCO that there is no admitted contention challenging the adequacy of the State EBS network. LILCO's Motion at 3. Blame for this lies with LILCO, however, and not the Governments. LILCO has just introduced its new EBS proposal; as a result, the Governments have not had an opportunity to review and analyze that proposal or to submit contentions challenging its adequacy. Until the Governments have been given an opportunity to do so, LILCO's Motion cannot succeed.

Third, contrary to LILCO's assertion (LILCO's Motion at 3), the adequacy of the coverage of the State EBS has not previously been resolved. In fact, LILCO's Motion is accompanied by an engineering report prepared by LILCO's consultants that concedes that WCBS' coverage of the 10-mile Shoreham EPZ does not meet regulatory requirements. See Engineering Report Re Field Strength Measurement Survey of Radio Station WCBS, New York, New York, dated June 1987, which is Attachment 6 to LILCO's Motion. As the cornerstone of LILCO's Motion -- the alleged adequacy of WCBS -- is contested by LILCO's own engineering report, this Board has no option but to reject LILCO's Motion.

Fourth, LILCO's Motion must be denied because it is purely executory in that it makes mere representations without any basis in fact. This Board has already held that proposals that are

executory in nature are not the proper subject for motions for summary disposition.^{2/} There is no reason for concluding otherwise with respect to LILCO's Motion.

Fifth, LILCO's Motion must be denied because of significant factual disputes between the parties. The Governments take issue with LILCO's so-called "undisputed" facts, all of which are either disputed, unsupported by the record, misleading or otherwise irrelevant. See Statement of Material Facts as to Which LILCO Contends There Is No Genuine Issue to Be Heard on the EBS Issue ("LILCO's Statement"), attached to LILCO's Motion. The Governments submit with this Response their own list of material facts; unlike LILCO's list, however, the Governments' list is comprised of those facts as to which there exists a genuine issue to be heard. Such factual disputes as exist here preclude summary disposition.

Finally, the Governments are not barred, as LILCO has alleged, from raising interface issues concerning WCBS, or any other issues for that matter, because "these interface issues are clearly encompassed within the 'realism/best efforts' Contention 5." LILCO's Motion at 9. WCBS, as well as the other stations that LILCO unilaterally claims will be participating in its latest EBS proposal, are private organizations. Therefore, even

^{2/} See Memorandum and Order (Ruling on Applicant's Motion of October 22, 1987 for Summary Disposition of Contention 25.C Role Conflict of School Bus Drivers) (Dec. 30, 1987) (hereafter, "December 30 Order").

assuming that the Commission's new emergency planning rule presumes that the Governments will follow LILCO's Plan, that rule cannot be so broadly interpreted so as to create a presumption that private radio stations will do so.

Any one of the foregoing reasons, as well as others discussed below, is itself sufficient to compel denial of LILCO's Motion. Taken together, they expose the impropriety of LILCO's attempt to eliminate inquiry into and evaluation of its latest EBS proposal. Thus, this Board has no choice but to deny LILCO's Motion, and, at a minimum, to provide the Governments with an opportunity to submit contentions and pursue discovery.

II. Applicable Law

The Governments summarized the law applicable to summary disposition in their response to LILCO's motion for summary disposition of Contention 25.C, and will not repeat it here. See Answer of Suffolk County, The State of New York and the Town of Southampton to LILCO's Motion for Summary Disposition of Contention 25.C ("Role Conflict" of School Bus Drivers), dated November 13, 1987, at 12-13.

III. Background

A detailed chronology of the events leading up to LILCO's Motion was presented in the Governments' Briefing Paper Concerning LILCO's Emergency Broadcast System, dated June 20, 1988. To summarize, on June 11, 1987, the Commission issued a Memorandum and Order reopening the record on LILCO's EBS proposal as a result of the withdrawal of WALK Radio as LILCO's primary station.^{3/} The Commission's Order found it "premature to admit contentions on the EBS situation until LILCO provides updated information on public notification procedures which may elicit additional contentions." 25 NRC at 886.

LILCO did provide updated information on its EBS proposal when it moved for summary disposition on November 6, 1987.^{4/} At that time, LILCO introduced an EBS proposal which relied upon WPLR as its lead EBS station. This Board denied LILCO's November 6 motion on December 21, 1987, and directed the Governments to submit contentions concerning the adequacy of LILCO's WPLR EBS proposal. The Governments submitted a single contention with numerous bases on January 12, 1988.

^{3/} Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-5, 25 NRC 884 (1987).

^{4/} LILCO's Motion for Summary Disposition of the WALK Radio Issue, dated November 6, 1987.

Thereafter, over the objection of the Governments, the Board admitted only those portions of the Governments' contention that challenged the adequacy of the WPLR EBS' coverage within the 10-mile Shoreham EPZ. See Memorandum and Order (Board Ruling on Contentions Relating to LILCO's Emergency Broadcast System) (Feb. 24, 1988) (hereafter, "February 24 Memorandum and Order"). Discovery proceeded on that issue, and on April 13, 1988, Suffolk County and LILCO filed their direct written testimony.^{5/} FEMA's testimony was filed on April 28,^{6/} and a schedule for trial, which contemplated that the issues relating to the coverage of the WPLR EBS would be heard by the Board on or about May 16, was established.

On May 3, 1988, counsel for Suffolk County wrote counsel for LILCO concerning an April 28, 1988 story that appeared in the New Haven Register reporting the withdrawal of WPLR from LILCO's EBS network. A copy of that letter is Attachment 1 to this Response. Counsel for Suffolk County noted that LILCO had not yet informed the Board of this development, and, since trial on the WPLR EBS issues was about to commence, requested counsel for LILCO to promptly inform the Board as to the status of its EBS proposal.

^{5/} See Direct Testimony of Charles G. Perry, III and Gregory C. Minor on behalf of Suffolk County Regarding LILCO's Emergency Broadcast System, dated April 13, 1988; Testimony of Douglas Crocker, Ralph E. Dippell and William G. Johnson on the Remanded Issue of the Coverage of LILCO's Emergency Broadcast System, dated April 13, 1988.

^{6/} See Testimony of John J. Boursy, Jr., dated April 28, 1988.

On May 6, LILCO filed its direct written testimony on the so-called realism/"best efforts" issues,^{7/} in which it revealed for the first time that WPLR intended to withdraw as LILCO's lead EBS station, if LILCO was ever issued a full power license for Shoreham. LILCO's realism testimony, at 52-56. According to that testimony, LILCO therefore no longer intended to rely initially on its own EBS network spearheaded by WPLR-FM, but would rather first attempt to activate the New York State EBS network, with WCBS-AM as the lead station, in the event of a Shoreham emergency.

In filing its realism testimony, LILCO not only introduced a proposed new EBS network, but also introduced new terminology to describe the status of the stations participating in that network. What had previously been referred to as the primary or lead EBS station was now referred to as the common point control station ("CPCS"); and, what had previously been referred to as secondary stations were now referred to as primary stations.^{8/} Notwithstanding this change in terminology, the responsibilities and functions of the stations in LILCO's proposed EBS network did not change, with one significant exception: according to LILCO,

^{7/} See Testimony of Dennis M. Behr, Douglas M. Crocker, Diane P. Dreikorn, Edward B. Lieberman, and John A. Weismantle on the "Best Efforts" Contentions EP 1-2, 4-8, and 10, dated May 6, 1988 (hereafter, "LILCO's realism testimony").

^{8/} No explanation was ever given by LILCO for this change in terminology, but the reason seems obvious: LILCO was attempting to conceal WPLR's change of status or even its possible withdrawal from the EBS network then proposed by LILCO.

WGLI, which had been a secondary station in LILCO's proposed WPLR EBS network, had agreed to take over responsibility from WPLR as the "CPCS" or lead station in LILCO's new EBS network. LILCO did not adequately explain, however, a number of other aspects of its proposed system, including how the WCBS EBS network would be activated, or how it would interact with the LILCO EBS network that then relied upon WGLI as the lead station.

Thereafter, on May 16, LILCO sent a letter to the Board which disclosed yet additional changes in its EBS proposal. That letter, which is Attachment 2 to this Response, informed the Board, for the first time, that WPLR's continued participation in LILCO's EBS, even as a secondary station, was unclear.

On May 24, LILCO issued Revision 10 to the LILCO Plan. While Revision 10 indicated that LILCO would initially rely on the New York State EBS, with WCBS as the CPCS or lead station, it also claimed that the "Shoreham local EBS network" would serve as a backup to the State EBS. Significantly, Revision 10 called for WPLR to assume the role of lead station of the "Shoreham local EBS network," as well as to continue to activate the tone alert radios installed (or to be installed) at various special facilities, such as schools, hospitals, nursing homes and major employers, throughout the 10-mile Shoreham EPZ. LILCO Plan (Rev. 10), at 3.8-7.

On May 25, counsel for LILCO sent a letter to the Board discussing these changes in LILCO's EBS proposal, as set forth in Revision 10. A copy of that letter is Attachment 3 to this Response. According to LILCO's May 25 letter, Revision 10 of the Plan provided for "direct activation of the Shoreham EBS through WPLR." LILCO's letter also claimed that Revision 10 "adequately resolve[s] all EBS issues," and asserted that "[a]ny other matters relating to the EBS construct described in Revision 10 would be for the Intervenors to raise by a timely contention."

Notwithstanding this May 25 letter, on May 26, during hearings before the Board, Judge Gleason raised the EBS issue and expressed his confusion over LILCO's description of its latest EBS proposal, as described in the May 25 letter. Relevant portions of the May 26 transcript are attached as Attachment 4 to this Response. In response to questions from the Board, counsel for LILCO continued to claim that "WPLR is still to be a member station and triggers the tone alerts." Tr. 20,425. Counsel for LILCO also asserted that there were no outstanding contentions concerning WCBS, but reasoned that hearings could go forward concerning the adequacy of WPLR "if the intervenors wish." Tr. 20,426. However, when counsel for LILCO was unable to explain adequately LILCO's EBS proposal as set forth in Revision 10, the Board ordered limited discovery to "provide an opportunity for [the] parties to have discovery with respect to whatever

it is you [LILCO] are proposing." Tr. 20,429 (Judge Gleason). The Board also ordered the parties to submit a briefing paper shortly thereafter concerning how best to proceed. Id.

Pursuant to the limited discovery ordered by the Board, Douglas Crocker, LILCO's lead EBS witness, was deposed by Suffolk County on June 13 for the sole purpose of ascertaining the structure and operations of LILCO's latest EBS proposal, as described in Revision 10 to the LILCO Plan. On June 20, the Governments and the NRC Staff submitted briefing papers in response to the Board's May 26 bench order. LILCO, however, did not do so; rather, it filed a Motion for Leave to File Summary Disposition Motion on the EBS Issue (hereafter, "Motion for Leave"), as well as the Motion for Summary Disposition at issue here.

IV. Discussion

A. LILCO's Motion Introduces a Materially Different EBS Proposal That the Governments Have Not Had an Opportunity to Analyze

As noted above, this is LILCO's second attempt to resolve the outstanding EBS issues before the Board through summary disposition. In denying LILCO's first attempt, this Board held that "[i]t can hardly be considered as acceptable procedure that LILCO's plan revisions, unreviewed by other parties and FEMA,

with new radio stations forming significant links in its emergency broadcast responsibilities, could be the subject of a summary disposition resolution." December 21 Order, at 3-4. As the changes in LILCO's latest EBS proposal are even greater than were the changes made by LILCO when it replaced WALK with WPLR as its lead EBS station, it is even more compelling now not to resolve the outstanding EBS issues by way of summary disposition, as LILCO would have this Board do.

Indeed, while LILCO's first summary disposition motion followed LILCO's replacement of WALK Radio with WPLR (as well as the replacement of a few secondary stations), LILCO's most recent proposal not only involves the replacement of WPLR with WCBS-AM as LILCO's new lead station (or as LILCO now refers to it, the "CPCS"), but also essentially calls for an entirely different network of secondary broadcast stations. Moreover, rather than relying on WPLR, LILCO's latest proposal calls for two different stations, WCBS-AM and WALK, to activate the tone alert radios that LILCO has or will install throughout the 10-mile EPZ. Most revealing, however, is that unlike LILCO's previous EBS proposals, none of the stations that LILCO now relies on to participate in any significant respect in its EBS proposal (WCBS, WALK and apparently WPLR) has agreed to participate in the implementation of that proposal.

Thus, LILCO is attempting to have summary disposition granted on a proposal that radically differs from its earlier EBS proposal, and it relies on stations that have not only not agreed to participate in the implementation of LILCO's Plan, but, at least in two cases (WALK and WPLR), have affirmatively stated that they will not do so. See Attachments 5 and 6 to this Response, which are letters dated August 8, 1986, and June 6, 1988 from WALK and WPLR, respectively, notifying LILCO of their withdrawal from the EBS networks then proposed by LILCO. As the Governments have not had an "opportunity to determine and respond to matters potentially in controversy", "fairness and proper procedure" require this Board to reject LILCO's latest attempt for summary disposition. See December 21 Order, at 4.

B. LILCO's Motion for Summary Disposition Introduces an EBS Proposal That Is Ambiguous

Summary disposition of the EBS issues also cannot be granted for LILCO because LILCO's Motion is ambiguous and unclear in certain critical respects. Perhaps the most significant ambiguity is the apparent continued role of WPLR under LILCO's latest proposal. Revision 10, LILCO's latest version of its Plan, clearly states that WPLR will still be the lead station of LILCO's local, or backup, EBS network. LILCO Plan, at 3.8-7. Moreover, Douglas Crocker, LILCO's primary EBS witness, testified during his recent deposition that LILCO's Plan also relies upon WPLR to activate tone alert radios installed or to be installed

at various special facilities throughout the 10-mile Shoreham EPZ. See Deposition of Douglas M. Crocker, June 13, 1988 (hereafter, "Crocker Deposition"), at 48-49.

Notwithstanding these Plan provisions, LILCO's Motion leaves entirely unclear whether LILCO's EBS proposal still continues to rely on WPLR in any capacity. On the one hand, it appears that LILCO is still relying on WPLR. LILCO's Motion, for example, states that "[a]t this point in time, it is not clear what role, if any, WPLR will play." LILCO's Motion at 2. Nonetheless, in the Motion for Leave that accompanied LILCO's Motion, LILCO concedes that WPLR is still included in Revision 10 and that it "would enlist WPLR's services . . . as a last resort." Motion for Leave at 3.

On the other hand, there are statements to the contrary made in LILCO's Motion and elsewhere. For example, LILCO's Motion claims that LILCO "no longer relies on the WPLR system." LILCO's Motion at 3. LILCO also states that "it is likely that future revisions of the LILCO Plan will not include WPLR." Id. at 4. Further, in its Motion for Leave, LILCO claims that it "now relies on the State EBS instead of the WPLR-triggered local EBS to broadcast EBS messages and activate tone alert radios." Motion for Leave at 4. Clearly, therefore, the question remains whether LILCO still relies on WPLR. Only LILCO can answer that

question. It is, however, a question which must be answered before the Board could grant summary disposition in LILCO's favor.

In addition to the ambiguity over the participation of WPLR, other questions concerning LILCO's latest EBS proposal remain unanswered. LILCO's Motion, for example, leaves open the issue whether LILCO's EBS still relies on a local or backup EBS network, and if so, what station is being relied upon to activate that network. Revision 10, for example, states, at page 3.8-7:

The availability of this backup network as a last resort ensures that in case of a problem or delay in activating the WCBS-based EBS, a coordinated and accurate emergency information message can be broadcast to the public.

Revision 10 calls for WPLR to activate the local Shoreham EBS. As previously noted, however, LILCO elsewhere claims that WPLR is no longer relied upon by LILCO in any respect. And, it cannot be overlooked that LILCO's Motion completely ignores any discussion of the local Shoreham EBS.

In addition, LILCO's Motion fails to address how the broadcast receivers at LILCO's secondary EBS stations, relied upon by LILCO to receive and transmit or tape for later re-broadcast LILCO's EBS messages, would be activated. Previously, LILCO relied upon WPLR to perform this function. This aspect of

LILCO's proposed WPLR EBS was challenged by the Governments, and the issue was deemed appropriate for litigation by the Board in its February 24 Memorandum and Order. The ambiguity surrounding whether and how LILCO now intends to activate the secondary stations' broadcast receivers under its latest EBS proposal provides additional reason for denying LILCO's Motion.

With so many questions surrounding LILCO's latest EBS proposal, this Board cannot grant LILCO the summary disposition it seeks. Accordingly, the Board must summarily reject LILCO's Motion, and refuse to consider the EBS issue further until LILCO submits a proposal that is final and clear in all significant respects.

- C. There Is No Admitted Contention Concerning the Adequacy of the State EBS Network Because the Governments Have Not Had an Opportunity to Review and Analyze LILCO's Latest Proposal or to Submit Contentions

LILCO claims that the only admitted contention concerning the EBS issue "is of no further significance" and that because there is no admitted contention challenging the adequacy of the State EBS, there are no "genuine issue[s] of material fact" to be heard by the Board. LILCO's Motion at 3. This logic is thoroughly disjointed and highlights the absurdity of LILCO's Motion. In essence, what LILCO argues is that there is no longer an admitted EBS contention to be heard, because LILCO has changed

its EBS proposal. Moreover, because of this change, there are no outstanding contentions to be resolved. Therefore, according to LILCO, summary disposition should be granted.

What LILCO really seeks, of course, is to eliminate the existing admitted EBS contention without litigation, while at the same time preventing the Governments from reviewing and analyzing LILCO's latest EBS proposal and, if appropriate, thereafter filing contentions challenging the adequacy of that proposal. This Board should not tolerate such a transparent attempt to circumvent the legitimate rights of the Governments to challenge and contest LILCO's proposed EBS. To do so would be clear error.

Rather than following LILCO's advice, what this Board first needs to address is the already-admitted contention concerning WPLR. That contention, which was submitted pursuant to the Board's December 21 Order and modified by the Board's February 24 Memorandum and Order, was essentially limited to the adequacy of the WPLR EBS network's coverage within the 10-mile Shoreham EPZ. To be sure, the continuing relevancy of that contention is doubtful, in light of the questions previously discussed concerning LILCO's continued reliance on WPLR, and WPLR's apparent withdrawal from LILCO's EBS network. Indeed, both the NRC Staff and LILCO have conceded that the WPLR issue is "moot".^{9/}

^{9/} NRC Staff Briefing Paper on the Emergency Broadcasting System Issue, dated January 20, 1988 (hereafter, "NRC Staff Briefing Paper"), at 2; LILCO's Motion at 4.

