



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

DEC 10 1987

MEMORANDUM FOR: Thomas F. Murley, Director  
Office of Nuclear Reactor Regulation

FROM: James P. Murray  
Deputy General Counsel

SUBJECT: SHOREHAM PID FINDING SCOPE OF EMERGENCY  
EXERCISE INADEQUATE UNDER APPENDIX E TO  
PART 50

In a Partial Initial Decision (PID) issued December 7, 1987, an Atomic Safety and Licensing Board found that the February 13, 1986 exercise of the LILCO emergency plan did not test as much of the plan in four limited areas as was "reasonably achievable." It therefore found that the exercise failed to meet the requirements of 10 C.F.R. Part 50, Appendix E, Par. IV.F.1.

This PID addressed only the threshold question of whether the Shoreham exercise was of sufficient scope to comply with the requirement in the regulations requiring a "full participation exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation" within two years prior to issuance of a full power license. The Licensing Board issued this partial decision, adverse to both the LILCO and Staff positions, in advance of its rulings on whether inadequacies demonstrated by the exercise constituted "fundamental flaws" in the LILCO Plan.

The Board agreed with Intervenors that the Commission's 1984 amendments to Appendix E indicated an intent that initial full participation exercises should be more complete than full participation exercises at operating sites. It read Par. IV F.1 to require that initial exercises test all major portions of the plans, the demonstration of which is reasonably achievable. *Id.* at 17-19. Thus, the Board examined each of the Intervenor challenges to the scope of the exercise to determine whether the evidence showed, as to any of the FEMA objectives for emergency planning exercises which were not demonstrated or tested, that demonstration of such objective was "reasonably achievable."

The Board found that the testing of the following four objectives was "reasonably achievable", but that these objectives were not tested in the exercise:

(1) transmission of an EBS message to WALK Radio and authentication of that message by WALK Radio;

(2) participation by more than one school district in the exercise scenario;

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(3) implementation of protective actions in the ingestion exposure pathway in both Connecticut and New York; and

(4) coordination and communication between LERO (the LILCO offsite response organization) and special facilities, including a review of the preparedness of ambulance companies relied on by LERO. Id. at 50.

In rejecting Intervenors' claims with respect to the absence of activation of the alert and notification system, the Board significantly found that "[g]iven the County's efforts to preclude any testing of the alert and notification system at the exercise, it ill behooves the Intervenors to complain that [sounding of the sirens, broadcast of the EBS message and activation of tone alert radios] were not carried out at the exercise. Moreover, those efforts clearly dictate the conclusion that testing of these portions of the plan was not reasonably achievable." Id. at 26-27.

Of possible legal significance is the absence from this partial decision of any discussion of whether LILCO's failure to comply with Par. IV F.1 of Appendix E requires a conclusion that there is a "fundamental flaw" in the LILCO Plan. The Commission in CLI-86-13 indicated that it was only the discovery of a fundamental flaw in an emergency plan which might cause it to be rejected. It appears that the Board considers the legal deficiency found to be determinative of the use of the exercise for licensing, and that a finding of whether "fundamental flaws" exist in the plan is thereby rendered superfluous. Support for such a view is found in ALAB-861, 25 NRC 129, 139 n. 38 (1987).

In this connection, it may also be noted that given the requirement of a full participation exercise within two years of initial full power licensing, and the passage of time since the February 13, 1986 exercise, another full participation exercise will be required if a license above 58 power is not issued by February 13, 1988. See 10 C.F.R., Part 50, App. E, Par. IV F.1.