As all parties agree that the contention concerning WPLR is moot, it appears that there are only two options available to this Board: grant summary disposition for the Governments on the existing EBS contention; or declare the contention moot and, as a matter of law, rule for the Governments. If it turns out in discovery or in later modifications of LILCO's Plan that WPLR is again being relied upon as a participant in LILCO's EBS, then the admitted contention can be resurrected. Until that time, however, there appears to be no reason not to dispose of that contention. In the Governments' view, the appropriate course for the Board would be for summary disposition to be granted for the Governments. The Governments are prepared to submit promptly whatever papers this Board feels are necessary in order to implement this recommendation.^{10/}

Assuming that this Board disposes of the admitted WPLR EBS contention, however, it does not logically flow, as LILCO suggests, that summary disposition should be granted in LILCO's favor because there is no admitted EBS contention. Rather, because LILCO's most recent EBS proposal is so materially different from its previous WPLR EBS proposal, the Governments

^{10/} In their June 20 Briefing Paper Concerning LILCO's Emergency Broadcast System, the Governments noted (at page 15) that summary disposition of the admitted WPLR EBS contention was appropriate, but that this Board had prohibited the filing of motions for summary disposition. This Board lifted that prohibition in a Memorandum and Order dated June 21, 1988. However, because there does not appear to be any dispute among the parties that summary disposition of the admitted EBS contention should be granted, the Governments have not filed the appropriate papers, but are prepared to do so if the Board so requests.

must be given, at a minimum, the opportunity to submit contentions and pursue discovery on matters raised by LILCO's latest EBS proposal. The NRC Staff has also concluded that at least this much is required. See NRC Staff Briefing Paper, at 3. By permitting the Governments to submit contentions, this Board would be following the same approach it took under a similar set of circumstances, when it denied LILCO's last attempt at summary disposition of the EBS issue. See December 21 Order.

D. The Adequacy of the Coverage of the State EBS Has Not Been Resolved

In support of its claim that there are no litigable EBS issues remaining, LILCO gives five reasons why the State EBS provides adequate coverage to the 10-mile Shoreham EPZ. LILCO's Motion at 7-9. Each of LILCO's reasons is without merit; in fact, rather than resolving the EBS issues, they illustrate that there are issues yet to be resolved.

First, LILCO notes that WALK Radio and all of the other stations that were part of the original LILCO EBS network are now part of the State EBS. LILCO argues that, since the Board found this network acceptable in the Plan litigation, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 760, 764 (1985) (hereafter, the "PID"), the adequacy of the State EBS coverage has already been established and judged adequate. LILCO's Motion at 7. Second, LILCO claims that WCBS'

coverage has already been established in the context of the legal authority contentions. Specifically, LILCO asserts that "Fact" number 17 in LILCO's March 20, 1987 Second Renewed Motion for Summary Disposition of those contentions (hereafter, "Second Renewed Motion") stated that "The CPCS-1 [for the State EBS] has a fifty kw AM station that covers the entire Shoreham 10-mile EPZ," and that this "fact" was admitted when the Governments failed to controvert it in their response to LILCO's Second Renewed Motion. LILCO's Motion at 7 (citing LBP-87-26, 26 NRC 201 (1987)). Third, LILCO contends that the adequacy of WALK Radio was "in effect conceded" by the Governments in their pleadings challenging the WPLR EBS, including their January 12, 1988 EBS contention. LILCO's Motion at 7-8. Fourth, as additional "confirmation" of the adequacy of the State EBS coverage to the Shoreham EPZ, LILCO relies upon a field strength engineering report and an affidavit from its radio engineers, Cohen and Dippell. Id. at 8. Fifth and finally, LILCO claims that the Governments' failure to produce State and County personnel for depositions created the presumption that their testimony would have been adverse to the Governments' position regarding the adequacy of LILCO's latest proposed EBS network. Id. at 8-9.

LILCO's reasoning is fundamentally flawed, and none of its five reasons for the allegation that there are no litigable issues concerning the State EBS coverage withstands scrutiny.

For example, the adequacy of the coverage of the State EBS has never been litigated in this proceeding; nor has the adequacy of the State EBS coverage been conceded by the Governments. In fact, LILCO's own engineering report clearly admits that WCBS does not provide adequate coverage to the 10-mile Shoreham EPZ. See LILCO's Motion, Attachment 6.

More particularly, LILCO's claim that the adequacy of the State EBS system's coverage has already been established in the Plan litigation is disingenuous and misleading. The adequacy of the State EBS issue was not litigated in that proceeding; in fact, not even the adequacy of WALK Radio's coverage was litigated. Rather, the only contention that was litigated was whether WALK's failure to broadcast on an AM frequency at night made WALK inadequate to serve as LILCO's lead, or primary, EBS station. See EP Contention 20, attached hereto as Attachment 7. Indeed, in the PID, the Board specifically stated that "the range of the stations (WALK-AM and -FM) is not at issue in Contention 20." 21 NRC at 764. LILCO therefore misleads the Board in claiming that the Plan litigation has resolved the adequacy of the State EBS system's coverage.

Moreover, even if the adequacy of WALK Radio had been litigated in the prior Plan litigation, that would not have been dispositive of the issues now before the Board in this proceeding. In the prior proceeding, WALK was the lead station of

the Shoreham EBS network and had agreed to participate in such network. Now, however, WALK is being relied upon only as a secondary station, and it has not agreed to participate in the implementation of LILCO's Plan, as LILCO would have this Board believe. Indeed, WALK has affirmatively withdrawn from LILCO's proposed EBS network. In any event, as the roles and responsibilities of lead stations and secondary stations are different, the inquiry into the adequacy of those stations is also necessarily different. Simply put, any litigation concerning the WALK-triggered EBS network is not relevant to the issues now to be determined by the Board.

It is equally misleading for LILCO to claim that the adequacy of WCBS' coverage has been established as a result of the Governments' failure to controvert "Fact" number 17 in LILCO's Second Renewed Motion. LILCO's Second Renewed Motion was not related to any contention concerning the adequacy of LILCO's latest EBS proposal or the adequacy of WCBS' coverage; rather, it was related to the realism/"best efforts" Contention 5. That contention solely concerned LILCO's inability to activate sirens and direct the broadcasting of emergency broadcast system messages.

The Governments did not controvert "Fact" 17, or many of the other "facts" offered by LILCO, because they believed that LILCO's "facts" did not address, or were irrelevant to, the

important legal authority issues that had to be resolved by the Board before summary disposition could be granted, and certainly were not related to the contention concerning the adequacy of LILCO's EBS proposal. Indeed, in denying LILCO's Second Renewed Motion, the Board found that "the 'best-efforts' assumption is rebuttable in this case to the extent that it leaves open the adequacy of response." 26 NRC at 225 (emphasis added).

Moreover, the adequacy of the EBS proposal could not have been decided at the time LILCO's Second Renewed Motion was resolved against LILCO, because there was no EBS proposal before the Board at that time. When the Board denied LILCO's Second Renewed Motion on September 17, 1987, LILCO had not yet replaced its WALK-triggered EBS with its WPLR EBS proposal, which was first introduced on November 6, 1987, when LILCO's Motion for Summary Disposition of the WALK Radio Issue was filed.^{11/} As there was no EBS proposal before the Board, and WCBS was not being relied upon by LILCO at the time to broadcast emergency information, there was no need to devote the time and resources to address the alleged adequacy of WCBS' coverage.

Therefore, as "Fact" 17 was only related to LILCO's attempt to resolve summarily the legal authority contentions, was not controverted by the Governments at a time when there was no EBS

^{11/} WALK had withdrawn from LILCO's EBS sometime prior to September 16, 1986. See Attachment 5 to this Response.

proposal before the Board, and did not relate to or establish "the adequacy of [LILCO's] response," it must be disregarded in the context of deciding LILCO's instant Motion.

Furthermore, even if this Board does deem "Fact" 17 related to this proceeding, it still would not establish the adequacy of the coverage of WCBS. "Fact" 17 only claimed that WCBS covers the entire 10-mile EPZ; it is, however, completely silent as to the adequacy of that coverage. And, as discussed below, LILCO's own engineering report demonstrates that WCBS' coverage falls below minimum standards. Therefore, "Fact" 17, even if considered relevant to this proceeding, is not dispositive of questions relating to the adequacy of WCBS' coverage.

LILCO's claim that the Governments have "in effect conceded the adequacy of WALK Radio as an EBS broadcaster" (LILCO's Motion at 7) requires but brief comment. This argument is premised on statements made by the Governments in their pleadings challenging the WPLR EBS; in particular, LILCO relies on the Governments' January 12, 1988 EBS contention. Pleadings and proffered contentions are not facts, however. Moreover, the contention submitted on January 12 only claimed that WALK was more suitable than WPLR to act as the lead station of an EBS network, not that WALK's coverage was adequate. Furthermore, it cannot be overlooked that the Board refused to admit any portions of the proffered conten-

tion that compared WALK to WPLR. See February 24 Memorandum and Order at 4. There is no basis for LILCO to rely on claims that were made, but rejected, by the Board.

As additional "confirmation" of the adequacy of the State EBS coverage to the Shoreham EPZ, LILCO relies upon an engineering report and affidavit prepared by the engineering consulting firm of Cohen and Dippell (attached to LILCO's Motion as Attachments 6 and 9, respectively). Neither the engineering report nor the affidavit, however, states that WCBS provides adequate coverage of the entire 10-mile Shoreham EPZ. The affidavit only claims that WCBS provides coverage at a level of at least .58 mV/m to the entire 10-mile EPZ, without disclosing the relevance of that level of coverage, or discussing whether this meets FCC regulatory requirements. The engineering report goes one step further, by explaining that regulatory standards require a signal strength of 2 mV/m to serve communities with populations in excess of 2500 persons. The engineering report confirms, moreover, that the EPZ consists of "numerous" communities in excess of 2500 persons, and then attaches a "Measured Service Contours" map that shows that WCBS' 2 mV/m contour may only reach a small part of the EPZ. Therefore, based on the Cohen and Dippell engineering report, it appears that the coverage of WCBS to the Shoreham EPZ fails to satisfy FCC regulatory requirements. At a minimum, the issue of WCBS' coverage to the Shoreham EPZ is thus called into question.

LILCO's last reason for claiming that no litigable issue exists with respect to the coverage provided by the State (WCBS) EBS hinges upon the fact that, despite LILCO's requests to depose State and County personnel knowledgeable about the capabilities and means of activating the State EBS, the Governments failed to produce these witnesses. In LILCO's view, this creates a presumption that the witnesses' testimony would have been adverse to the Governments. LILCO's Motion at 8-9.

This LILCO argument is plainly without merit. First, this Board, in its May 26 bench order, limited discovery to only what was necessary for the Governments to ascertain the nature and scope of LILCO's EBS proposal, as set forth in Revision 10 to LILCO's Plan. The persons whose depositions were noticed by LILCO -- specifically John Randolph, G. Berkeley Bennett, John Bilello and Richard Jones of Suffolk County and Marvin Silverman of New York State -- were clearly not contemplated by the Board's discovery order. See letter of Michael J. Missal to Donald P. Irwin and K. Dennis Sisk, dated June 10, 1988 (attached hereto as Attachment 8).

Second, counsel for LILCO announced during a Board telephone conference on June 17 that LILCO was no longer seeking to depose the noticed County and State personnel on the EBS-related issues before the Board. Tr. 20,890-91. As a result, LILCO cannot now

argue that although it no longer desires to depose the witnesses, a presumption that their testimony would have been adverse to the Governments should nonetheless be created.

For the foregoing reasons, it is clear that the adequacy of the coverage provided by the State EBS to the Shoreham EPZ has not been resolved. Therefore, at a minimum, LILCO's Motion must be denied, and the Governments must be given an opportunity to submit contentions and pursue discovery.

**E. LILCO's Motion Is Purely Executory and
Therefore Is Not the Proper Subject for
a Motion for Summary Disposition**

This Board has previously held that proposals that are executory in nature require analysis and review and are not the proper subject for motions for summary disposition. See December 30 Order. LILCO's Motion is executory in nature, relying upon mere representations not yet demonstrated to be based in fact. It therefore must fail.

Some of the more significant, factually unsupportable representations made by LILCO include the following:

1. LILCO represents that WCBS is now being relied upon to notify the public and to activate the State EBS network and the tone alert radios at various special facilities throughout the Shoreham EPZ. LILCO's Motion at 3, 5-6. WCBS has not agreed to participate in LILCO's EBS proposal, however.

2. LILCO represents that since the WCBS-triggered State EBS includes WALK Radio, WALK can be relied upon to participate in the State EBS and to activate tone alert radios at various special facilities throughout the EPZ. LILCO's Motion at 5, 7. WALK Radio, however, has specifically withdrawn from participation in LILCO's proposed EBS network. There is therefore no basis for LILCO's assumption regarding WALK's participation.

3. LILCO may still be relying on WPLR to activate the backup or local Shoreham EBS network. LILCO's Motion at 2, 4-6. WPLR has specifically withdrawn from participating in LILCO's EBS proposal, however.

4. LILCO represents that it will recrystallize or replace the tone alert radios so that they can be activated by WCBS and WALK. LILCO's Motion at 6. However, Douglas Crocker testified during his recent deposition that LILCO's Plan still calls for the tone alert radios to be activated by WPLR. See Crocker Deposition, at 48-49.

5. LILCO claims that "the adequacy of the State EBS' coverage of the 10-mile EPZ around Shoreham was deemed admitted by the Intervenors in the legal authority proceeding." Motion for Leave at 5. This statement is baseless and, as discussed above, erroneous.

6. LILCO claims that the Cohen and Dippell engineering report attached to its summary disposition motion (LILCO's Motion, Attachment 6) confirms that "WCPS itself provides full coverage to the Shoreham EPZ." Motion for Leave at 5. As discussed above, this statement is baseless and false.

Therefore, as LILCO's Motion, and its accompanying Motion for Leave, contain significant statements and representations that are purely executory and, in many instances, contrary to fact, this Board must deny LILCO's Motion.

F. LILCO's Statement of "Material Facts" Is Disputed

Attached to LILCO's Motion are 11 "material facts" as to which LILCO claims there are no genuine issues to be heard. However, as shown below, these "facts" are either disputed, unsupported by the record, misleading and/or irrelevant. Moreover, some of these "facts" can neither be admitted nor denied at this time, because the Governments have not had an opportunity to conduct discovery concerning LILCO's latest EBS proposal.

Alleged Fact 1 - LILCO begins by claiming that it "no longer relies on radio station WPLR or the local Shoreham EBS as its first-tier EBS broadcaster for the Shoreham station."

This alleged "fact" is, at best, misleading. LILCO's claim that it is no longer relying on WPLR or the local Shoreham EBS as the "first-tier" EBS broadcaster suggests that LILCO is not relying on either to provide emergency information to the public in the event of a Shoreham emergency. Revision 10, however, calls for WPLR to activate the local Shoreham EBS if there are "problems or delays" in activating the State EBS. LILCO Plan at 3.8-7. Therefore, if there are "problems or delays" in activating the State EBS, WPLR and the local Shoreham EBS network would become the "first-tier" EBS broadcaster, at least according to the latest version of LILCO's Plan.

Alleged Fact 2 - LILCO next claims that it is "now rely[ing] on the official State EBS for the Nassau - Suffolk Counties Operational Area to broadcast emergency information during a Shoreham emergency."

This alleged "fact" is misleading, because Revision 10 states that LILCO is relying on both the State EBS and the local Shoreham EBS, not just the State EBS. LILCO Plan at 3.8-6 and 3.8-7. In addition, LILCO's Plan still calls for WPLR, which is

not a participating station in the State EBS, to activate the tone alert radios installed or to be installed at special facilities located throughout the Shoreham EPZ. See Crocker Deposition at 48-49. Alleged "Fact 2" is also irrelevant because WCBS, the station that activates the State EBS, has not agreed to participate in LILCO's EBS proposal.

Alleged Fact 3 - LILCO's alleged "Fact 3" simply identifies WCBS-AM as the station that activates the State EBS, and claims that "WCBS is a fifty kw clear-channel station that operates on a frequency of 880 kHz, 24 hours a day."

As the Governments have not yet had an opportunity to conduct discovery concerning LILCO's latest EBS proposal, the Governments lack an adequate basis to either admit or deny alleged "Fact 3." The Governments note, however, that alleged "Fact 3" is irrelevant to the issues before this Board, because WCBS has not agreed to participate in LILCO's latest EBS proposal.

Alleged Fact 4 - LILCO claims that "[t]he State EBS for the Nassau-Suffolk Counties Operational Area is comprised of about 30 Long Island radio stations, in-

cluding WALK and all of the other Long Island stations that were previously (or are currently) participating members in the local Shoreham EBS."

Like alleged "Fact 3," the Governments lack an adequate basis to either admit or deny alleged "Fact 4" at this time. Simply put, the Governments have not had an opportunity to conduct discovery concerning LILCO's latest EBS proposal. The Governments submit, however, that alleged "Fact 4" is irrelevant, because most of the stations participating in the State EBS have not agreed to participate in the local Shoreham EBS network.

Alleged Fact 5 - In alleged "Fact 5," LILCO lists the steps to activate the EBS that the LERO Director of Local Response would implement, pursuant to Revision 10 of the Plan, in the event of an emergency at Shoreham. Included as a step is the activation of the local Shoreham EBS in the event of "problems or delays" in activating the State EBS.

This allegedly undisputed "fact" is, in fact, disputed by LILCO's own Motion. Revision 10 of the LILCO Plan still relies on WPLR to activate the local Shoreham EBS. LILCO Plan at 3.8-7. LILCO's Motion, however, claims that "LILCO no longer relies on the WPLR system to be its EBS broadcaster." LILCO's Motion at 4. LILCO's Motion further states that "[i]ndeed, it is likely that

future revisions of the LILCO Plan will not include WPLR." Id. Therefore, LILCO's own Motion disputes alleged "Fact 5." Moreover, alleged "Fact 5" is irrelevant in that WCBS and WPLR, the stations apparently relied upon by LILCO to activate its EBS networks, have not agreed to participate in the implementation of LILCO's Plan.

Alleged Fact 6 - LILCO claims that it will "rely on the State EBS to activate the tone alert radios that LILCO has provided to schools, special facilities, hospitals and large employers."

This alleged "fact" is not supported by the record. LILCO's Plan still relies upon WPLR to activate the tone alert radios. Moreover, Douglas Crocker, LILCO's principal EBS witness, confirmed during his recent deposition that the tone alert radios are still programmed to be activated by WPLR. See Crocker Deposition at 48-49. Therefore, alleged "Fact 6" is unsupported by the record; accordingly, it is disputed by the Governments.

Alleged Fact 7 - "Fact 7" alleges that "LILCO will replace or recrystallize all of the tone alert radios so that they can be activated by both WCBS (AM) and WALK-FM."

Alleged "Fact 7," like alleged "Fact 6," is unsupported by the record because Revision 10 calls for the tone alert radios to be activated by WPLR. See Crocker Deposition at 48-49. Moreover, this alleged "fact" is purely executory in nature. As such, it is not a "fact" at all.

Alleged Fact 8 - Alleged "Fact 8" claims that Cohen and Dippell, at LILCO's request, conducted a field strength measurement survey of WCBS for the purpose of determining "the extent of WCBS' actual coverage throughout the 10-mile Shoreham EPZ, taking into account the specific terrain effects between the station and measurement points in the 10-mile EPZ and beyond."

Alleged "Fact 8" is irrelevant to LILCO's Motion, as it only states that LILCO requested a study of the coverage of WCBS. Alleged "Fact 8" does not address the focus of LILCO's Motion, which is the adequacy of that coverage. Even without the opportunity for discovery, the Governments are able to dispute "Fact 8," based upon the results of the Cohen and Dippell survey, which are reflected in the engineering report attached to LILCO's Motion as Attachment 6. Alleged "Fact 8" is also irrelevant, in that WCBS has not agreed to participate in LILCO's EBS proposal.

Alleged Fact 9 - In alleged "Fact 9," LILCO claims that WCBS-AM operates on a frequency of 880 kHz with a power level of 50 kw, and uses the same non-directional antenna system both day and night. LILCO also alleges that under FCC rules, WCBS is designated as a Class I-A, clear channel station and operates with the maximum permissible power for AM stations. LILCO further alleges that Class I-A stations are protected to their 0.1 mV/m groundwave contour from co-channel stations and to the 0.5 mV/m groundwave contour from adjacent channel stations during the daytime. Moreover, LILCO alleges that during nighttime, Class I-A stations are protected to the 0.5 m/Vm 50% skywave contour from co-channel stations and to the 0.5 groundwave contour from adjacent channel stations. Finally, LILCO alleges that WCBS' 0.5 mV/m 50% skywave contour extends approximately 700 miles, and FCC rules preclude nighttime operation of other co-channel stations within this area.

Until the Governments are given an opportunity to conduct discovery concerning LILCO's latest EBS proposal, the Governments lack an adequate basis to either admit or deny alleged "Fact 9." In the Governments' view, however, alleged "Fact 9" is irrelevant to the issues before the Board, because WCBS has not agreed to participate in LILCO's latest EBS proposal.

Alleged Fact 10 - "Fact 10" alleges that "[a]n analysis of the field strength measurements shows that WCBS provides 24-hour coverage at a level of at least 580 microvolts (.58 millivolts) per meter to the entire 10-mile EPZ around Shoreham."

Like alleged "Facts" 3, 4 and 9, the Governments lack an adequate basis to either admit or deny alleged "Fact 10," because they have not yet been given an opportunity to conduct discovery. The Governments believe that alleged "Fact 10" is misleading, in that it fails to state that WCBS does not provide coverage to the entire 10-mile Shoreham EPZ pursuant to FCC requirements. As discussed above, LILCO's own engineering report concedes that the FCC requires coverage of 2000 microvolts (2.0 mV/m) per meter to the more heavily-populated areas of the EPZ. Moreover, alleged "Fact 10" is irrelevant, since WCBS has not agreed to participate in LILCO's latest EBS proposal.

Alleged Fact 11 - Alleged "Fact 11" claims that "WCBS' signal is of ample strength to activate the tone alert radios dispersed throughout the 10-mile EPZ, since the sensitivity of the AM tone alert radios is 30 microvolts per meter."

This alleged fact is disputed for some of the same reasons given above with respect to alleged "Fact 10." First, the Governments lack an adequate basis to either admit or deny alleged "Fact 11," because they have not been given an opportunity to conduct discovery. Second, alleged "Fact 11" is irrelevant, because WCBS has not agreed to participate in LILCO's latest EBS proposal. Third, the Governments dispute alleged "Fact 11," because Revision 10 of the LILCO Plan still relies on WPLR to activate the tone alert radios dispersed throughout the 10-mile EPZ. See Crocker Deposition at 48-49.

G. Material Issues of Fact Remain to Be Decided

As noted above, significant issues of fact remain to be decided concerning not only the structure of LILCO's latest EBS proposal, but also the adequacy of that proposal. Among the questions that must be addressed is whether WCBS will participate in LILCO's EBS proposal; if so, whether the coverage of WCBS is adequate to provide emergency information to the public, activate the broadcast receivers at the secondary EBS stations, and activate the tone alert radios at the special facilities dispersed throughout the EPZ; whether WPLR is still being relied upon in LILCO's EBS proposal; whether WALK, or any of the other approximately 30 Long Island radio stations that normally participate in the State EBS network, but have never agreed to participate in LILCO's proposed EBS network, will do so; and, whether LILCO is

relying upon a local or backup Shoreham EBS network to provide emergency information, and if so, what station will activate that network. A Statement of Material Facts as to Which There Exists a Genuine Issue to Be Heard, which sets forth the above issues and others, is attached to this Response.

H. The Governments Are Not Precluded from Raising Interface Issues Concerning WCBS

LILCO claims that the only potentially litigable issues concerning LILCO's reliance on the State EBS are interface issues -- for example, issues involving how the State or County or LILCO would contact WCBS, how WCBS would be activated, etc. LILCO's Motion at 9-10. LILCO alleges that as these issues are clearly encompassed within the realism/"best efforts" contentions -- specifically, Contention 5 -- the Governments are precluded from raising such interface issues.

LILCO is wrong. The kinds of interface issues raised by LILCO's latest EBS proposal are not part of the "realism" proceeding. The "realism" proceeding focuses on the presumption that the Governments would participate in emergency planning in the event of a radiological emergency at Shoreham. WCBS, and all of the other stations that LILCO unilaterally claims will be participating in its EBS proposal, are private organizations, however. Even if the Governments asked those stations to broadcast emergency information, they are under no obligation to do so.

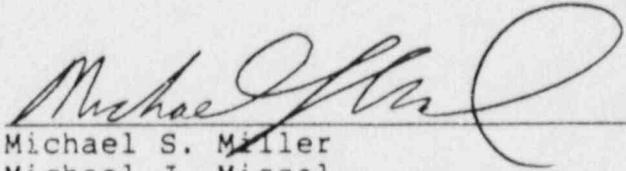
Thus, even if it is assumed that the Governments would follow LILCO's Plan in the event of a Shoreham emergency -- an assumption the Governments vigorously contest -- the Commission's new rule cannot be so broadly interpreted to create a presumption that private radio stations would do so. Accordingly, the Governments are not precluded from raising interface issues concerning WCBS, and, in fact, they are entitled to do so.

V. Conclusion

For the reasons stated above, LILCO's Second Motion For Summary Disposition of the EBS Issue should be denied in its entirety. Further, if and when LILCO submits an EBS proposal that is final and clear, the Governments should be given an opportunity to submit contentions and pursue discovery into LILCO's latest EBS proposal.

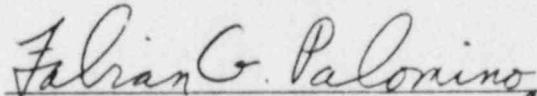
Respectfully submitted,

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



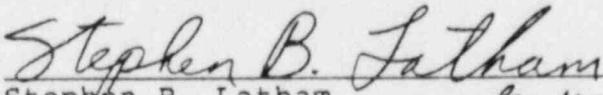
Michael S. Miller
Michael J. Missal
KIRKPATRICK & LOCKHART
1800 M Street, N.W.
South Lobby - Ninth Floor
Washington, D.C. 20036-5891

Attorneys for Suffolk County



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

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



Stephen B. Latham *by MJM*
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Attorney for the Town of
Southampton

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS A
GENUINE ISSUE TO BE HEARD ON MATTERS RAISED BY LILCO'S
SECOND MOTION FOR SUMMARY DISPOSITION OF THE EBS ISSUE

1. Whether WCBS will participate in LILCO's EBS proposal.
2. Whether the stations in the State EBS that have not agreed to participate in LILCO's EBS proposal, including WALK Radio, will in fact participate.
3. Whether LILCO's EBS proposal still relies on WPLR, and if so, whether WPLR will participate.
4. Whether LILCO's EBS proposal still relies on the local or backup Shoreham EBS network, and if so, what station is being relied upon to activate that network.
5. Whether the adequacy of the coverage of WCBS meets regulatory requirements.
6. Whether WCBS' broadcasting on only an AM frequency satisfies regulatory requirements.
7. Whether the coverage of the State EBS is adequate to satisfy regulatory requirements.

8. Whether WCBS is capable of activating the broadcast receivers at the secondary stations in the State EBS.

9. Whether WCBS is capable of activating the tone alert radios installed (or to be installed) at special facilities throughout the 10-mile Shoreham EPZ.

10. Whether WALK Radio is capable of activating the tone alert radios installed (or to be installed) at special facilities throughout the 10-mile Shoreham EPZ.

11. How would the State or County or LILCO contact WCBS?

12. Whether the procedures established for the State or County or LILCO to contact WCBS are adequate to satisfy regulatory requirements.

13. How would WCBS activate the State EBS?

14. Whether the procedures established for WCBS to activate the State EBS are adequate to satisfy regulatory requirements.

15. Under what conditions would LILCO seek permission from New York State to activate the State EBS?

16. Under what conditions would LILCO seek permission from Suffolk County to activate the State EBS?

17. Under what conditions would LILCO contact WCBS directly to activate the State EBS?

18. Under what conditions would LILCO attempt to activate the local or backup Shoreham EBS network?

19. What is meant by the term "problem or delay" in Revision 10 to LILCO's Plan, at page 3.8-7?

20. Under what conditions will the stations that are part of the local or backup Shoreham EBS network switch their signal source to WCBS?

DOCKETED
July 12, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 JUL 14 P5:28

Before the Atomic Safety and Licensing Board

DOCKETING & SERVICE
BRANCH

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power)
Station, Unit 1))

Docket No. 50-522-OL-3
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of the RESPONSE OF SUFFOLK COUNTY, STATE OF NEW YORK, AND TOWN OF SOUTHAMPTON IN OPPOSITION TO LILCO'S SECOND MOTION FOR SUMMARY DISPOSITION OF THE EBS ISSUE have been served on the following this 12th day of July, 1988 by U.S. mail, first class, postage prepaid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

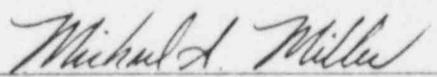
Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
1717 H Street, N.W.
Washington, D.C. 20555

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

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

Richard Bachmann, Esq.
Edwin J. Reis, Esq.
U.S. Nuclear Regulatory Comm.
Office of General Counsel
Washington, D.C. 20555

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


Michael S. Miller
KIRKPATRICK & LOCKHART
1800 M Street, N.W.
South Lobby - 9th Floor
Washington, D.C. 20036-5891

KIRKPATRICK & LOCKHART

SOUTH LOBBY - 9TH FLOOR
1800 M STREET, N.W.
WASHINGTON, D.C. 20036-5891

TELEPHONE (202) 778-9000
TELEX 440209 KL DC U1
TELECOPIER (202) 778-9100

EXCHANGE PLACE
53 STATE STREET
BOSTON, MA 02109
(617) 227-6000

1428 BRICKELL AVENUE
MIAMI, FL 33131
(305) 374-8112

1500 OLIVER BUILDING
PITTSBURGH, PA 15222-5179
(412) 355-6500

MICHAEL S. MILLER
(202) 778-9022

May 3, 1988

BY TELECOPY

James N. Christman, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dear Jim:

We were informed yesterday by Judge Gleason's secretary that the conference of counsel scheduled for this Wednesday, May 4, has been rescheduled by the Licensing Board until next Tuesday, May 10. We were not provided any reason for the change.

With the prehearing conference now scheduled to take place only a few days before trial on the remand issues is scheduled to begin, we thought that it might make sense to explore the possibility of agreeing upon a trial schedule. Such a schedule would permit everyone to take into account witness availability problems, so that, if at all possible, such problems can be accommodated. In addition, an agreed-upon trial schedule would offer a degree of certainty to our own lives.

I have spoken with Rick Zahnleuter about approaching you with a proposed schedule for the remand proceeding, and he is in agreement with the schedule we are proposing. That schedule is as follows:

Dates

May 17-20

May 24-25

Issue

EBS (LILCO, Suffolk County
and FEMA witness panels)

Hospital Evacuation Time
Estimates (LILCO, New York
State, and NRC Staff witness
panels)

KIRKPATRICK & LOCKHART

James N. Christman, Esq.
May 2, 1988
Page 2

May 26-27 and June 1-2	Schools (LILCO witnesses)
June 7-8	Schools (Suffolk County school official witnesses)
June 9-10	Schools (Suffolk County role conflict witnesses)

Consistent with past practice, the above schedule contemplates a four-day hearing week, Tuesday through Friday. This would avoid weekend travel as much as possible. A normal hearing day would begin at 9:30 a.m. and last until approximately 5:00 p.m., with one-and-one-half hours for lunch. As in the past, the hearings would take place on Long Island, presumably at the Court of Claims courtroom in the New York State Office Building.

In developing this schedule, Suffolk County has assumed that the EBS issues would be part of the remanded hearings. We have just learned, however, that radio station WPLR-FM has apparently withdrawn from its agreement with LILCO to be the primary station for broadcasting emergency warnings in the event of a Shoreham accident. A copy of an April 28, 1988 story in the New Haven Register, reporting WPLR's withdrawal, is attached. In our view, WPLR's withdrawal, if true, would significantly change the posture of the EBS proceeding since, up until this time, the EBS issues have focused on the adequacy of LILCO's EBS proposal using WPLR as the primary, or trigger, broadcast station. We recognize, however, that LILCO has yet to advise the Licensing Board or the other parties of WPLR's withdrawal and the impact that such would have, in LILCO's opinion, on the upcoming hearings. Thus, the above proposal leaves intact the possibility of having to litigate the EBS issues at this time. We would expect LILCO to make clear its position on the pending EBS matters in the very near future, however, so that proper planning for the remand proceeding can proceed.

As can be seen, the above schedule is based on firm starting dates for each panel of witnesses. This approach worked quite well during last summer's reception center hearings and is desirable so that counsel and the witnesses will know exactly when each issue will be tried. As we agreed last summer, it would be understood that the witness panel dates would not be moved forward, even if the preceding panel finishes ahead of schedule, unless agreed to by the parties. Similarly, a panel would not begin later than the agreed-to date, without the agreement of the parties. In addition, if a party does not complete its cross-examination or redirect examination of a panel

KIRKPATRICK & LOCKHART

James N. Christman, Esq.
May 2, 1988
Page 3

by the time the next witness panel is scheduled to commence, cross-examination or redirect examination rights would not thereby be extinguished or limited; if such examination is to be continued, however, it would have to be structured in a way that leaves the basic schedule substantially unaffected.

It also must be understood that even if a firm schedule can be agreed to, it may not eliminate all witness availability problems. Accordingly, certain accommodations and adjustments to any schedule may be necessary to address a particular witness' unavailability or other unforeseen circumstances. For instance, one of the County's school official witnesses is presently unavailable on June 7, when the County school witnesses under the above schedule would be scheduled to appear. We believe that this matter can be resolved, but it must be recognized that certain accommodations may have to be made. However, the "firm" starting date approach worked well last summer, and we therefore believe that it should be followed here.

You will note that there are no hearings scheduled on May 31, which is the day after Memorial Day. Rather than continuing LILCO's witness panel on the school issues on May 31, we have adjusted our proposed schedule to resume the hearings on June 1; this takes into account travel problems that may arise from the Memorial Day weekend.

Similarly, under our proposal there are no hearings scheduled on June 3. We recognize that this results in a two-day hearing week, but believe that this is preferable than the alternative of beginning the County's school official witness panel on Friday, June 3, and then having to continue that panel on the following Tuesday, June 7.

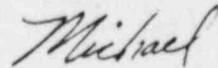
Finally, it must be recognized that in developing the above schedule, the County has proceeded without the benefit of knowing either when the upcoming FEMA-graded exercise will be scheduled (assuming that one is held), or when the Appeal Board will schedule oral argument on the Frye Board's February 1, 1988 decision (LBP-88-2). Under no circumstances would the County or the State agree to a schedule that results in the trial going forward concurrently with the exercise or oral argument before the Appeal Board.

KIRKPATRICK & LOCKHART

James N. Christman, Esq.
May 2, 1988
Page 4

Please let me have your thoughts as soon as possible with respect to the schedule set forth above.

Sincerely,



Michael S. Miller

Enclosure

cc: Richard J. Zahnleuter, Esq.
William R. Cumming, Esq.
Stephen B. Latham, Esq.
Charles A. Barth, Esq.

ice G. Hall, 89

HAYEN — A funeral service will be held today for Estaline Hall, 89, formerly of 216 1/2 Ave. who died Tuesday at a long illness. She was the wife of J. Henry Hall. The service will be held at 11 the Miller Ward Funeral Home, 260 Bank St., Seymour. She is in Northwest Cemetery.

Hall was born in Acushnet, Mass., May 24, 1899, daughter of Charles E. and Lizzie Gifford, and lived in New Haven for 60 years.

After retirement, she and her husband operated the former and latter Co. in New Haven.

She leaves two daughters, Edith of Seymour and Margaret of Gifford, a brother, Charles Gifford of Acushnet, two grandchildren and one great-grandchild.

Funeral contributions may be made to the Seymour Ambulance

Francis Franco, 37

SHIRE — A funeral service will be held today for Raymond Franco, 410 Wallingford Road, who died Monday at the Connecticut State Hospital in Branford after a long illness. He was the husband of Josephine Franco.