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# DRAFT

TO: Jim Murray  
FROM: Ed. Reis  
SUBJECT: OPEN ISSUES IN SHOREHAM PROCEEDING

I. Re-anded by Commission

A. "Realism" & "Immateriality" CLI-86-13

1. These issues rise from the refusal of the County and State to cooperate in emergency planning. The Licensing Board found for the Intervenor on 10 contentions which alleged that LILCO did not have legal authority to carry out portions of its off-site emergency plan related to: evacuation control; directing traffic; making protective action decisions; notifying the public of an emergency; access control to the EPZ; control of ingestion pathway; and recovering and reentry. The Commission stated in CLI-86-13 that it would not review the legal authority issue at this time, but directed the Licensing Board to determine "whether there is reasonable assurance that adequate protective actions can and will be taken in the event of an emergency" in view of the fact that local and State governments would act to protect their citizens in the event of an emergency, and would act on the basis of the utility plan in the absence of any other plan.
2. The Commission in its recent amendments to 10 C.F.R. § 50.47(c)(1) reiterated that reasonable assurance of adequate

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protection should be examined under the presumptions that State and local governments would act to protect their citizens using the utility plan as the basis of their action.

3. Renewed LILCO motions for summary disposition on the basis of "realism" and the "immateriality" of the legal authority questions is pending. The response dealing with legal questions involved on the Commission's amendment of 10 C.F.R. § 50.47(c)(1) are due on January 15, 1988. Responses on the "immateriality" questions on February 1, 1988, and responses dealing with the "realism" arguments on February 10, 1988. We shall support LILCO on the dismissal of some of these contentions.

B. Public notification of an emergency (CLI-87-05).

This issue arises from the withdrawal of WALK radio in August, 1986 as the principal emergency broadcast system station for Shoreham. The Commission in CLI-87-05 (June 11, 1987), in ruling upon intervenors motion to admit new contentions based on the withdrawal of WALK radio as the principal EBS station, stated that the motion was premature and the submission of contentions should await the filing of LILCO's amended EBS plan. LILCO submitted such a plan on November 10, 1987, and simultaneously moved for summary disposition of issues involving the EBS. The Licensing Board denied the motion on the ground that there were no admitted contentions to be summarily disposed of, and the fact that the Commission had stated that the intervenors might have a reasonable

time to file contentions after LILCO submitted its new EBS plan. The Board provided such new contentions were to be filed by about January 15, 1988.

C. Hospital Evacuation (CLI-87-12)

In CLI-87-12, November 6, 1987, the Commission affirmed an Appeal Board ruling that evacuation planning was needed for hospital patients even though "sheltering" might be preferred protective action for hospital patients in the Shoreham EPZ. However it pointed out that the Licensing Board might approve the EP for Shoreham under 10 C.F.R. 50.47(c)(1) if it found that the failure to have a plan or estimated times for the evacuation of hospital patients was not significant. LILCO has since moved for summary disposition of this issue on the basis of now having evacuation time estimates for hospital patients and on ground that lack of such plans would not be significant for the Shoreham EPZ in any event. We are supporting the motion.

D. License for Operation at 25% Power (CLI-87-04)

In CLI-87-04, June 11, 1987, the Commission referred LILCO's motion for a 25% license to the Licensing Board. By order of January 7, 1988, the Licensing Board Initiated proceedings on this application, and indicated a new Licensing Board or a master should be appointed to determine if existing contentions are relevant to operations at 25% power.

II. Other Matters

:

- A. Scope of the EP Exercise. The Licensing Board (Judge Frye) in a PID of December 7, 1987 (LBP-87-32), determined that the exercise was not a "full participation exercise" as required by 10 C.F.R. Part 50, Appendix E, sec. IV.F. It concluded that pre-license exercise must test all parts of plan "reasonably achievable without mandatory public participation." LILCO has appealed. We shall support the appeal on questions involving the required scope of the exercise and questions involving what could have been reasonably tested.
- B. Results of EP Exercise. Licensing Board (Judge Frye) decision after hearing is pending on whether February 1986 exercise showed LILCO plan can be implemented. FEMA found five deficiencies in LILCO's ability to implement the plan, including mobilization of emergency workers, the ability to respond to unplanned events, and dissemination of information to the press. (FEMA defines a "deficiency" in a plan as the Commission has defined a "fundamental flaw" in a plan (See CLI-86-11)). In proposed findings the Staff did not agree with FEMA that each of its "deficiencies" was a "fundamental flaw."
- C. Adequacy of Relocation Centers. Licensing Board (Judge Gleason) decision after hearing is pending on adequacy of relocation centers designated by LILCO and provisions for the monitoring of evacuees. We have maintained the relocation centers and provisions for monitoring are adequate.

- D. School evacuation. In A-AB-832, the Appeal Board remanded for further consideration the issue of whether school bus drivers would respond in an emergency to evacuate school children. LILCO moved for, and the Staff supported summary disposition of the issues. The Licensing Board (Judge Gleason) denied the motion on December 30, 1987, saying the Appeal Board expected further hearings. It also set out a 30 day period for discovery on that issue and the issue of availability of school buses (a matter determined adversely to LILCO on original consideration of its emergency plan).
- E. New Exercise Needed. 10 C.F.R. Part 50, Appendix E, sec. IV.F. required an off-site emergency plan exercise within 2 years before licensing for operation above 50 power. The last LILCO exercise was held on February 13, 1986. A new exercise will be needed for licensing after February 13, 1988. LILCO has asked the NRC and FEMA to schedule such an exercise.
- F. Medical Services Contention. The Commission has before it a February 25, 1987 Intervenor motion for admission of a new contention on emergency planning for medical services. The contention relates to FEMA guidance memorandum M5-1. The Staff opposed this motion.

*Hogbin*  
*from George Johnson*  
*1/22/88*

i. Issues In OL-3 Remand Proceeding on Realism Issues (CLI-86-13)

- A. Questions posed by Memorandum & Order denying Summary  
Disposition of Legal Authority Contentions 1-2, 4-10  
(3 moot), September 17, 1987

Contention 5

1. Sirens:

- a. Whether sirens will be sounded?
- b. When will sirens be sounded (criteria for protective action decisions)?
- c. By whom would sirens be activated?

2. EBS Messages:

- a. What system will be used?
- b. How will it be activated?
- c. At whose direction will it be activated?
- d. What messages will be broadcasted?

Contention 6 (Command & Control)

- a. Who will assume charge?
- b. Who will decide when protective actions are required?
- c. What criteria will be used to decide appropriate protective actions?

Contentions 1 & 2 (Traffic Control)

- a. How will traffic be guided?
- b. By Whom will traffic be guided?

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Contention 4 (Road Impediments)

- a. How would obstructions be removed?
- b. By whom would they be removed?
- c. How will removal coordinate with guiding traffic and selection of alternate evacuation routes?
- d. Who will be in overall charge of "well-planned response"?

Contention 7 (Ingestion Pathway)

- a. Would government actions comply with NRC regulations?
- b. Would government actions work at cross purposes with LILCO actions?

Contention 8 (Recovery and Reentry)

- a. Who will decide proper reentry and recovery procedures?
- b. What standards will be used to evolve proper procedures?

Contention 9 (Dispensing Fuel) (not required by regulations)

- a. How will this feature function?
- b. Would this feature function?

[how is either question relevant if not required?]

Contention 10 (Access Control)

- a. What standards would be used to decide exclusion over how wide an area?
- b. What would occur if LILCO was advising different than authorities?
- c. How would organizations interact, to what end?

B. Other Issues from CLI-86-13 Remand on Realism

1. Familiarity of State and County officials with local plan?
2. How much delay can be expected in alerting public and making decisions and recommendations on protective actions?
3. How about making decisions and recommendations on recovery and reentry?
4. How about achieving effective access controls?

II. Emergency Planning Contentions Remanded for further hearing

A. Contention 20 (WALK Radio): Remanded by Commission in CLI-87-05 (June 11, 1987):

LILCO intends that ERS 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).