The service will be at 1 p.m. in the Bailey Funeral Home, 273 St. Wallingford. Burial will be in Hillside Cemetery.

Franco was born in New York City March 15, 1951, son of Joseph and Rose Bonilla Franco of New York City. Formerly of Middletown, he lived in Cheshire for 10 years.

He worked at A&A Acoustics, in addition to his wife and partner. He leaves a son, Eric of Cheshire; a brother, Joseph of the Bronx; four sisters, Ann Marie Torres, Lisa Val and Lois Kennedy, all of the Bronx; and Betty Delia Cruz of

Funeral contributions may be made to the Connecticut Hospice, 51 Burton Drive, Branford

Robert L. Malwitz, 69

SOMERSET — Robert L. Malwitz, 69, of 64 Rufus St. died Monday at Veterans Administration Medical Center, West Haven after a brief illness. He was the husband of Mary Debra Malwitz.

Malwitz was born in Chicago, Oct. 25, 1918, son of the late Joseph and Alma Milbrandt Malwitz and had lived 47 years in Ansonia. He was a cafeteria manager at the University of Bridgeport beginning in 1984. After that, he was the assistant manager of the Ansonia store in Derby for four years. He was a U.S. Army veteran of World War II.

He leaves his wife, he leaves two daughters, Richard H. Malwitz of Ansonia, Pa., and Theodore Malwitz of Denver, and two sisters, Rose Buckley and Alma Busch of Ansonia.

The funeral will leave Holy Trinity Memorial, 167 Wakelee Ave., Saturday at 9:30 a.m. A Mass of Christian burial will be celebrated in Sts. Peter & Paul Church at 10. Burial will be in Sts. Peter & Paul Cemetery, Derby.

Memorial gifts may be made to Sts. Peter & Paul Church Rededication Fund, through the funeral home.

Mary H. Maroney, 94

NEW HAVEN — Mary Heffernan Maroney, 94, of 134 W. Elm St. died Wednesday at Ardenwood, Hamden, after a brief illness. She was the widow of William F. Maroney.

Mrs. Maroney was born in New Haven, Nov. 22, 1893, daughter of the late James and Nora Heffernan. She was a member of the St. Ignace Parish, Hamden, and

Frank A. Guarino, 73; ex-New Haven alderman

ST. AUGUSTINE, Fla. — Funeral services will be held here today for Frank A. Guarino, 73, of 14 Coquina Ave., a former New Haven alderman, who died Tuesday at Flagler Hospital. He was the husband of Alice Kania Guarino.

The service will take place at the Cathedral Basilica. Burial will be in San Lorenzo Cemetery. The Craig Funeral Home, 1475 Old Dixie Highway, is in charge of arrangements.

Mr. Guarino was born in New Haven, Oct. 15, 1914, and lived in Florida for 15 years. A retired restaurant operator, he served on the Board of Aldermen from 1956 to 1962, representing the 5th Ward in New Haven's Hill section.

Besides his wife, he leaves a daughter, Joan Guarino of St. Augustine; five grandchildren and two great-grandchildren.

Rose G. Esposito, 78

NORTH HAVEN — A funeral service will be held Friday for Rose Gaetano Esposito, 78, of 216 Quinnipiac Ave., who died Tuesday at St. Raphael's Hospital after a brief illness. She was the widow of Pasquale Esposito.

The funeral will leave the Marasca & Sons Funeral Home, 592 Chapel St., New Haven at 8:15 a.m. A Mass of Christian burial will be celebrated at 9 in St. Theresa's Church, 555 Middletown Ave. Burial will be in All Saints Cemetery.

Mrs. Esposito was born in New Haven June 10, 1909, daughter of the late Marcelino and Loretta Pilla Gaetano. She lived in New Haven most of her life before moving to North Haven three years ago.

She leaves a son, James P. Esposito of North Haven, three sisters, Kate Lucibello of West Haven, Esther Gaetano of New Haven and Dorothy Amendola of East Haven; two grandchildren and two great-grandchildren.

She was predeceased by a sister, Nellie Rapino, and two brothers, Thomas and Michael Gaetano.

George J. Wieland, 63

NEW HAVEN — George J. Wieland, 63, of 45 Adelise St. died Wednesday at St. Raphael's Hospital of an apparent heart attack.

Mr. Wieland was born in New Haven, May 6, 1924, son of the late George and Anna Benoit Wieland, and was a lifelong resident of New Haven.

He recently retired from Sikorsky Aircraft, Stratford, where he had worked for more than 33 years. He was an Army veteran of World War II, and served in Europe. Mr. Wieland was a member of the West Haven Lodge of Elks and was a longtime parishioner of Sacred Heart Church.

He leaves a sister, Catherine Solovoy of Milford.

The funeral will leave the Sixa Bros. Funeral Home, 128 Dwight St., Friday at 9:30 a.m. A Mass of Christian burial will be celebrated in Sacred Heart Church, at 10. Burial will be in St. Lawrence Cemetery, West Haven.

Nathan T. Cohen, 82

MIAMI BEACH, Fla. — A graveside service will be held today for Nathan T. Cohen, 82, of 1000 Michigan Ave., who died Monday at the Geri Care Center after a brief illness. He was the husband of Janet Weimer Cohen, formerly of New Haven, and father of Paul M. Cohen of Naugatuck, Conn.

The service will be held at 2:30 p.m. in the Beth David Cemetery, Elmont, N.Y. The Rubins Funeral Home, 17th St. and Alton Road, Miami Beach, is in charge of arrangements.

Mr. Cohen was born in New York City May 31, 1905, son of the late Barnett and Pauline Cohen, and lived in Florida for 15 years. He was a member of the

Radio station retreats from N-alert plan

By Phil Blumenkrantz
Register Staff

NEW HAVEN — Radio station WPLR-FM has withdrawn from an agreement to be the primary station for broadcasting emergency warnings should the Shoreham nuclear power plant operate commercially.

The decision comes days before the Board of Aldermen is to consider a resolution urging WPLR to break its agreement with operators of the Shoreham plant on Long Island. It also follows an activists' boycott of WPLR's advertisers.

WPLR attorney Herbert Emanuelson Jr. said the station was not bowing to pressure.

"The issue bottomed out to whether this radio station was going to be used by (Long Island Lighting Co.) to get a license," said Emanuelson. "We are not beholden to LILCO and we're not beholden to public interest groups, either."

WPLR, however, will continue to be the plant's "trigger" for emergency warnings while Shoreham remains operating at low-power. WPLR also will broadcast emergency messages — but not as the trigger station — should Shoreham run at full power.

"We feel this is important and critical to the health and safety of all residents who live within an area that could be exposed to an accident at Shoreham," Emanuelson said in a letter to the aldermen.

The trigger receives news of emergencies directly from nuclear operators, transmitting it to other radio stations. Power plants are required to have such triggers as a condition of licensing.

Long Island Lighting Co., Shoreham's operator, announced Wednesday it had signed an agreement with WGLJ-AM of Babylon, N.Y., to assume WPLR's role if Shoreham gets a license for commercial operation.

"We recognize (WPLR's) situation, and we appreciate the support," said LILCO spokesman Jim Lox. WPLR will participate in a June drill, Lox said.

The Board of Aldermen had been scheduled to vote Monday on a resolution for WPLR to abort its original agreement. Alderman Martin J. Dunleavy, co-sponsor of the resolution, was not available for comment Wednesday. Alderman Tom Harp, the other sponsor, said some sort of vote on Shoreham should still be taken, but that he would defer to Dunleavy.

Jack McKivigan, secretary of the New Haven Green Party and a spokesman for the Coalition Against Radioactive Waste, said WPLR had made a "significant compromise" but that it was "still assisting LILCO in obtaining a license."

Denise Bodo, who heads the aldermanic Municipal Services Committee, disagreed.

"I don't consider (WPLR's action) a hedge," she said.

Manuel V. Rodriguez, WPLR's general manager, in a letter dated April 11, said he would oppose a nuclear power plant being located in his hometown of Hamden, but that he would hope a "responsible broadcaster" carried any warnings.

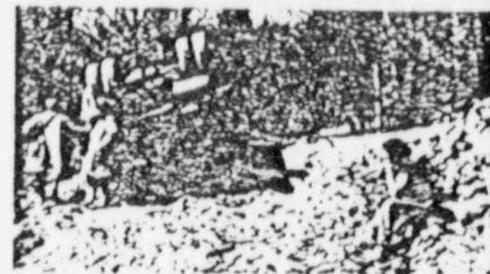
McKivigan and a few others wearing "radiation suits" confronted WPLR disc jockeys during a broadcast last week from Union Station.

Adolphe A. Rempp, 77; created meat tenderizer

MORRO BAY, Calif. (AP) — Adolphe A. Rempp, 77, creator of Adolphe's Meat Tenderizer and owner of several restaurants, died at home Tuesday.

Mr. Rempp was born in San Francisco, where he started his res-

POLICE & FIRE ROUNDUP



David Carl Taylor

WHEELS UP: Wallingford firefighters stand near a truck carrying foundation forms that rolled over on a route to a construction site off South Turnpike Road in Wallingford Wednesday morning. Police said the truck was apparently overloaded. No one was injured.

Firefighter faces another sex charge

NORTH HAVEN — A North Haven firefighter arrested last month and charged with sexual assault and risk of injury to a minor now faces additional charges.

Michael Tammaro, 42, of 26 Fortune Drive was charged Wednesday with another count of fourth-degree sexual assault and risk of injury to a minor in an incident involving another female juvenile.

Police said the parents of the second girl came forward after reading newspaper accounts of Tammaro's arrest.

Tammaro was employed as a substitute teacher at North Haven Junior High School before his arrest. He has been suspended pending the outcome of his trial. He has also been reassigned from duty in the fire station to other kinds of work until the trial is over, according to New Haven Fire Chief John Reardon.

Tammaro was released on a promise to appear in court May 8.

He is still awaiting trial on the original charge, police said.

Sandi Kahn Shelton

Neighbors' dispute ends in violence

BEACON FALLS — A man stabbed several times in a long-standing property dispute with a neighbor remained in stable condition Wednesday at Saint Mary's Hospital in Waterbury, officials said.

State police said they found Richard Maynor of 109 Beacon Valley Road on his property at about 7:30 p.m.

Tuesday.

His neighbor, Robert Keifer, 33, was charged with first-degree assault and was held on \$25,000 bond, police said.

Maynor allegedly approached Keifer with a baseball bat prior to the assault, police said.

United Press International

Eagle-eyed cop nabs robbery suspect

MILFORD — The manager of Peabody Vision Center didn't have to worry too long when some eyeglass frames, valued at more than \$800, were stolen from his business Tuesday.

Police Officer Steve Stavrovsky said he saw Michael S. Perkins, 30, of 55 Harper Ave., New Haven, throw the frames down a sewer drain near Peabody Vision on the Boston Post Road. Stavrovsky recovered the frames and charged Per-

kins with fourth-degree larceny.

Stavrovsky said he made the arrest at 7:44 p.m. Tuesday after receiving a complaint that two men — one of them the suspect — were drinking behind a liquor warehouse next to Peabody Vision.

Police set bond at \$1,000, but a Superior Court judge released Perkins Wednesday on a promise to appear in court in May.

Andrea Zantz

Accident snarls rush hour on I-95

STAMFORD — A tractor-trailer carrying fruit juices slammed into a highway divider Wednesday morning on Interstate 95, closing the westbound lanes of the highway for six hours and creating havoc during the morning rush hour.

The truck was owned by Juice Services Inc. of Lincoln, R.I., and was driven by James R. Dennis, 23, of Providence, R.I., who was given a summons for failing to stay in his

lane, state police said.

The accident occurred about 4:22 a.m. when the truck hit the divider on the eastbound ramp in Stamford, turned on its side and spilled apple and orange juice, along with diesel fuel, on the highway.

Traffic was diverted from the highway and through downtown Stamford before it could continue toward New York, state police said.

United Press International

Cigarette is blamed for starting fire

NORTH BRANFORD — A lit cigarette but tossed in a garage trash can loaded with combustible items was the cause of a fire Tuesday night which damaged a Woodland Street home, Fire Marshal Bert Bunnell said.

Bunnell said the fire spread throughout the garage, basement, attic and parts of the op-

er's portion of the house at 75 Woodland St. said that the whole house sustained smoke damage.

The fire began about 10:11 p.m. and was under control at 11:09, Bunnell said. No estimate of damage has been made. There were no injuries.

Jerome James

Man sues owner and patron of bar

attempting to activate the New York State EBS network through that network's lead station, WCBS-AM in New York, New York. If that is unsuccessful, LILCO's proposal calls for the activation of its backup EBS network through WPLR-FM in New Haven, Connecticut. Regardless of which EBS network is activated, however, WPLR is relied upon by LILCO to activate the tone alert radios that are installed (or are to be installed) at various special facilities throughout the 10-mile Shoreham EPZ.

Although the interaction between LILCO's two alternative EBS networks is confusing and obscure, one thing is clear: neither WCBS nor WPLR, the two stations relied upon by LILCO to activate its EBS networks, has agreed to participate in any way in LILCO's EBS proposals. In fact, WPLR recently has specifically stated that it will not participate in LILCO's EBS proposal, and apparently, despite attempts by LILCO to obtain an agreement with WCBS to serve as LILCO's lead EBS station, that station has similarly refused to do so. Since there are no stations to activate either of the two EBS networks relied upon by LILCO, it must be concluded that LILCO's EBS proposal is not feasible, implementable or workable. Accordingly, this Board must rule as a matter of law that LILCO does not have an implementable EBS proposal, and should grant summary disposition in favor of the Governments on the Governments' existing EBS contention. The Governments propose, therefore, that the Board rescind its Confirmatory Memorandum and Order of February 29, 1988 (barring

further summary disposition motions) and permit the Governments to file such a motion within 10 days of receipt of such Board notification.

II. BACKGROUND

On June 11, 1987, the Commission issued a Memorandum and Order^{1/} reopening the record on LILCO's EBS plan as a result of the withdrawal of WALK Radio as LILCO's primary or lead EBS station. On November 6, 1987, LILCO filed a Motion for Summary Disposition of the WALK Radio Issue.^{2/} LILCO's Motion introduced a new EBS proposal, based upon WPLR as the lead EBS station ("WPLR EBS proposal").

According to LILCO's Motion, and the subsequently issued Revision 9 to the LILCO Plan, the functions of WPLR as a lead station were threefold. First, WPLR was to act as LILCO's "Common Point Control Station," a phrase introduced in Revision 9, by directly broadcasting emergency information concerning a Shoreham radiological emergency to the public. LILCO Plan at 3.8-6 (Revision 9). Second, WPLR was to activate broadcast receivers installed (or to be installed) at each of the nine secondary stations comprising LILCO's EBS network, which would have enabled these secondary stations either to rebroadcast the

^{1/} CLI-87-5, 25 NRC 884 (1987).

^{2/} LILCO's Motion for Summary Disposition of the WALK Radio Issue ("LILCO's Motion").

EBS messages received from WPLR over their own frequencies, or to tape them for later broadcast. Id. Third, WPLR was relied upon to activate tone alert radios installed (or to be installed) at various special facilities, such as schools, hospitals, nursing homes and major employers, throughout the 10-mile Shoreham EPZ. LILCO Plan, Appendix A at IV-3, -170, -172 and -173.

This Board denied LILCO's Motion on December 21, 1987, and directed the Governments to submit contentions concerning the adequacy of LILCO's WPLR EBS proposal. The Governments submitted a single contention with numerous bases on January 12, 1988. That contention alleged that LILCO's provisions for radio transmission of EBS messages and other emergency information, and for activation of tone alert radios and receivers installed at the secondary EBS stations, were inadequate and failed to comply with relevant regulatory requirements. Notwithstanding these allegations, this Board issued an Order on February 24, 1988, which essentially limited the scope of the contention to the adequacy of the coverage of WPLR and to the adequacy of communication of emergency information to persons within the 10-mile Shoreham EPZ.^{3/}

Discovery on LILCO's WPLR EBS proposal ended on March 25, 1988. Testimony was filed by the Governments and LILCO on April

^{3/} Memorandum and Order (Board Ruling on Contentions Relating to LILCO's Emergency Broadcast System), dated February 24, 1988.

13, and by FEMA on April 28, and hearings on this issue were contemplated to begin the following month, on or about May 16.

On May 6, 1988, however, LILCO disclosed that it was now relying upon a significantly different EBS proposal, which would be described in detail in Revision 10 of LILCO's Plan. Among other things, LILCO then revealed for the first time that WPLR had announced to LILCO that it intended to withdraw as the lead station in LILCO's proposed EBS network, if LILCO were ever issued a full power license. LILCO further explained that WGLI, which had been a secondary station in the WPLR EBS network, had agreed to take over as the lead station in LILCO's EBS network. Also on May 6, LILCO revealed for the first time that LILCO would not initially rely on its own EBS network, but would rather first attempt to activate the New York State EBS network, with WCBS-AM as the lead station ("WCBS EBS network"). LILCO, however, provided only a very cryptic and confusing description of how the WCBS EBS network would be activated and how it would interact with the LILCO EBS network that now included WGLI as the lead station. See Exhibit 1 hereto.

On May 9, counsel for LILCO notified this Board by letter that in the event that LILCO received a full power operating license for Shoreham, WPLR would no longer agree to serve as the lead station in LILCO's EBS network. See Exhibit 2 hereto for a copy of LILCO's May 9 letter. Counsel for LILCO assured the

Board, however, that WPLR had agreed to remain in LILCO's EBS network and that it would continue to act as the station that activated "the tone alert radios in the EBS," although it would not act "as the 'trigger' station for the radio station[s] in the EBS." The letter conceded that LILCO needed to determine "how any restructuring of its EBS will be implemented," but concluded that it was "appropriate and desirable" to proceed with the hearing on the admitted EBS issues. See Exhibit 2.

The status of the Governments' EBS contention and the issues raised therein were discussed at a prehearing conference of counsel on May 10, 1988. See Tr. 19325-49. Counsel for LILCO there argued that the issue of WPLR's coverage should be litigated because although WPLR was not going to be the lead station in LILCO's EBS network, it had agreed to participate in LILCO's proposed EBS in some capacity. However, because counsel for LILCO was unable to explain adequately the structure of its EBS system or how it would operate, this Board ordered LILCO to file a briefing paper concerning the status of its EBS proposal and whether a hearing on the issue should proceed.