This contention was resolved favorably by the Licensing Board in 21 NRC 644, 763-764 (1985). However, WALK radio withdrew from participation in the EBS in <sup>October</sup> 1986. The Commission granted a reopening of the record on this issue, but stated the admission of contentions should await LILCO's providing updated information on public notification procedures. CLI-87-05 at 4. The Commission also directed that the Board condition admission of new contentions on the extent they assisted in focusing the litigation of earlier admitted issues. Id. at 10.

Subsequently, LILCO filed for Summary Disposition on this contention by providing a new flag station (WPLR-FM in New Haven, Connecticut) and substituting two other Connecticut stations for the Long Island stations that also withdrew from the EBS. In denying Summary

Disposition of this Issue, the Board stated that any new contentions must address the earlier admitted Issues, that is, the adequacy of the Plan provisions for radio transmission of EBS messages and activation of tone alert radios. Memorandum and Order (Ruling on Applicant's Motion of November 6, 1987 for Summary Disposition of the WALK Radio Issue), December 21, 1987.

*(Review of Issues admitted in remand.)*

B. Contention 25.C (Role Conflict of School Bus Drivers): Remanded  
by Appeal Board in 23 NRC 135, 152-154 (1986).

The LILCO Plan fails to take into account the role conflict that will be experienced by school bus drivers. In fact, a substantial number of school bus drivers are likely to attend to the safety of their own families before they report (if they report at all) to perform the bus driving duties which LILCO assumes will be performed. Role conflict of school bus drivers will mean that neither school buses nor school bus drivers will be available to implement the LILCO Plan. Without an adequate number of buses or bus drivers, LILCO will be incapable of implementing the following protective actions:

1. early dismissal of schools (necessary under the LILCO Plan to permit school children to be sheltered or to evacuate with their parents);
2. evacuation of schools;
3. evacuation of persons without access to cars; and,
4. evacuation of persons in special facilities.

In rejecting Summary Disposition of this remanded contention, the Licensing Board stated the arrangements made by LILCO for providing auxiliary bus drivers recruited from its own employees does not require the submission of new contentions, but the Intervenors must have an opportunity to confront this new plan. 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), December 30, 1987.

An additional matter is the issue of the availability of buses, an issue the Licensing Board found as a deficiency in the PID (21 NRC at 874). LILCO's arrangements for securing an adequate number of buses to evacuate school children in one wave may also be heard in the context of the proceeding regarding bus drivers. Board Order of December 30, 1987 at 6.

- C. Contention 72 (Evacuation of Hospitals): Remanded by Appeal Board in ALAB-832, 23 NRC 135, 154-157 (1986), affirmed by Commission in CLI-87-12 (November 5, 1987).

The LILCO Plan proposes to evacuate all hospitals, nursing homes and other special health care facilities in the EPZ, using buses, ambulances, and ambulettes. [cites to Plan omitted]. This aspect of the Plan cannot be implemented; accordingly, people in special facilities will not be adequately protected in the event of an emergency and the LILCO Plan fails to comply with 10 C.F.R. § 50.47(a)(1), (b)(3, 8 & 10) for the following reasons:

72.A. Assuming the necessary vehicles were available to LILCO and were mobilized, the time necessary, following mobilization, to accomplish the proposed evacuation of special facilities will be too long to provide adequate protection from health threatening radiation doses. Evacuation will take too long as a result of: the large number of trips necessary to transport persons individually to relocation centers; the other mobilization of evacuation traffic congestion which the evacuation vehicles will encounter; and the time necessary to load and unload passengers from ambulances. [cites omitted]

72.C. The Plan fails to identify any relocation or reception centers for persons evacuated from any hospitals, nursing homes, or other special health care facilities other than the United Cerebral Palsy of Greater Suffolk Inc.

72.D. The LILCO Plans recognizes that under certain circumstances the evacuation of John T. Mather Memorial, St. Charles and Central Suffolk Hospitals might be necessary, and that LILCO may recommend such an evacuation. [cites to Plan omitted.] However, the Plan fails to specify adequately or accurately the circumstances that would necessitate an evacuation of the hospitals, and does not include adequate procedures to permit the person in command and control to make an accurate determination

as to whether or not such an evacuation is needed. [cites omitted.]