LILCO did not submit such a briefing paper. Instead, on May 16, LILCO sent a letter to the Board that once again stated that WPLR would not act as the lead station in LILCO's proposed EBS in the event that LILCO obtained a full power operating license, and, for the first time, informed the Board that WPLR's continued

participation in LILCO's EBS, even as a secondary station, was unclear. A copy of LILCO's May 16 letter is attached as Exhibit 3 hereto. LILCO's letter included as an attachment a May 9 letter from counsel for WPLR, which amended WPLR's agreement to participate in LILCO's proposed EBS network. That letter stated, in relevant part:

WPLR-FM, however, will not act in that capacity [primary broadcast station] should the NRC grant licensure to full power. Should the community need then exist in the plant's full power operation, WPLR would consider serving in a secondary capacity. (Emphasis added.)

On May 24, LILCO issued Revision 10 to the LILCO Plan. Relevant portions of Revision 10 are attached as Exhibit 4 hereto. While Revision 10 indicates that LILCO will initially rely on the New York State EBS, with WCBS as the lead station, it also claims that the "Shoreham local EBS network" will serve as a backup to the State EBS. However, contrary to previous LILCO representations, Revision 10 does not rely on WGLI as the lead station of the "Shoreham local EBS network." Rather, Revision 10 calls for WPLR to once again assume that role. Indeed, contrary to WPLR's letter of May 9 -- which states that WPLR would only "consider serving in a secondary capacity" -- Revision 10 states that WPLR has agreed, if needed, "to remain a member station" of the Shoreham local EBS and that the other participating stations in the Shoreham local EBS "will tune to WPLR and rebroadcast an

EBS message coming from the LERO EOC" upon activation of WPLR's dual tone EBS signal. LILCO Plan, 3.8-7 (Revision 10).

On May 25, counsel for LILCO sent a letter to the Board discussing the changes in LILCO's EBS proposal as set forth in Revision 10. A copy of LILCO's May 25 letter is attached as Exhibit 5. The letter states that Revision 10 provides for the "direct activation of the Shoreham EBS through WPLR." The letter also states that "LILCO believes that these revisions adequately resolve all EBS issues."

On May 26, however, during hearings before this Board, Judge Gleason raised the EBS issue and expressed his confusion over LILCO's description of its EBS proposal in the May 25 letter. Relevant portions of the May 26 transcript are attached as Exhibit 6. When counsel for LILCO was unable to explain adequately the proposal, this Board ordered limited discovery with respect to LILCO's EBS proposal.^{4/} The Board also ordered the parties to submit a briefing paper shortly thereafter concerning how best to proceed.

On June 6, counsel for WPLR sent a letter to counsel for LILCO which clearly and unequivocally stated that WPLR was terminating its agreement to participate in LILCO's proposed EBS

^{4/} The Board ordered discovery to "provide an opportunity for parties to have discovery with respect to whatever it is you [LILCO] are proposing." Tr. 20429.

network.^{5/} The June 6 letter is attached hereto as Exhibit 7. According to counsel for WPLR, some type of notice of termination had been given to LILCO on June 3.

III. DISCOVERY

Because of the unavailability of LILCO's lead EBS witness, Douglas Crocker, until June 13, the discovery period was extended by the Board to that date. Mr. Crocker was deposed on June 13; in addition, LILCO produced two documents in response to a document request made by the Governments. The Governments believe that this limited discovery was sufficient to determine the framework of LILCO's EBS proposal, and that nothing more is needed.

Counsel for LILCO initially disagreed with this position, notifying counsel for the Governments that they believed that the limited EBS discovery period ordered by the Board -- a period designed to permit the parties to discover what LILCO was proposing (see note 4 above) -- also permitted the depositions of County and State personnel -- specifically, John Randolph, G. Berkeley Bennett, John Bilello and Richard Jones of Suffolk County and Marvin Silverman of New York State. Counsel for

^{5/} The agreement between LILCO and WPLR, dated July 27, 1987, requires either party to give 90 days written notice to terminate the agreement.

Suffolk County informed counsel for LILCO that these proposed deponents would not be produced, because the discovery contemplated by the Board was limited to determining what LILCO's Revision 10 was all about, and these proposed deponents clearly were not relevant for such purposes. See letter of Michael J. Missal to Donald P. Irwin and K. Dennis Sisk, dated June 10, 1988 (attached as Exhibit 8 hereto). Nonetheless, up until last Friday, June 17, counsel for LILCO stated their disagreement with this position, asserting that these proposed deponents were relevant, because they "may have knowledge of the technical adequacy of the State EBS." See, e.g., letter of K. Dennis Sisk to Michael J. Missal and Richard J. Zahnleuter, dated June 13, 1988 (attached as Exhibit 9 hereto).

As previously noted, however, the depositions of County and State personnel were not envisioned by the Board's May 26 Order, and would be a wasted exercise in any event, because none of the proposed deponents has any role in LILCO's Revision 10, is aware of the EBS proposal in Revision 10, or has even seen Revision 10.^{6/} In fact, during the deposition of LILCO's Douglas Crocker, it was conceded that the only Suffolk County official even

^{6/} In addition, depositions of the County and State employees identified by LILCO would be inappropriate, because LILCO has already gone through the process of formulating and finalizing the EBS provisions now set forth in Revision 10. As Mr. Crocker stated during his deposition (at pages 70-71), LILCO considers the Revision 10 EBS provisions to be "complete," "satisfactory," and "reliable." Thus, in LILCO's view, there are no details of its EBS proposal that need to be added. Under these circumstances, after-the-fact depositions of County/State employees would be plainly untimely, wasteful and improper.

mentioned in Revision 10 concerning LILCO's EBS proposal was the Suffolk County Executive or his designee. See Deposition of Douglas Crocker, June 13, 1988 ("Crocker Deposition") at 21-24 (attached as Exhibit 10). Therefore, whether or not the proposed deponents have any "knowledge of the technical adequacy of the State EBS" is totally irrelevant to the scope of the limited discovery ordered by this Board. Accordingly, they should not be required to be deposed in this proceeding.^{7/}

IV. LILCO's CURRENT EBS PROPOSAL

At best as it can be determined by reviewing the latest version of the LILCO Plan (relevant portions of which are attached as Exhibit 4), and as explained during the deposition of Douglas Crocker, LILCO's current EBS proposal consists of the following general procedures:

- 1) In the event of a Shoreham emergency declaration, LERO will request that the Suffolk County Executive or his designee activate the State EBS network by contacting WCBS to broadcast EBS messages to the public and to contact the other

^{7/} In any event, counsel for LILCO announced during the Board telephone conference on June 17 that LILCO was no longer seeking to depose County and State personnel on EBS-related issues. Tr. 20890-91.

stations in the State EBS network to broadcast EBS messages;

- 2) If the Suffolk County Executive or his designee fails to activate the State EBS, LERO will then request that the State Emergency Management Organization ("SEMO") activate the State EBS network by contacting WCBS;
- 3) If SEMO fails to activate the State EBS, LERO will then contact WCBS directly to activate the State EBS network;
- 4) If after some unspecified time there is a "problem or delay in activating" the State EBS network, LERO would then activate LILCO's proposed EBS network, which it refers to as a backup network, with WPLR as the lead station. To activate LILCO's proposed EBS network, LERO would then go back to the Suffolk County Executive or his designee and request that WPLR be contacted to issue EBS messages to the public and to contact the other stations in LILCO's proposed EBS network to broadcast EBS messages. If the Suffolk County Executive or his designee fails to activate

LILCO's proposed EBS, then LERO would contact WPLR directly; and

- 5) Whether or not WCBS or WPLR is used to activate LILCO's EBS, LILCO's EBS proposal presumes that WPLR will activate the tone alert radios installed (or to be installed) at various special facilities throughout the 10-mile Shoreham EPZ.

LILCO's EBS proposal is therefore dependent upon the participation of WCBS and WPLR to activate the two EBS networks (the State EBS and LILCO's proposed backup EBS) by broadcasting messages to the public, contacting the stations participating in the EBS networks, and activating the tone alert radios at various special facilities within the EPZ. However, as evidenced by Exhibits 3 and 7 hereto, WPLR has specifically stated that it will not participate in LILCO's EBS proposal, either as a lead station or a secondary station. Indeed, Mr. Crocker confirmed during his deposition that WPLR was no longer participating in LILCO's EBS proposal. See, e.g., Crocker Deposition at 80 (attached as Exhibit 11). Mr. Crocker also confirmed that there is no letter of agreement with WCBS to participate in LILCO's EBS proposal (like there had been when WALK and WPLR were the lead stations of LILCO's earlier EBS proposals), nor is there any "informal" agreement. See Crocker Deposition at 19 (attached as Exhibit 12).

Therefore, as the radio stations that are necessary for the activation of LILCO's EBS networks are not willing to participate in LILCO's EBS proposals, it can only be concluded that LILCO's EBS proposals are only a figment of LILCO's imagination. Put another way, because there are no lead stations to activate either one of the EBS networks that LILCO relies upon, LILCO's EBS proposal is not feasible, implementable or workable.

V. THE BOARD SHOULD GRANT SUMMARY DISPOSITION
OF THE GOVERNMENTS' EBS CONTENTION

The EBS contention that this Board has admitted, and which was to be the subject of the previously scheduled hearing, focused primarily on the adequacy of WPLR to act as the lead station of LILCO's EBS network. It would therefore be a waste of time and resources to hold a hearing concerning the adequacy of WPLR, because WPLR has clearly and definitively stated that it will not participate in any capacity in LILCO's proposed EBS network. Additionally, it would be similarly ill-advised to hold a hearing concerning the adequacy of WCBS to serve as LILCO's lead EBS station, because that station has not agreed to participate in LILCO's proposal.^{8/}

^{8/} It can be expected that counsel for LILCO may propose resolving the EBS issue in the context of the "realism" proceeding. Such a proposal, however, would be without merit. The "realism" proceeding focuses on the presumption that the Governments would participate in emergency planning in the event of a radiological emergency. LILCO's EBS proposal, however, provides for LILCO to activate its EBS networks by contacting WCBS and WPLR directly, if the Governments are unable or

(footnote continued)

It appears to the Governments, therefore, that the only option available to this Board is to rule as a matter of law that LILCO does not have a feasible, implementable or workable EBS proposal, and to grant summary disposition of the Governments' existing EBS contention. The Governments recognize, however, that this Board has prohibited the filing of motions for summary disposition. See Confirmatory Memorandum and Order, dated February 29, 1988. The Board is therefore requested to rescind its prohibition of summary disposition motions, so that the Governments can file the appropriate moving papers within a short period of time -- 10 days would seem appropriate.

VI. CONCLUSION

For the reasons set forth above, the Board must rule as a matter of law that LILCO does not have a feasible, implementable or workable EBS proposal. Thus, the Board should allow the

(footnote continued from previous page)
unwilling to do so first. See LILCO Plan, at 3.8-7 (Revision 10). Therefore, as LILCO's EBS proposal is not dependent upon the Governments' participation, the EBS issue is separate and apart from any "realism" issue. In fact, counsel for LILCO has previously indicated as much. See Tr. 20429.

Governments to submit a motion seeking summary disposition in their favor on the EBS contention presently before the Board.

Respectfully submitted,

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

Michael S. Miller

Michael S. Miller
Michael J. Missal
KIRKPATRICK & LOCKHART
1800 M Street, NW
South Lobby - Ninth Floor
Washington, DC 20036-5891

Attorneys for Suffolk County

Fabian G. Palomino

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

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

Stephen B. Latham

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

Attorney for the Town of
Southampton

June 20, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power)
Station, Unit 1))

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the GOVERNMENTS' BRIEFING PAPER CONCERNING LILCO'S EMERGENCY BROADCAST SYSTEM have been served on the following this 20th day of June, 1988 by U.S. mail, first class, unless otherwise noted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

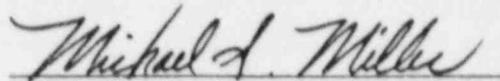
Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
1717 H Street, N.W.
Washington, D.C. 20555

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

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

*Richard Bachmann, Esq.
Edwin J. Reis, Esq.
U.S. Nuclear Regulatory Comm.
Office of General Counsel
Washington, D.C. 20555

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


Michael S. Miller
KIRKPATRICK & LOCKHART
1800 M Street, N.W.
South Lobby - 9th Floor
Washington, D.C. 20036-5891

- * Service via hand delivery.
- ** Service via teletype.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
) (Emergency Planning)
(Shoreham Nuclear Power Station,) (Best Efforts Issue)
Unit 1))

TESTIMONY OF DENNIS M. BEHR,
DOUGLAS M. CROCKER, DIANE P. DREIKORN,
EDWARD B. LIEBERMAN, AND JOHN A. WEISMANTLE
ON THE "BEST EFFORTS" CONTENTIONS EP 1-2, 4-8, AND 10

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

May 6, 1988

~~8805174229~~ 8pp.

companies to move their disabled cars. We cannot see why similar activities would suddenly become illegal in a radiological emergency.

88. Q. Does LILCO ever remove road impediments in the course of its business?
- A. [Crocker, Weismantle] Yes. As the attached Affidavit of Charles A. Daverio shows (page 9), LILCO has in the past been asked by the authorities to tow a stranded vehicle. During his deposition, Chief Roberts confirmed that private entities, such as a utility, can be and have been directed by the police to perform such functions. Roberts deposition, p. 151.

Contention 5: Sirens/EBS

89. Q. Please state Contention 5 as rewritten by the Board.
- A. [Behr, Crocker, Weismantle] Contention 5 reads as follows:

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

April 8 Memorandum at 26.

90. Q. Does the LERO Plan have administrative and physical means for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ?
- A. [Behr, Crocker, Weismantle] Yes. The means include sirens and an Emergency Broadcast System (EBS).
91. Q. What did the Voorhees plan say about the sirens?
- A. [Weismantle] The Voorhees plan contemplated that the siren system would be used to alert the public. Voorhees plan, page 16.

92. Q. How are the LERO sirens activated?

A. [Behr, Crocker, Weismantle] The sirens can be activated from any of three different locations by LILCO or LERO. Admitted Fact 7. We anticipate that the State or County would ask us to sound the sirens as soon as it became necessary to alert the public.

93. Q. What would the sirens mean to the public?

A. [Behr, Crocker, Weismantle] Under the LERO Plan, the sirens alert people to tune their radios to the EBS. The public is told this in the annual public education brochure and by a variety of other means.

94. Q. What EBS will LERO use?

A. [Behr, Crocker, Weismantle] The LERO EBS at this time includes WPLR of New Haven, Connecticut, as the common point control station (CPCS). The coverage of this EBS is being separately litigated. Within the past few days, however, WPLR has advised us that it will continue as the CPCS only until Shoreham is issued a full-power license. This decision by the station came at a time when the New Haven Board of Aldermen was about to pass a resolution condemning WPLR's participation in the EBS for Shoreham, when a U.S. Congressman was pressuring the station not to participate, and when anti-Shoreham groups were pressuring the station's advertisers.

After Shoreham is issued a full-power license, WPLR is willing to continue as a primary station. WGLI, one of our present primary stations, has agreed to take over as the CPCS.

However, in light of the fact that LILCO has now twice put together an EBS and then had to change it, in the future we will rely in the first instance on the ordinary State EBS, with WCBS of New York City as its

Common Program Control Station-1. The details of the system are given in Admitted Facts 14-27. The present procedure, OPIP 3.8.2 § 5.1.4 (Rev. 9), already addresses the possibility of switching from the WPLR system to the WCBS system once an emergency has begun. Included in the WCBS EBS are WALK and the other radio stations in LILCO's original EBS. Accordingly, there is no question that coverage of the entire EPZ is provided.

Accordingly, in the future, if there is an emergency at Shoreham requiring the activation of an EBS, the LERO Director of Local Response will ask the Suffolk County Executive to activate or endorse activation of the WCBS system. Furthermore, the State Plan makes clear that the State Emergency Management Office can coordinate the issuance of EBS messages if county personnel have difficulty doing so. State Plan at K-8. The Director will then call WCBS directly and ask it to broadcast a message, which he will be prepared to read over the phone directly onto the air. The LERO Director has copies of the prewritten EBS messages in the LERO Plan with him at all times. Sample Message A, a simple warning that an emergency message is to follow (PID. 21 NRC at 757-58), is only three paragraphs long and can be read quickly.

If there is any undue delay in activating the WCBS system, the LERO Director will ask the County Executive to endorse activating the Shoreham local EBS.

Also, as called for under OPIP 3.8.2 § 5.1.4a, the LERO Coordinator of Public Information, when WCBS takes over as CPCS, will call WPLR and ask it to transmit the two-tone attention signal and inform its listeners to tune to WCBS for further emergency information. This step is to be repeated each time a new EBS message is issued in order to activate the tone alert radios.

95. Q. How are EBS messages prepared and broadcast under the LERO Plan?
- A. [Behr, Crocker, Weismantle] EBS messages are governed by OPIP 3.8.2 (Emergency Broadcast System Activation).
96. Q. How exactly would EBS messages be written with a County and State "best efforts" response?
- A. [Behr, Crocker, Weismantle] Prewritten sample EBS messages in OPIP 3.8.2, modified as necessary, would be used. Final decisions on the EBS messages would be coordinated with the County or State, with the County Executive or the State Chairman of the DPC giving the final approval.
97. Q. How much delay in sounding the sirens would you expect the "best efforts" participation of the County and State to cause?
- A. [Behr, Crocker, Weismantle] There would be no delay. We would expect that once a decision had been made to broadcast an EBS message, the sirens would be sounded at the same time as the EBS was activated.
98. Q. How much delay in broadcasting EBS messages would you expect the "best efforts" participation of the State and County to cause?
- A. [Behr, Crocker, Weismantle] There would be no delay in broadcasting EBS messages either. Again, once a decision had been made on a protective action, an EBS message would go out immediately afterward to tell the public what they should do. It makes sense that the County and State would want to tell the public right away about any decisions they had made.
99. Q. Does the Plan meet the time requirements in NRC regulations?
- A. [Crocker, Weismantle] Yes. The Licensing Board has noted two 15-minute requirements:

The regulations therefore have two separate 15-minute notification requirements. The first requires the licensee to transmit notice of an emergency at the plant to offsite authorities within 15 minutes after the emergency is recognized. The second requires offsite authorities to make a prompt public notification decision and to have the capability to carry out that decision within 15 minutes of their receipt of a notification of emergency at the plant.