72.E. Instead of planning to provide adequate protection to hospital patients in the event of such an evacuation, the LILCO Plan simply provides that "LERO will evacuate these facilities using an ad hoc expansion of transportation resources that are presently committed to other aspects of evacuation." [cites to plan omitted.] Apparently, this ad hoc plan will not be developed until an emergency actually occurs. [cites to plan omitted.] The ad hoc plan will utilize vehicles assigned to implement the evacuation of other segments of the population, but such vehicles will be supplied for the purpose of evacuating hospital patients only "on an as available basis," and only "as the rest of the affected population evacuation nears completion. [cites to plan omitted.] Thus, there is no assurance that adequate protective measures could or would be taken for hospital patients and LILCO has thus failed to satisfy the requirements of 10 C.F.R. §§ 50.47(a)(1) and 50.47(b)(10).

LILCO has filed for Summary Disposition on this matter, (Lilco's Motion for Summary Disposition of the Hospital Evacuation Issue, December 18, 1987) and it is currently pending before the Licensing Board.

III. Emergency Planning Exercise Contentions (pending Licensing Board decision)

A. Groupings of Contentions:

1. Scope/sampling contentions: EX 15, 16, 21
2. Field Worker Contentions: EX 34, 40.a,b, 41
3. Rad Health/Monitoring Contentions: EX 22.a, 36, 47, 49 (except c)
4. Public Information Contentions: EX 38, 39, 40.c, 49.c
5. Training Contention: EX 50

B. Specifically:

Contentions 15 & 16 allege exercise didn't include evaluation or demonstration of major portions of plan or of capabilities of many persons and entities relied upon for implementation.

Contention 19 alleges FEMA's inability to make reasonable assurance finding reveals a fundamental flaw in plan. (Admitted for legal argument only)

Contention 21 alleges FEMA used insufficient data to conclude exercise objectives were met (size of sample insufficient).

Contention 22.a alleges Nassau Coliseum not available (noct issue).

Contention 34 alleges response of route-alerting personnel (in event of siren failure) was slow.

Contention 36 alleges performance error in conduct of exercise. (Inappropriate protective action recommendations were made in response to wind shift of plume in exercise scenario)

Contention 38 alleges incompetent performance regarding emergency news center operations (public information issue).

Contention 39 alleges incompetent performance regarding rumor control at ENC.

Contention 40 alleges errors by field workers in exercise of plan. (Mobilization of Traffic Guides)

Contention 41 deals with traffic impediments and errors in responding to same by field workers.

Contention 47 deals with decontamination of special populations. (Registration and monitoring of evacuees from special facilities)

Contention 49 alleges LILCO is incapable of performing registration and monitoring of evacuees within 12 hours.

Contention 50 alleges mistakes evident during exercise demonstrate an inadequate training program which is fundamental flaw in plan.

Document Name:  
PARTY

Requestor's ID:  
BROWN

Author's Name:  
McDonald

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Party Positions



Party Positions on Remaining Shoreham Emergency Planning Contentions

1. Legal Authority Contentions 1,2,4-10

A. FEMA

FEMA has consistently found various portions of the LILCO Plan inadequate as a result of the lack of legal authority to implement the plan as found by New York State Courts.

B. STAFF

The staff has consistently taken the position that LILCO/LERO lacks legal authority to implement some of the elements of the plan cited in these contentions (specially, directing traffic, sounding sirens, command and control).

C. APPLICANT

Applicant has maintained that these contentions are either immaterial (not necessary under the regulations to meet the emergency planning requirements) or that in a real emergency the County and/or State would participate and cure any lack of legal authority for LERO to respond (realism argument).

D. INTERVENORS

Suffolk County, Town of Southampton and New York State have consistently maintained that the Applicant lacks legal authority to implement the activities cited in these contentions, and that they would not participate in any emergency response that utilized the LILCO Plan, notwithstanding the new rule.