PID, 21 NRC at 708. The Board has also found that, for a utility plan, it is LERO that is the "offsite authorities" for the purposes of the first 15-minute requirement:

In this unique case, State and local officials are not the offsite authorities who will receive the initial notification from the Shoreham control room, since New York and Suffolk County are not participating in emergency planning. Instead, LILCO plans for that notification to be received at its Customer Service Office in Hicksville, New York. LILCO Plan at 3.3-1 to 3.3-4.

PID, 21 NRC at 708-09. The County Police and County EOC (as well as the State, assuming it has reconnected its RECS phones) are notified by RECS phone at the same time as the Customer Service Office.

The second 15-minute requirement covers the time from when a decision is made until an EBS message is broadcast. The clock starts running when an EBS message is approved (that is, when Suffolk County or the State agrees to broadcast it), and the message is supposed to start going out over the air within 15 minutes after that.

Under the LERO Plan, with the "best efforts" participation of the State and County, (1) decisions would be made with the participation of the County and/or State representatives, (2) an EBS message from the Plan would be prepared with the concurrence of the County and/or State, and (3) the message would be read over the phone to WCBS and broadcast at the same time. It is this third step, reading the message, that must be begun within 15 minutes.

HUNTON & WILLIAMS
707 EAST MAIN STREET P.O. BOX 1538
RICHMOND, VIRGINIA 23218

TELEPHONE 804-788-8200
TELEX 6844251

May 9, 1988

1000 CHAIN BRIDGE ROAD
P. O. BOX 1467
FAIRFAX VIRGINIA 22036
TELEPHONE 703-352-2200

FIRST VIRGINIA BANK TOWER
P. O. BOX 2689
NORFOLK, VIRGINIA 23514
TELEPHONE 804-625-5301
TELEX 751828

1000 CHAIN BRIDGE ROAD
P. O. BOX 1467
FAIRFAX VIRGINIA 22036
TELEPHONE 703-352-2200

100 PARK AVENUE
NEW YORK, NEW YORK 10017
TELEPHONE 212-308-8003
TELEX 424848 HUNT NY

ONE HANNOVER SQUARE
P. O. BOX 108
RALEIGH, NORTH CAROLINA 27604
TELEPHONE 919-899-3000

FIRST TENNESSEE BANK BUILDING
P. O. BOX 881
KNOXVILLE, TENNESSEE 37901
TELEPHONE 615-637-4311

FILE NO. 24566.300001
DIRECT DIAL NO. 804-788-725

TELECOPY

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Administrative Judges
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gentlemen:

This matter treats two issues: EBS stations and hearing scheduling.

1. EBS

LILCO confirms a recent development, initially reported in LILCO's written "realism" testimony filed May 6, 1988, regarding LILCO's Emergency Broadcast System (EBS).

WPLR-FM in New Haven, Connecticut currently is the CPCS or "trigger" station in LILCO's EBS. WPLR-FM has assured LILCO that it will continue as the "trigger" station through the licensing proceedings. WPLR has recently informed LILCO, however, that once LILCO obtains a full power operating license for the Shoreham Nuclear Power Station (SNPS), WPLR-FM will remain in LILCO's EBS as a member station (referred to in our realism testimony as a "primary" station) only. As a member station, WPLR will continue to act as the station triggering the tone alert radios in the EBS. However, it will not act thereafter as the "trigger" station for the radio station in the EBS.

Because WPLR will remain a part of the EBS both before and after licensing, with respect to the evidentiary hearings on remanded issues which are set to begin May 16, 1988, LILCO believes it is appropriate and desirable to proceed with the hearing on the admitted EBS issues regarding the coverage of LILCO's EBS, including WPLR. Once LILCO determines how any restructuring of its EBS will be implemented, we will promptly so inform this Board and all parties.

HUNTON & WILLIAMS

Atomic Safety and Licensing Board
May 9, 1988
Page 2

2. Hearing Schedule

LILCO also informs the Board that the parties have been discussing a hearing schedule for the remanded school bus driver, hospital ETE's, and EBS issues. LILCO proposes that the school bus driver issue be heard first, beginning May 16 and ending May 19 or 20; that testimony on the hospital ETE's be heard May 23-24 and 27 (the only day the NRC's witness will be available); and that the EBS issue be heard May 25-26 and possibly May 31, if the Board decides to hear the FEMA witness in Washington, D.C. Counsel for both FEMA and the NRC have agreed to this schedule.

The Intervenor's have proposed a schedule beginning May 17 and continuing five weeks through June 10 with EBS being heard first, hospital ETE's next, and the school bus driver issue being heard last. Intervenor's have also stated that they would agree to LILCO's school bus driver witnesses being heard first. However, they have been unwilling to agree to compress their schedule proposals to fit into anything less than five weeks. LILCO believes that five weeks of hearings is plainly excessive for the issues now before this Board.

Some weeks ago, in response to the Board's order setting May 16 as the beginning of the hearing, LILCO told its school bus driver witnesses to hold open May 16-17 for hearings. LILCO's witnesses have done so and are prepared to proceed on May 16 on the school bus driver issue. LILCO's witnesses on EBS and ETE's are prepared to proceed the second week of hearings, beginning on May 23.

The short of the matter is that LILCO and the Intervenor's have not been able to agree on an order of issues for the hearing, the appropriate length of the hearing, or other matters. We will be prepared to discuss this matter at tomorrow's prehearing conference if the Board wishes.

Sincerely yours,

Donald P. Irwin

Donald P. Irwin
James N. Christman
K. Dennis Sisk

[Handwritten initials]

201/374
cc: Service List

HUNTON & WILLIAMS

100 PARK AVENUE

NEW YORK, NEW YORK 10017

TELEPHONE 212-309-1000

TELEX 424549 HUNT UI

707 EAST MAIN STREET P. O. BOX 1838
RICHMOND, VIRGINIA 23212
TELEPHONE 804-782-8200
TELEX 884428

FIRST VIRGINIA BANK TOWER
P. O. BOX 3888
NORFOLK, VIRGINIA 23514
TELEPHONE 804-829-1501
TELEX 753826

3080 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
TELEPHONE 703-352-2200

8000 PENNSYLVANIA AVENUE, N.W.
P. O. BOX 18230
WASHINGTON, D.C. 20038
TELEPHONE 202-898-1500

ONE HANNOVER SQUARE
P. O. BOX 108
RALEIGH, NORTH CAROLINA 27602
TELEPHONE 919-889-3000

FIRST TENNESSEE BANK BUILDING
P. O. BOX 991
KNOXVILLE, TENNESSEE 37901
TELEPHONE 615-827-4311

FILE NO

May 16, 1988

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

EBS Remand

Gentlemen:

As this Board knows, LILCO initially created a specific Emergency Broadcast System network for the Shoreham Nuclear Power Station in 1983, as part of the offsite emergency plan it developed after Suffolk County reversed its earlier course of cooperation. That network was originally based on a Long Island Station, WALK, which was to serve as the "trigger" station ("Common Program Control Station" or "CPCS-1" station in FCC terminology). EBS issues involving that network were litigated in the original round of emergency planning litigation decided by the Licensing Board in 1985.

WALK unilaterally terminated its agreement with LILCO in 1986. The only explanation LILCO has ever received for this withdrawal was the hostility of Suffolk County and New York State to emergency planning at Shoreham and to the emergency plan developed by LILCO for Shoreham.

LILCO next constructed a successor EBS system, based on WPLR-FM, a station located in New Haven, Connecticut. Recently, following months of pressure from groups based on Long Island as well as in New Haven, events similar to those which took place with WALK two years ago have recurred. In late April, 1988, the New Haven Board of Aldermen enacted a nonbinding resolution urging WPLR to repudiate its agreement with LILCO. The local Congressman, Bruce Morrison, also pressured the station to withdraw.

88-5261-33

3pp

Discussion at the May 10 Prehearing Conference concerned the likelihood that WPLR would no longer serve as the "CPCS-1" station for the Shoreham EBS following receipt of a full power license. Since the prehearing conference, two sets of developments have continued to unfold; neither has come to a definitive resolution. First, after the prehearing conference LILCO received a letter from WPLR's counsel, Herbert Emanuelson, Esq., dated May 9. In the letter, WPLR has again assured LILCO that it will continue to act as the lead or trigger station in the LILCO EBS until LILCO obtains a full power operating license, but will not do so thereafter. Unlike the situation with WALK, the letter does not exclude WPLR's continued participation in the Shoreham EBS. However, WPLR's letter is not clear as to whether WPLR will remain a member station in the EBS after LILCO obtains a full power operating license.

Second, LILCO currently is making progress on the details of its EBS procedures relying upon the official EBS for the Nassau and Suffolk Counties Operational Area, triggered by WCBS. We anticipate being able to notify the Board and the parties shortly as to the interface of this system with the LILCO Plan. Since the WCBS-based EBS provides more than adequate coverage of the Shoreham EPZ, this may moot the need to litigate the coverage of the WPLR-based system.

LILCO has concluded that any Shoreham-specific EBS is likely to be vulnerable to pressure. LILCO will therefore rely primarily on the existing federal EBS for the Nassau and Suffolk Counties Operational Area, based on WCBS in New York City. This system, which is the one on which Long Islanders now rely for warning in every other emergency, and its application to Shoreham will be described in Revision 10 to the Shoreham Offsite Emergency Plan, which LILCO expects to issue this week.

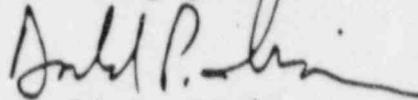
LILCO is not withdrawing its testimony on the signal coverage of the WPLR-based EBS. However, until the circumstances described above are clarified, LILCO believes that it is premature to proceed to hearing at this time on the existing EBS contention.

HUNTON & WILLIAMS

May 16, 1988
Page 3

LILCO regrets that circumstances beyond its control have repeatedly forced reconfiguration of its EBS plans. However, emergency plans always change to adapt to circumstances, and further changes will doubtless occur in this plan, perhaps even in this very area, over time.

Sincerely yours,



Donald P. Irwin
James N. Christman
K. Dennis Sisk

Attachment

cc: Attached Service List

EMANUELSON AND CHURCH

ATTORNEYS AND COUNSELLORS

PLEASE REPLY TO:

205 CHURCH STREET

NEW HAVEN CONNECTICUT 06510

HERBERT L. EMANUELSON JR.
MARGARET KEIZER CHURCH
ROBERT W. CHURCH JR.

ERIC I. EMANUELSON

205 CHURCH STREET
NEW HAVEN CONNECTICUT 06510
TELEPHONE (203) 862-8177

129 CHURCH STREET
NEW HAVEN CONNECTICUT 06510
TELEPHONE (203) 862-0300

May 9, 1988

Mr. Ira L. Freilicher
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Dear Ira:

This letter is to provide notice that WPLR is amending its June 17, 1987, Agreement with LILCO pursuant to such Agreement as follows:

Until further notice, WPLR-FM will continue service as a primary broadcast station to provide Emergency Public Notification during Shoreham's current licensure. WPLR-FM, however, will not act in that capacity should the NRC grant licensure to full power. Should the community need then exist in the plant's full power operation, WPLR would consider serving in a secondary capacity.

Sincerely,

Herbert L. Emanuelson, Jr.
Counsel for WPLR-FM

HLE/gml
cc: Manuel V. Rodriguez

Emergency Broadcast System (EBS)

The Emergency Broadcast System, or EBS, is a federally sponsored network of radio and television stations that provides a rapid means of contacting the public during emergency situations. 47 C.F.R. Part 73, Subpart G, Section 73.901, et seq. It operates on National, State, and Operational Area (Local) levels.

The New York State Emergency Broadcast System is activated by a request from authorized officials to the State's Originating Primary Relay Stations: WABC, WNBC, and WCBS in New York City. For emergency situations not involving the entire State, local authorities may request activation of the EBS at the Operational Area level through the Common Program Control Station (CPCS) serving the affected area. New York State Emergency Broadcast System (EBS) Operational Plan (July 1981) at 2. Federal regulations permit the EBS at the State and local level to also be activated at the discretion of the management of the participating broadcast stations, even without the request of government officials, in connection with day-to-day emergency situations posing a threat to the safety of life and property. 47 C.F.R. Section 73.935(a). The New York State EBS Plan implementing the federal structure specifically includes "radiological incidents" within this class of life- or property-threatening events. New York State EBS Operational Plan at 2.

The State-level EBS applicable to Shoreham is the New York State system. The local Operational Area system applicable to Shoreham is the Nassau-Suffolk Counties Operational Area. The New York State EBS Operational Plan specifies the composition of and basic procedures for the State and Operational Area systems.

The EBS for the Nassau and Suffolk Counties Operational Area is comprised of over 30 Long Island radio stations. The New York State EBS Plan designates WCBS in New York City as the primary originating station (referred to as "PRI CPCS-1") for the Nassau and Suffolk Counties operational area. WCBS is a fifty kW clear-channel, 24-hour AM station whose signal provides coverage over the entire Shoreham 10-mile EPZ. With its cascading relays it ensures redundant coverage of the Shoreham EPZ. Included in the State network is WALK in Patchogue, formerly the CPCS in the Shoreham local EBS.

In the event of a Shoreham emergency declaration, the Director of Local Response will seek permission from the Suffolk County Executive, or his designee, to activate the Nassau-Suffolk Operational Area EBS prior to issuing an EBS message. OPIP 3.1.1, Attachment 10, Step D. In the event that the LERO Director is unable to contact the Suffolk County Executive or some other responsible County official in a timely manner, the LERO Director will seek permission from New York State to activate the EBS through the New York State Emergency Management Office (SEMO). SEMO is designated by the New York State EBS Operational Plan at 4 as being responsible for activating the State level EBS.

The Director of Local Response will request the official WCBS-EBS authentication code for WCBS or, as necessary, other authentication assistance from pertinent County of State officials. If that official is unable to provide the official authentication code information for WCBS in a timely manner, the LERO Director will, using his best judgement in light of emergency circumstances, request official permission to contact WCBS directly and will ask WCBS to verify by return phone call, in accordance with the Nassau-Suffolk Operational Area EBS implementation procedures. The LERO Director, or the LERO Coordinator of Public Information, will then activate the EBS system as detailed in OPIP 3.3.4 and 3.8.2, Section 5.1.4. LERO's procedures for activating the Nassau-Suffolk Operational Area EBS and broadcasting emergency information conform directly with the existing implementation procedures in the Nassau-Suffolk Operational Area EBS Plan. OPIP 3.8.2, Section 5.1.4(b)(1)-(5). If there is any problem or delay in obtaining authentication with WCBS, the LERO Director, using his best judgement, in his discretion will seek permission to activate the Shoreham Local EBS network which is a backup to the New York State system based on WCBS. OPIP 3.1.1, Attachment 10, Step D.

The Shoreham local emergency broadcast network consists of 10 radio stations on Long Island and Connecticut. LILCO's letters of agreement with these stations are contained in Appendix B. All of the Long Island radio stations participating in the Shoreham local EBS network are also participants in the State EBS for the Nassau-Suffolk Operational Area, including WGLI in Babylon. The availability of this backup network as a last resort ensures that in case of a problem or delay in activating the WCBS-based EBS, a coordinated and accurate emergency information message can be broadcast to the public.

WPLR radio is an FM band station which broadcasts from Hamden, Connecticut and provides coverage over the entire Shoreham EPZ. WPLR has agreed to serve as the CPCS for the Shoreham local EBS until the issuance of a full power operating license, and, if needed, to remain a member station thereafter. WPLR has a backup electrical generator to ensure full power transmission even during periods of power outages. LILCO maintains a dedicated telephone line from the EOC in Brentwood to WPLR's studio. An EBS message can be provided to WPLR either directly via dedicated line or from another radio station's broadcast signal. Upon activation of WPLR's dual tone EBS signal, the other participating stations in Connecticut and Long Island will tune to WPLR and rebroadcast an EBS message coming from the LERO EOC.

Because the Long Island radio stations that are part of the Shoreham local emergency broadcast network are also part of the WCBS network, they will switch their source signal to WCBS when WCBS is functioning as the CPCS for the emergency. The Connecticut stations will direct their Long Island listeners to tune to WCBS for emergency information.

Sample EBS messages used by LERO and details of EBS activation
are contained in OPIP 3.8.2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Press Conferences

Press conferences will be conducted periodically in the Press
Conference Room of the ENC. Private and public agency/or organ-
ization representatives (i.e., American Red Cross, Suffolk
County, FEMA, NRC, State officials, etc.) will be invited to
join LERO workers at the ENC to participate as a panel in all
press conferences to provide up-to-date information, respond
to any rumor received, and answer any questions the media may
have. This panel will also be invited to help disseminate any
emergency announcements including accident termination ("ALL
CLEAR") announcements.

HUNTON & WILLIAMS

707 EAST MAIN STREET P.O. BOX 1535

RICHMOND, VIRGINIA 23218

TELEPHONE 804-788-6200

TELEX 6844251

May 25, 1988

2000 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 8830
WASHINGTON, D.C. 20036
TELEPHONE 202-855-3500

FIRST VIRGINIA BANK TOWER
P.O. BOX 3888
NORFOLK, VIRGINIA 23514
TELEPHONE 804-625-3551
TELEX 788828

3950 CHAIN BRIDGE ROAD
P.O. BOX 147
FAIRFAX, VIRGINIA 22020
TELEPHONE 703-352-2200

60 PARK AVENUE
NEW YORK, NEW YORK 10017
TELEPHONE 212-308-1000
TELEX 426548 HUNT U

ONE HANNOVER SQUARE
P.O. BOX 99
RALEIGH, NORTH CAROLINA 27602
TELEPHONE 919-889-3000

FIRST TENNESSEE BANK BUILDING
P.O. BOX 851
KNOXVILLE, TENNESSEE 37801
TELEPHONE 615-637-4311

FILE NO. 24566.300001

DIRECT DIAL NO. 804 788 8358

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Atomic Safety and Licensing Board
East-West Towers
4350 East-West Highway
Bethesda, Maryland 20814

BY TELECOPIER

Shoreham EBS Issues

Gentlemen:

Yesterday, LILCO served Revision 10 to the Shoreham Offsite Emergency Plan on the Board and all active parties to this proceeding by Federal Express. The contents of Revision 10 are synopsized in the covering letter and matrix accompanying it.

One aspect of Revision 10 relevant to the current proceedings is a modification of the Emergency Broadcast System to account for the change in status of radio station WPLR, of which LILCO had notified the Board by letter dated May 16, 1988.

History has indicated that an agreement-based special EBS network is vulnerable to political opposition. Accordingly, Revision 10 shifts primary reliance for EBS coverage for the Shoreham Emergency Planning Zone from an agreement-based system tailored for Shoreham to the official New York State EBS plan. That plan designates the Nassau and Suffolk Counties as a distinct EBS operational area and establishes a 30-station Long Island network anchored on WCBS in New York City. In the event of a radiological emergency at Shoreham, LILCO would utilize the New York State plan to enlist the assistance of the Suffolk County Executive or, in the alternative, New York State, in activating this EBS. That cooperation would be presumed under the realism principle codified 10 CFR § 50.47(c)(1).

As further alternate backup means of EBS activation, Revision 10 provides for the following:

880623010L 288'

HUNTON & WILLIAMS

Atomic Safety and Licensing Board
May 25, 1988
Page 2

1. direct activation of the official New York EBS upon information directly from LERO, as a matter of WCBS's management discretion, as permitted by FCC regulations;
2. direct activation of the Shoreham EBS through WPLR upon information directly from LERO, as a matter of WPLR's management discretion, as permitted by FCC regulations.

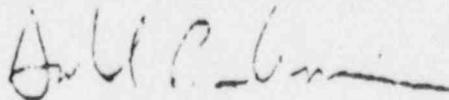
Details of these changes are set forth in the following pages of Revision 10:

Plan: pages 3.8-6 through 3.8-8

Procedures: OPIP 3.1.1, Att. 10, pages 86, 86a
OPIP 3.8.2 pages 1, 1a, 4, 4a.

LILCO believes that these revisions adequately resolve all EBS issues. Since access to WPLR remains in the Shoreham offsite plan, the matter of its signal coverage may still be before this Board. Any other matters relating to the EBS construct described in Revision 10 would be for the Intervenor's to raise by a timely contention (if one can be framed, which LILCO doubts), consistent with Commission regulations and the previous history of this matter, particularly the Commission's decision in CLI-87-05, 24 NRC 884 (1987), this Board's Memorandum and Order (Ruling on Contentions Relating to the Emergency Broadcast System) (February 24, 1988) (unpublished), and the facts admitted in connection with LILCO's Second Renewed Motion for Summary Disposition of the "Legal Authority" Issues (Contentions 1-10) (March 20, 1987).

Respectfully submitted,



Donald P. Irwin
James N. Christman
K. Dennis Sisk

cc: Edwin J. Reis, Esq.
William R. Cumming, Esq.
Lawrence C. Lanpher, Esq.
Richard J. Zahnleuter, Esq.

91/6176

UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1

)
)
)
) Docket No. 50-322-OL-3
) (Emergency Planning)
) (School Bus Driver Issue)
)
)
)

Location: Hauppauge, New York

Pag : 10243-20439

Date: May 26, 1988

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20545
(202) 628-4838

1 position I must state on behalf of my client and I
2 hope the Board appreciates that.

3 JUDGE GLEASON: Gentlemen, you are
4 excused. We appreciate your testimony very much.

5 MR. MILLER: May we take a break?

6 JUDGE GLEASON: We will take a 10 minute
7 break and then come back.

8 (Brief recess.)

9 JUDGE GLEASON: I think we will start
10 with the EBS issue first. I am not sure, Mr.
11 Christman, I have a full understanding of their
12 letter. It appears to be, in some respect, a motion
13 to dismiss an issue or motion at least to say we
14 shouldn't proceed with the EBS issue. There is a
15 sentence that I really didn't understand. It is the
16 sentence that reads, "In the event of a radiological
17 emergency at Shoreham, LILCO would utilize the New
18 York State's plan--" on the first page, second to
19 last paragraph-- "would utilize the New York State
20 plan to enlist the assistance of the Suffolk County
21 executive or in the alternative, New York State
22 activated the EBS." I don't understand that, in light
23 of where the emergency plan is today, that it calls
24 for some effort at direct contact with county
25 executive.

1 MR. CHRISTMAN: Well, this is intended
2 to merely summarize the provisions of Rev 10, which I
3 think were attached to this, most likely.

4 JUDGE GLEASON: They weren't attached to
5 my copy. Some summary of them was put in the letter
6 itself.

7 I guess really I would like to
8 know--maybe the other parties would to--just what
9 this letter represents.

10 MR. CHRISTMAN: The letter represents
11 the following. The current plan is Rev 10, which I
12 think has been served on people by now. In light of
13 the Rev 10 provision, which makes the primary EBS the
14 ordinary State one, WCBS as the what is called
15 CPSC-1, I believe--in light of that change, the
16 coverage question involving WPLR is, I suppose, a
17 less important issue. WPLR is still to be a member
18 station and triggers the tone alerts. Therefore, the
19 intervenors may still wish to go forward with that
20 issue of that coverage. But it now involves the
21 coverage of what is essentially a backup or
22 supplemental part of the plan.

23 I suppose what we are saying is that we
24 anticipate the intervenors will want to go ahead with
25 the coverage question of WPLR, which is still a part

1 of the plan, though as a supplemental part, and we
2 are prepared to go forward with that. We can
3 schedule those hearings if the intervenors wish. As
4 to the rest of the plan, which involves WCBS, there
5 is no outstanding contention.

6 JUDGE GLEASON: Mr. Miller?

7 MR. MILLER: Judge Gleason, it is
8 difficult for me to respond because at this time all
9 I have seen is this two-page letter. I have not seen
10 Revision 10, which I have think has been served in
11 our office in Washington, D.C. but, of course, we
12 have been here. I need to see Revision 10 and see
13 what Revision 10 says about the EBS. I think at a
14 minimum--I don't quite understand the proposal even
15 still, even after Mr. Christman's comments. But I
16 would assume that at a minimum if we were to proceed
17 in some fashion with EBS litigation, given these
18 changes that have occurred, we would have to, at a
19 minimum, begin with some discovery so that we, the
20 County at least, can have a better understanding as
21 to what is going on here, because I am confused.

22 MR. CHRISTMAN: The Board may wish to
23 order discovery. The discovery wouldn't go to WPLR.
24 I can tell you now, there is not going to be much to
25 discover. It is not as though LILCO has, as far as I

1 know, very many documents about this issue. We are
2 using now as a primary means of notifying the public
3 what is the standard State EBS, the same one that was
4 described in our second renewed motion for summary
5 disposition, I might add, and some facts about which
6 were admitted by the intervenors.

7 MR. MILLER: For example, Judge Gleason,
8 Mr. Christman referenced the fact WPLR would remain
9 the station that would activate tone alert radios
10 within the EPZ. He says nothing about how LILCO
11 would attempt to activate broadcast receivers at
12 other radio stations within LILCO's proposed EBS
13 network. Is that going to be WPLR? Is it some other
14 radio station? Whatever station that is, is it
15 capable of doing that sort of activation? There are
16 a lot of questions I think that need to be addressed.
17 Frankly, I am not in a position right now to
18 articulate them all for the Board.

19 MR. CHRISTMAN: I had no intention of
20 summarizing REV 10. I think it would be
21 inappropriate and I might get it wrong. Remember, we
22 had, in addition to the State EBS we now rely on, we
23 had the two separate Shoreham-specific EBS, the first
24 of which had WALK as its flagship. All of the
25 stations in the original EBS using WALK as the

1 flagship, which was litigated and resolved, are tied
2 into the State EBS using WCBS as the flagship
3 station.

4 JUDGE GLEASON: Are they all a part of
5 the State system?

6 MR. CHRISTMAN: The WALK--all of the
7 original stations--

8 JUDGE GLEASON: All of the other
9 stations are--

10 MR. CHRISTMAN: Are part of the State
11 system. And I believe that is probably one of the
12 admitted facts that was attached to our second
13 renewed motion, as a matter of fact. We would have
14 to check.

15 JUDGE GLEASON: Mr. Bachmann, do you
16 have something to add to this?

17 MR. BACHMANN: I am also a little
18 confused about a statement in this letter. There
19 seems to be some sort of an implication here that if
20 there is to be litigation on EBS it would come under
21 the heading of best efforts or realism argument. I
22 notice at the end of the cut-off paragraph they talk
23 about cooperation being presumed, et cetera. I am a
24 little bit confused as to exactly what is going on.
25 Of course, I, too, have not seen Rev 10.

1 MR. CHRISTMAN: I don't think it is part
2 of the realism litigation, though that is not an
3 unreasonable thing for Mr. Bachmann to say. I do
4 think it is possible the new rule may have a bearing
5 on this issue just as it does on the legal authority
6 contentions.

7 JUDGE GLEASON: Why don't we resolve, at
8 least currently, and provide an opportunity for
9 parties to have discovery with respect to whatever it
10 is you are proposing. We ought to keep that within a
11 relative short period of time. Ten days, let's say.
12 Then at that time, within a period of, let's say,
13 five days after that, the Board to receive a motion
14 or paper from the parties as to how they want to
15 proceed or if they want to proceed with respect to
16 the issue and the Board will resolve it.

17 Is that satisfactory?

18 MR. MILLER: Judge Gleason, I am
19 responding a little bit in a vacuum because I have
20 not seen Revision 10.

21 JUDGE GLEASON: None of us has.

22 MR. MILLER: All I ask, I think the
23 first step from at least the County's perspective is
24 to get back to Washington and look at Revision 10 and
25 then, assuming Revision 10 can be reviewed quickly

1 enough, I suppose that your proposal, your schedule
2 could be adhered to. But I would want the caveat
3 that if we get to Revision 10 and it is a fairly
4 broad-ranging revision to the plan, that we may need
5 to come back to the Board and say it is going to take
6 more than ten days for discovery and more than five
7 days after that to put in the paper to the Board.

8 JUDGE GLEASON: Mr. Christman, the only
9 references in Revision 10 are these two paragraphs on
10 page two of the letter?

11 MR. CHRISTMAN: Are you saying are the
12 only portions of Rev 10 that relate to the EBS?

13 JUDGE GLEASON: That relate to the EBS
14 issue. You don't know either?

15 MR. CHRISTMAN: I think so, but, you
16 know--

17 JUDGE GLEASON: If they are more
18 extensive, if you just telephone the parties and tell
19 them which pages are involved, that will expedite
20 things.

21 MR. CHRISTMAN: Every time you do a
22 revision, sometimes if you change a number or name,
23 it ripples through and you have 50 pages of changes
24 but it is all a little, bitty minor thing. This is
25 the substance, this is it, what we described here.

1 We will certainly do what you suggest, review it. If
2 there is anything they need to know about, they will
3 tell them by phone.

4 JUDGE GLEASON: If there is a problem
5 within the ten days, we would like to be notified.
6 We hope to keep it in the ten days.

7 MR. BACHMANN: I am considering the fact
8 that we have got hearings next week, three of those
9 days we will be in the courtroom. Monday is a
10 holiday.

11 JUDGE GLEASON: Just bring--ten days is
12 a long period of time. You will be here three days
13 next week.

14 Mr. Zahnleuter? Were you going to make
15 the same objection?

16 MR. ZAHNLEUTER: I had the same concern.
17 This ten days will occur in the midst of hearings and
18 the exercise and there is an awful lot to do.

19 JUDGE GLEASON: I guess I am assuming
20 that the discovery is not really going to be very
21 lengthy because there isn't--

22 MR. CHRISTMAN: Judge Gleason, I think I
23 can virtually guarantee that LILCO does not have more
24 documents.

25 JUDGE GLEASON: If you need more time,

1 move the Board to grant more time.

2 MR. CHRISTMAN: If we, contrary to my
3 firm expectations, produce a large number of
4 documents, of course, there may be good cause but we
5 can resolve that when we come to it.

6 MR. ZAHNLEUTER: It is more than
7 documents. It may entail a deposition which would
8 require an open day in the schedule and that may not
9 occur within ten days. I am not sure because--

10 JUDGE GLEASON: If you have problems,
11 Mr. Zahnleuter, just let us know.

12 The Board has reviewed the filings of
13 the parties concerning the realism issues and the
14 Board's orders of February 29th and April 8th of this
15 year. They include--I will list them--LILCO's prima
16 facie case dated April 1st, the intervenors'
17 objections to the Board's orders and its offer of
18 testimony of Mr. Halpin and Dr. Axelrod dated April
19 13th, LILCO's response to intervenors' objections
20 dated April 22nd, the staff's response to
21 intervenors' objections dated April 28th, the
22 intervenors' response to LILCO's April 22nd response
23 dated May the 2nd, LILCO's supplement to its response
24 of April 22nd, dated May 2nd, the intervenors' reply
25 to the staff's April 28th response dated May 6th, the

1 staff's response to LILCO's supplemental response
2 dated May 13th, and the intervenors' response to
3 LILCO's supplement dated May 13th.

4 In order to maintain some semblance of a
5 schedule, a regular semblance of a schedule in the
6 realism contentions, we are announcing at this time
7 our decision with respect to those filings. That
8 decision is as follows:

9 First, the Board is not dismissing the
10 realism contentions as requested by LILCO and the
11 staff despite the intervenors' failure to produce
12 evidence of the State and Suffolk County's
13 prospective responses in the event of a radiological
14 accident at Shoreham. The reason for this ruling is
15 that the interface best efforts responses of
16 Attachment 10 to LILCO's emergency plan have not
17 received an evidentiary foundation, nor have the
18 questions raised previously with respect to it by the
19 Licensing Board and the Commission. Those questions
20 raised by the Licensing Board and the Commission.

21 Two, the Board will neither accept nor
22 reject at the present time intervenors' proffered
23 testimony, Mr. Halpin and Dr. Axelrod, because we
24 consider it premature for any Board action at this
25 time. Such testimony, as well as LILCO's testimony

EMANUELSON AND CHURCH

ATTORNEYS AND COUNSELLORS

PLEASE REPLY TO:

208 CHURCH STREET

NEW HAVEN, CONNECTICUT 06510

HERBERT L. EMANUELSON, JR.
MARGARET KEISER CHURCH
ROBERT W. CHURCH, JR.

ERIC I. EMANUELSON

208 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510
TELEPHONE: (203) 962-6177

129 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510
TELEPHONE: (203) 962-6300

June 6, 1988

Donald P. Irwin, Esquire
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear Don:

I am in receipt of a Memorandum from Manuel Rodriguez relative to a verbal agreement which he reached with you last week with regard to a "June 7-9 exercise" for Shoreham. Pursuant to that agreement, General Communicorp, Inc. (WPLR) as agreed with Long Island Lighting Company (LILCO) as follows:

1. WPLR will not participate in the broadcast over the air of any signal or test this week or at any time in the future.
2. A representative from LILCO and the Federal Energy Management Agency (FEMA) will be given access to the studios of WPLR tomorrow, June 7, 1988.
3. The representatives of LILCO and FEMA will be permitted to inspect the equipment purchased by LILCO pursuant to the July 27, 1987, agreement between WPLR and LILCO.
4. The purpose of this inspection will be to determine:
 - (a) That the designated phone line for Shoreham does operate.
 - (b) That a message over the phone can be recorded.
 - (c) That such message could have been broadcast by WPLR, although as noted above, it will not be broadcast.
 - (d) That the WPLR operator in charge is familiar with the use of this system.
5. Pursuant to the July 27, 1987 agreement, notice was given to LILCO through you on June 3, 1988, that as the result of its sale of the Shoreham property, the agreement between WPLR and LILCO will terminate ninety (90) days from June 3, 1988. WPLR shall be under no obligation to pay LILCO any amount for the cost of equipment installed pursuant to such agreement and LILCO will release and discharge WPLR from any and all claims, demands, suits and expenses and shall hold WPLR free and

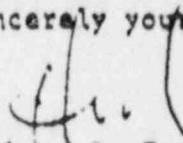
Mr. Irwin
June 6, 1988
Page Two

harmless from any claims, demands, suits and expenses resulting from the July 27, 1987 agreement and/or its participation with Shoreham.

I would appreciate your signing a copy of this letter indicating LILCO's agreement or signifying such approval on a separate response to this letter.

With best regards, I am

Sincerely yours,



Herbert L. Emanuelson, Jr.

HLE/gml
cc: Manuel V. Rodriguez
Peter H. Starr
Douglas Crocker

WALK FM 97.5

AM 1370

Alan S. Beck, President and General Manager

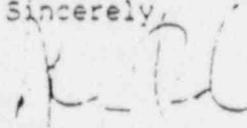
August 8, 1986

Mr. Ira Freilicher
Vice President
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Dear Mr. Freilicher:

In accordance with the ruling of the Supreme Court of the State of New York (Cuomo, Suffolk, Southampton vs. LILCO./Judge Geiler) and on the advice of counsel, we find it necessary at this time to withdraw from participation in the Shoreham Emergency Response Plan.

Sincerely,


Alan S. Beck
President and General Manager

ASB:ds

EMANUELSON AND CHURCH

ATTORNEYS AND COUNSELLORS

PLEASE REPLY TO:

208 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510

HERBERT L. EMANUELSON, JR.
MARGARET KEISER CHURCH
ROBERT W. CHURCH, JR.

ERIC I. EMANUELSON

June 6, 1988

208 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510
TELEPHONE: (203) 552-0177

128 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510
TELEPHONE: (203) 552-0300

Donald P. Irwin, Esquire
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

Dear Don:

I am in receipt of a Memorandum from Manuel Rodriguez relative to a verbal agreement which he reached with you last week with regard to a "June 7-9 exercise" for Shoreham. Pursuant to that agreement, General Communicorp, Inc. (WPLR) as agreed with Long Island Lighting Company (LILCO) as follows:

1. WPLR will not participate in the broadcast over the air of any signal or test this week or at any time in the future.
2. A representative from LILCO and the Federal Energy Management Agency (FEMA) will be given access to the studios of WPLR tomorrow, June 7, 1988.
3. The representatives of LILCO and FEMA will be permitted to inspect the equipment purchased by LILCO pursuant to the July 27, 1987, agreement between WPLR and LILCO.
4. The purpose of this inspection will be to determine:
 - (a) That the designated phone line for Shoreham does operate.
 - (b) That a message over the phone can be recorded.
 - (c) That such message could have been broadcast by WPLR, although as noted above, it will not be broadcast.
 - (d) That the WPLR operator in charge is familiar with the use of this system.
5. Pursuant to the July 27, 1987 agreement, notice was given to LILCO through you on June 3, 1988, that as the result of its sale of the Shoreham property, the agreement between WPLR and LILCO will terminate ninety (90) days from June 3, 1988. WPLR shall be under no obligation to pay LILCO any amount for the cost of equipment installed pursuant to such agreement and LILCO will release and discharge WPLR from any and all claims, demands, suits and expenses and shall hold WPLR free and

EMANUELSON AND CHURCH

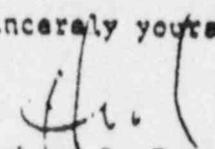
Mr. Irwin
June 6, 1988
Page Two

harmless from any claims, demands, suits and expenses resulting from the July 27, 1987 agreement and/or its participation with Shoreham.