II. Emergency Planning Contentions Remanded for further hearing

A. WALK Radio (Contention 20):

1. FEMA

FEMA found the original broadcast system adequate except for legal authority, and has taken no formal position as yet on the new system.

2. STAFF

Staff has taken no formal position, but found the earlier system adequate and generally supports the new system.

3. APPLICANT

Applicant maintains the new system is just as serviceable as the earlier system.

4. INTERVENORS

Intervenors object to Connecticut stations replacing Long Island stations and maintain this affords inadequate coverage to the EPZ.

B. Role Conflict of School Bus Drivers (Contention 25.C):

1. FEMA

FEMA (in testimony filed in the proceeding) did not find role conflict a significant problem with regard to bus drivers.

2. STAFF

The Staff took no formal position, but generally supported FEMA and the Applicant in not finding role conflict a significant problem with regard to bus drivers.

3. APPLICANT

The Applicant maintained that historically emergency workers have responded to accidents and role conflict has not been a problem in disaster research literature.

4. INTERVENORS

Suffolk County has consistently maintained that role conflict will be a problem among workers in response to a radiological emergency, based on current surveys of residents of Long Island.

C. Evacuation of Hospitals (Contention 72):

1. FEMA

FEMA found the lack of letters of agreement between receiving hospitals and EPZ hospitals or LERO a deficiency, but FEMA notes hospitals are different than nursing homes in the degree of care usually necessary for hospital patients, therefore sheltering is generally the preferred option for this special population.

2. STAFF

The Staff has taken no formal position on this issue, but generally supports FEMA in the matter.

3. APPLICANT

Applicant maintains it has planned carefully for hospitals, and the new revision (no. 9) to the plan contains the evacuation time estimates (ETE's) deemed missing by the Appeal Board. Applicant also maintains that a list of receiving hospitals is adequate and that letters of agreement are not required (a position with which FEMA and, hence, the Staff, disagrees).

4. INTERVENORS

Intervenors maintain that evacuation of hospital patients, down to the very smallest detail must be part of the LILCO Plan, notwithstanding the requirement by the New York State hospital code that all hospitals must have written emergency and disaster preparedness plans rehearsed and updated biannually.

III. Emergency Planning Exercise Contentions

A. FEMA

FEMA found five deficiencies in its Post Exercise Assessment (PEA) concerning (1) operations at the emergency news center, (2) mobilization of bus drivers, (3) training of bus drivers, (4) communications at the EOC with regard to road impediments and the

response of field workers thereto, and (5) the deployment of traffic guides.

With regard to specific contentions, FEMA took the position that contentions 15, 16, and 21 regarding the scope of the exercise should not be admitted, and that the scope of the exercise was not a deficiency. Contentions dealing with the deficiencies cited in the PEA include Contentions 38 & 39 (emergency news center operations), Contention 40 (mobilization of traffic guides), Contention 41 (regarding response to road impediments) and Contention 50 (training program inadequacies).

#### B. STAFF

The Staff also took the position that Contentions 15, 16 and 21 regarding scope of the exercise were not deficiencies. The staff did not find operations at the ENC (Contentions 38 and 39) constituted a deficiency, but did agree with FEMA that Contentions 40, 41, and 50 regarding mobilization and response of field workers to road impediments and the training program constituted deficiencies.

#### C. APPLICANT

The applicant maintained that none of the deficiencies cited by FEMA were deficiencies within the definition set forth by the Commission in CLI-86-11, 23 NRC 577 (1986). Applicant maintains that mistakes on the day of the exercise are correctable and do not provide evidence that the Plan is inherently unworkable.

D. INTERVENORS

Suffolk County and New York State maintain that all mistakes or errors in performance by personnel on the day of the exercise (not limited by the five deficiencies cited by FEMA, but including all areas recommended for corrective action [ARCA's]) are deficiencies which make the Plan inherently unworkable and demonstrate that there is no reasonable assurance adequate emergency response can and will be implemented under the LILCO Plan.