I would appreciate your signing a copy of this letter indicating LILCO's agreement or signifying such approval on a separate response to this letter.

With best regards, I am

Sincerely yours,



Herbert L. Emanuelson, Jr.

HLE/gml
cc: Manuel V. Rodriguez
Peter H. Starr
Douglas Crocker

Contention 20

LILCO intends that EBS messages will be broadcast simultaneously by WALK AM and FM. (Plan at 3.3-6.) However, WALK AM does not operate at night. Therefore, those persons without FM radios (especially people in cars) will be unable to receive adequate information in the event a radiological accident occurs at night, contrary to the requirements of 10 C.F.R. § 50.47(b)(5).

KIRKPATRICK & LOCKHART

SOUTH LOBBY - 9TH FLOOR
1800 M STREET, N.W.
WASHINGTON, D.C. 20036-5891

TELEPHONE (202) 778-9000
TELEX 440209 KL DC LT
TELECOPIER (202) 778-9100

EXCHANGE PLACE
51 STATE STREET
BOSTON, MA 02109
(617) 227-6000

1429 BRICKELL AVENUE
MIAMI, FL 33131
(305) 374-8112

1500 OLIVER BUILDING
PITTSBURGH, PA 15222-5179
(412) 355-6500

WRITER'S DIRECT DIAL NUMBER

June 10, 1988

FEDERAL EXPRESS

Donald P. Irwin, Esq.
Dennis Sisk, Esq.
Hunton & Williams
P.O. Box 1535
707 E. Main Street
Richmond, Virginia 23212

Dear Don and Dennis:

Chris McMurray has related to me a conversation he had with you this afternoon concerning EBS discovery. Since Chris had to leave the office, I am responding.

As Larry Lanpher mentioned to Dennis this morning, it is our understanding of the Board's discovery order on EBS matters that that discovery was opened by the Board on May 26 so that the parties could discover what LILCO's Revision 10 proposal is all about. Thus, the Board stated (at page 20429):

Why don't we resolve, at least currently and provide an opportunity for parties to have discovery with respect to whatever it is you are proposing. We ought to keep that within a relative[ly] short period of time. Ten days, let's say. Then at that time, within a period of, let's say, five days after that, the Board [is] to receive a motion or paper from the parties as to how they want to proceed or if they want to proceed with respect to the issue and the Board will resolve it.

Thus, the discovery we are proposing to take concerning Revision 10 (i.e., the Crocker deposition) is what is contemplated by the Board's statements on May 26. Subsequently, after

KIRKPATRICK & LOCKHART

Donald P. Irwin, Esq.
Dennis Sisk, Esq.
June 10, 1988
Page 2

the parties have filed their status reports on June 20, more discovery may be appropriate, depending upon the posture of the issue and any decision reached thereon by the Board. In advance of that, however, the kinds of discovery LILCO is proposing (as I understand it, depositions of Messrs. Randolph, Bennett, Bilello, and Jones of the County and Mr. Silverman of the State) is not contemplated by the Board, particularly since these persons obviously have had no role in LILCO's Revision 10 or its local EBS.

As Larry hinted at the start of the conference call today, and as he mentioned to Dennis in a telephone call prior to the conference call, we thought this EBS matter would likely come up during the conference call. For whatever reason, it did not. In the present circumstances, however, it would be difficult to proceed with more EBS depositions next week in any event.

As you know, Mike Miller and I have shared EBS responsibilities. Mike Miller can consult on the telephone, but as of now, I do not know when he will be back in the office. He is certainly unavailable for any travel such as would be entailed to prepare witnesses for depositions, etc. It is likely, therefore, that if further EBS discovery is required, other attorneys from the D.C. office will have to get up to speed on the EBS matter. That will necessarily take some amount of preparation, making it a real hardship to even contemplate extensive EBS depositions next week.

In addition, it is unclear why LILCO desires EBS depositions of the County personnel listed above. As I understand LILCO's Revision 10, LILCO is proposing to rely upon the State EBS system and, as a backup, to use its WGLI/WPLR "local EBS." I do not understand what potentially relevant data might be available from County personnel regarding Revision 10.

Perhaps as a first step toward attempting to resolve this, you might attempt to explain why the County personnel are pertinent on Revision 10 EBS issues. They were originally noticed on both EBS and "best efforts" matters. Given the Board's ruling today on the "best efforts" matters, it seems likely that that proceeding will come to a halt. Thus, these deponents would be presented solely for purposes of testimony concerning LILCO's Revision 10 EBS proposal. Again, I do not see how they could have relevant data concerning that proposal and thus cannot see why they should be presented for deposition, even if the Board's May 26 oral ruling were construed to allow discovery by LILCO.

KIRKPATRICK & LOCKHART

Donald P. Irwin, Esq.

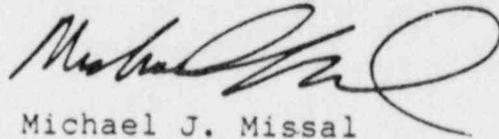
Dennis Sisk, Esq.

June 10, 1988

Page 3

Please consider these matters and we can discuss them at the Crocker deposition.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael J. Missal". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Michael J. Missal

cc: Christopher M. McMurray

HUNTON & WILLIAMS

707 EAST MAIN STREET P. O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

TELEX 8844251

June 13, 1988

2000 PENNSYLVANIA AVENUE, N.W.
P. O. BOX 9130
WASHINGTON, D.C. 20038
TELEPHONE 202-955-1500

FIRST VIRGINIA BANK TOWER
P. O. BOX 3588
NORFOLK, VIRGINIA 23514
TELEPHONE 804-625-5501
TELEX 755828

3050 CHAN BRIDGE ROAD
P. O. BOX 1147
FAIRFAX, VIRGINIA 22030
TELEPHONE 703-282-2200

105 PARK AVENUE
NEW YORK, NEW YORK 10017
TELEPHONE 212-309-1000
TELEX 424548 HUNT U

ONE HANNOVER SQUARE
P. O. BOX 108
RALEIGH, NORTH CAROLINA 27602
TELEPHONE 919-889-3000

FIRST TENNESSEE BANK BUILDING
P. O. BOX 951
KNOXVILLE, TENNESSEE 37901
TELEPHONE 615-637-4311

FILE NO 24566.300001
DIRECT DIAL NO. 804-788-7250

By Telecopy and By Hand

Michael J. Missal, Esq.
Kirkpatrick & Lockhart
South Lobby - 9th Floor
1800 M Street, N.W.
Washington, D.C. 20036-5891

Richard J. Zahnleuter, Esq.
Assistant to Special Counsel to
the Governor
State Capitol
Albany, New York 12224

EBS Discovery

Dear Mike and Rick:

We received Mike Missal's June 10, 1988 letter regarding EBS discovery over the weekend. As we stated last week and I confirmed in my letter to Messrs. Lanpher and Zahnleuter on June 10, we disagree with your interpretation of the Board's order reopening EBS discovery. The Board's May 26, 1988 bench ruling gives no indication that the reopened EBS discovery period was to be a one-way street, as counsel for Suffolk County now maintains:

JUDGE GLEASON: Why don't we resolve, at least currently, and provide an opportunity for parties to have discovery with respect to whatever it is you are proposing.

Tr. 20,429 (emphasis added).

Further, I stated at the hearing on June 2, 1988, that LILCO has served

[a]dditional notices of deposition which relate to the realism proceeding and some of which also overlap and relate to EBS. There is one identified individual and one

HUNTON & WILLIAMS

Michael J. Missal, Esq.
Richard J. Zahnleuter, Esq.
June 13, 1988
Page 2

other individual identified by position within the county government who should be knowledgeable about the County EBS and warning systems. We have identified one additional person from the state who should be knowledgeable about those as well.

Those depositions, while we don't have any agreement as to when they will be conducted, have been noticed for the week of June 6th, during the exercise, so we would hope to be able to complete some of our discovery or the discovery we need within the June 13th time frame.

Tr. 20,667. The State and County persons noticed by LILCO may have knowledge of the technical adequacy of the State EBS.

Suffolk County and the State of New York failed to produce any of the deponents whom LILCO noticed on EBS issues for the week of June 6-10.*/ Instead, in a letter from Mr. Lanpher to me dated June 3, Suffolk County proffered available dates for Richard Jones, County Radiological Division, and John Bilello, Deputy Director, Emergency Preparedness Division, of June 15, and June 16, respectively. In response to LILCO's notice of deposition of G. Berkeley Bennett, Mr. Lanpher stated that Mr. Bennett works with Messrs. Jones and Bilello at the Emergency Preparedness Division and represented that "[a] deposition of Mr. Bennett would be repetitive and redundant given the Jones and Bilello depositions. They should be able to respond to all questions." Mr. Lanpher further noted that "I do not yet have any date for Mr. Randolph. I will contact you about that as soon as possible." Then, in a letter dated June 6, 1988 from Richard Zahnleuter to Donald P. Irwin, Mr. Zahnleuter indicated that Mr. Silverman could be made available on June 17 with the REPG panel, but not separately as LILCO had requested.

*/ John Randolph, June 7; G. Berkeley Bennett, June 7; and Marvin Silverman, June 9.

HUNTON & WILLIAMS

Michael J. Missal, Esq.
Richard J. Zahnleuter, Esq.
June 13, 1988
Page 3

It was not until my telephone conversation with Mr. Lanpher on the afternoon of June 9 that the County first suggested that the Board's May 26 order did not contemplate discovery by LILCO. Your objection, therefore, to producing the deponents noticed by LILCO is raised belatedly. Instead, Mr. Missal's letter of June 10 makes clear that the County's position now is that none of the deponents noticed by LILCO or proffered by the County on EBS issues will be produced.*/ As we stated in our letter to the Board dated June 9, the State's and the County's failure to produce deponents has precluded LILCO from completing EBS discovery, as ordered, by June 13.

LILCO should not have to go to the Board for an order every time it seeks discovery. Accordingly, we will address this issue in our briefing paper to be filed June 20, 1988. If you reconsider your position regarding producing the individuals LILCO has noticed for deposition, please let us know. We are prepared to proceed this week, but we are not prepared to further defer the filing of papers to the Board as ordered on June 20.

Sincerely yours,

K. Dennis Sisk / *RAS*
K. Dennis Sisk

201/374

cc: Richard G. Bachmann, Esq.
William R. Cumming, Esq.

*/ I have not yet succeeded in reaching Mr. Zahnleuter to determine whether Mr. Silverman will be produced on June 17; the State declined to produce him in time for a deposition prior to the June 13 discovery cutoff.

TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

----- -X
: IN THE MATTER OF :
: : DOCKET NO. 50-322-OL-3
: LONG ISLAND LIGHTING COMPANY : (Emergency Planning)
: : (EBS Issue)
: (SHOREHAM NUCLEAR POWER STATION, :
: UNIT 1) :
: :
: :
----- -X

DEPOSITION OF DOUGLAS M. CROCKER

Hauppauge, New York

Monday, June 13, 1988

ACE FEDERAL REPORTERS, INC.

Stenotype Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700
Nationwide Coverage
800-336-6646

1 Q When you say you would "speculate that we probably
2 asked for it," what do you base that on?

3 A Just general common sense that if you are trying
4 to work something out with somebody, you might formalize it
5 on paper.

6 Q What is, in as much detail as you can provide,
7 LILCO's current EBS system?

8 A It's as described in the Rev 10 to the Plan. We
9 would rely on CBS as the lead station which in turn would
10 activate the host of stations that are on Long Island and
11 are secondary stations to CBS.

12 Q Does LILCO's current EBS system lead by WCBS
13 contemplate any participation by Suffolk County personnel?

14 A The Plan envisions that when Suffolk County is
15 asked to either activate or give LERO authority to activate
16 the WCBS system that it would. That's Suffolk County's role
17 in that process.

18 Q Suffolk County's role is to activate the network;
19 is that correct?

20 A Or give us the necessary information to do it.

21 Q And, what personnel will be asked to activate the
22 system? I mean, Suffolk County personnel.

suew 1 A It would be the Suffolk County Executive or his
2 designee, whoever is the Duty Officer at the time of the
3 emergency.

4 Q Aside from the Suffolk County Executive or, as you
5 describe, his Duty Officer, does LILCO's WCBS EBS system
6 contemplate any participation by Suffolk County personnel?

7 A Well, to the extent that if Suffolk County decide
8 to activate it and exchange information with WCBS, then they
9 may draw on their own staff to do more. I can't speak to
10 that.

11 Q Is that part of the LILCO Plan?

12 A The LILCO Plan does not describe how Suffolk
13 County's internal staff operations would actually accomplish
14 that. They have standard procedures for doing it.

15 But, those are not incorporated in our Plan.

16 Q The only Suffolk County personnel that is included
17 in the LILCO Plan is the Suffolk County Executive or his
18 designated officer; is that correct?

19 A Well, there is a lot of Suffolk County people
20 involved or referred to in the LERO Plan. In the EBS, the
21 intent is to go through the County Executive or whoever is
22 in charge at the time of the emergency and whatever staff he

ysuew 1 may select.

2 Q Okay. When you say "whatever staff he may
3 select," in reference to what?

4 A In the LERO Plan, the Director is in charge but he
5 has a staff that helps him prepare EBS messages, call the
6 radio stations and do things of that sort. I assume the
7 County government has something similar to that.

8 The County Executive may elect to do this all
9 himself. But, I suspect he would have support staff helping
10 him.

11 Q That's not included in the LILCO Plan; is that
12 correct?

13 A Not explicitly as I laid it out. We count on
14 contacting the Executive or the Duty Officer. How he
15 handles it after that is up to him.

16 Q So, just so the record is clear, the only Suffolk
17 County personnel that is referred to by the EBS portion of
18 the LILCO Plan is the Suffolk County Executive or his Duty
19 Officer?

20 A If you have the interface procedure there, we can
21 go through it.

22 Q Sure. This is Revision 10.

ysuew

1 A All right. The language in the procedure says the
2 Suffolk County Executive or his designee. But, designee is,
3 in my mind, synonymous with Duty Officer.

4 Q Could you reference the page?

5 A This is OPIP 3.1.1, Page 85 of 90 of Attachment
6 10.

7 Q Is that it?

8 A Yeah, that's it.

9 Q How would the -- and I believe you've heard it
10 testified to this, but just so we can get a new line of
11 questioning going, how would the WCBS EBS network be
12 activated?

13 A On receiving authorization from the Suffolk County
14 Executive or his concurrence that the network should be
15 activated, then the appropriate contacts are made with the
16 radio station. The message and the authentication are
17 provided to the station and they will broadcast it using
18 their normal EBS procedures.

19 Q Does the Plan -- does the LILCO Plan envision any
20 other options if the Suffolk County Executive or his
21 designee does not give that authorization?

22 A Yeah. In the unlikely event, that in my mind is

TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

-----X
: IN THE MATTER OF :
: : DOCKET NO. 50-322-OL-3
LONG ISLAND LIGHTING COMPANY : (Emergency Planning)
: (SHOREHAM NUCLEAR POWER STATION, : (EBS Issue)
UNIT 1) :
: :
-----X

DEPOSITION OF DOUGLAS M. CROCKER

Hauppauge, New York

Monday, June 13, 1988

ACE-FEDERAL REPORTERS, INC.

Stenotype Reporters
44 North Capitol Street
Washington, D.C. 20001
(202) 347-3700
Nationwide Coverage
800-336-6646

1 unnecessary change.

2 If circumstances change later, we might consider
3 using WGLI.

4 Q But, you don't know if WPLR is in the system?
5 They haven't agreed to be in the system based on the May 9th
6 letter; is that correct?

7 A They, as indicated in the May 9th letter, are
8 still willing to serve until we get a license. After that,
9 they may continue to serve as a secondary.

10 Depending on the course of what happens with
11 WCBS, we may not need another primary station. It's just --
12 the decision hasn't been made what to do with WGLI yet. We
13 are waiting for events to unfold.

14 Q But, it's your testimony that WPLR may or may not
15 participate in the system; is that correct, once a full
16 power license is --

17 A Yeah. We have no contractual agreement with them
18 past full power licensing.

19 It's my understanding they may have some role,
20 but that's still evolving and still being negotiated.

21 Q You have said that WGLI may be used as a lead
22 station depending on circumstances. What are you waiting

TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

-----X
: IN THE MATTER OF :
: : DOCKET NO. 50-322-OL-3
LONG ISLAND LIGHTING COMPANY :
: (Emergency Planning)
(SHOREHAM NUCLEAR POWER STATION, :
: (EBS Issue)
UNIT 1) :
: :
-----X

DEPOSITION OF DOUGLAS M. CROCKER

Hauppauge, New York

Monday, June 13, 1988

ACE-FEDERAL REPORTERS, INC.

Stenotype Reporters

44 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

Nationwide Coverage

800-336-6646

suew 1 A I believe they were to explore CBS's participation
2 in an EBS network dealing with Shoreham.

3 Q What were the results of these conversations?

4 A My sense is that they were generally in the
5 affirmative, that they, you know, would support our effort.
6 But, there is no formal agreement.

7 Q What is that sense based on?

8 A Conversations with my superiors who relayed the
9 word down.

10 Q But, there is no formal agreement for CBS to
11 participate in the EBS?

12 A Not to my knowledge.

13 Q Is there any documentation concerning CBS's
14 participation in the EBS?

15 A There is the Plan and the Procedures, things of
16 that sort. Is that what you are asking me?

17 Q Other than the Plan and Procedures?

18 A I'm not aware of anything else.

19 Q I think your testimony is that your sense is that
20 CBS was generally favorable towards participating; is that
21 correct?

22 A That's my understanding.