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LILCO, July 28, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

LILCO'S RENEWED OPPOSITION TO INTERVENORS' PROPOSED CONTENTION ON EMERGENCY MEDICAL SERVICES FOR CONTAMINATED INJURED INDIVIDUALS AND SUGGESTION OF MOOTNESS

I. INTRODUCTION

On February 25, 1987, Suffolk County, the State of New York and the Town of Southampton (Intervenors) filed a motion asking the Commission to admit a multi-part contention alleging that LILCO did not comply with FEMA Guidance Memorandum MS-1, Medical Services ("MS-1"), concerning the provision of medical services for "contaminated injured"[1/] members of the general public.[2/] LILCO and the NRC Staff timely responded to Intervenors' motion, urging rejection of their proposed contention.[3/] Intervenors' motion has never been acted on by the Commission.

1/ FEMA Guidance Memorandum MS-1, published on November 13, 1986, defines the term "contaminated injured" to include individuals who are "(1) contaminated and otherwise physically injured; (2) contaminated and exposed to dangerous levels of radiation; or (3) exposed to dangerous levels of radiation." MS-1 at 1. A copy of MS-1 is attached as Attachment A.

2/ Motion of Suffolk County, the State of New York and the Town of Southampton to Admit New Contention (Feb. 25, 1987).

3/ See LILCO's Opposition to Intervenors' Motion to Admit a New Contention (March 9, 1987); NRC Staff Response in Opposition to Motion to Admit a New Contention (March 17, 1987).

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In the seventeen months since Intervenors filed their proposed contention, MS-1 has become effective and LILCO has complied with it. Accordingly, LILCO moves to dismiss Intervenors' motion as moot or, in the alternative, as failing to meet the requirements for reopening a closed record. See 10 C.F.R. § 2.734.

As described below and in the attached Affidavit of Diane P. Dreikorn, the LILCO Offsite Radiological Response Plan ("LILCO Plan") fully complies with the guidance of MS-1. FEMA has judged every major aspect of LILCO's compliance to be adequate. Final Regional Assistance Committee (RAC) Review of Revision 9 of LILCO Plan (April 28, 1988) (hereinafter "RAC Review").[4/] In addition, various aspects of LILCO's Plan on which LILCO currently relies to comply with MS-1 have been reviewed and approved by the Licensing Board. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644 (1985) (hereinafter "PID"). Intervenors' proposed contention has been overtaken by events and is clearly moot.

Independently, Intervenors' motion must be dismissed because it does not meet the "heavy burden" faced by the proponent of a motion to reopen a closed evidentiary record. Intervenors submitted their proposed contention two and a half years after the record had closed on the issue of medical services for contaminated injured individuals,[5/] but they made no effort to satisfy the requirements for reopening it. They should

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4/ Copies of pages of the RAC Review cited herein are attached as Attachment B.

5/ On July 26, 1983, Intervenors submitted numerous contentions on the LILCO Plan, including one claiming that LILCO had failed to comply with 10 C.F.R. § 50.47(b)(12). Intervenors' Revised Emergency Planning Contentions at 114 (Contention No. 54) (July 26, 1983). The Licensing Board denied admission of the proffered contention, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3, slip op. at 20 (Aug. 19, 1983), and closed the evidentiary record on August 29, 1984, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 651 (1985).

The Licensing Board issued its decision on the LILCO Plan in two Partial Initial Decisions. Id. and LBP-85-31, 22 NRC 410 (1985). Intervenors appealed numerous por-

(footnote continued)

not now be permitted to ignore the Commission's rules to gain admission of their moot contention. Neither should they be allowed to reform their argument to have yet another bite at the apple. As the Commission noted in a recent decision in this docket, "[m]otions to reopen cannot be permitted to be a means for parties to pass off old, unsuccessful contentions as new and relitigate them in hopes of a better result the next time around .... At some point the adjudicatory process must come to an end." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, slip op. at 4 (July 15, 1988).

I. BACKGROUND

The Commission's offsite emergency planning regulations require that "arrangments [sic] are made for medical services for contaminated injured individuals." 10 C.F.R. § 50.47(b)(12). The Commission had found that § 50.47(b)(12) could be satisfied by a list of medical facilities available in the area of the plant. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 534-36 (1983). However, on February 12, 1985, the U.S. Court of Appeals for the District of Columbia Circuit held that the measures mandated by § 50.47(b)(12) must

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(footnote continued)

tions of these decisions, including the Licensing Board's order denying admission of a proposed contention on § 50.47(b)(12). See Suffolk County, State of New York, and Town of Southampton Brief on Appeal of Licensing August 26, 1985, Concluding Partial Initial Decision on Emergency Planning at 65-68 (Nov. 6, 1985). The Appeal Board rejected Intervenors' appeal and affirmed the Licensing Board's denial of the "medical services" contention. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 NRC 135, 143 (1986).

Intervenors sought review of the Appeal Board's decision, arguing that unless the Commission granted review, the Appeal Board's decision would become final agency action. See Suffolk County, State of New York, and Town of Southampton Petition for Review of ALAB-832 at 4 and Att. 1, p. 5 (Apr. 15, 1986). However, the Commission granted review on only three discrete issues in ALAB-832, none of them related to § 50.47(b)(12). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322-OL-3, slip op. (Sept. 19, 1986).

include pre-accident arrangements for medical services in addition to a list of existing treatment facilities. GUARD v. U.S. Nuclear Regulatory Commission, 753 F.2d 1144, 1145-46 (D.C. Cir. 1985). The Appeals Court remanded the case to the Commission for further consideration. Id. at 1150.

In response, on September 17, 1986, the Commission issued a Statement of Policy on Emergency Planning Standard 10 C.F.R. § 50.47(b)(12). There it indicated that satisfactory arrangements for the provision of medical services for contaminated injured members of the public should include, in addition to a list of local or regional medical treatment facilities, the following:

(1) a good faith reasonable effort by licensees or local or state governments to facilitate or obtain written agreements with the listed medical facilities and transportation providers;

(2) provision for making available necessary training for emergency response personnel to identify, transport, and provide emergency first aid to severely exposed individuals; and

(3) a good faith reasonable effort by licensees or state or local governments to see that appropriate drills and exercises are conducted which include simulated severely-exposed individuals.

51 Fed. Reg. 32,904, 32,905 (Sept. 17, 1986). The Commission further indicated that it had directed the NRC Staff to develop, in connection with FEMA, specific guidance on the application of planning standard § 50.47(b)(12) to NRC commercial operating licensees and license applicants. Id.

The required guidance was provided in FEMA Guidance Memorandum MS-1, Medical Services, issued by FEMA and forwarded to NRC licensees by IE Notice 86-98 (December 2, 1986). MS-1 iterated the guidelines for the provision of medical services for contaminated injured individuals described in the Commission's Statement of Policy and established specific evaluation criteria for FEMA to review. Plants without full power licenses were to comply within nine months of its effective date, i.e., by August 13, 1987. MS-1 at 5.

On February 25, 1987, more than six months before LILCO was obligated to comply with FEMA Guidance Memorandum MS-1, intervenors moved to admit the presently pending contention, alleging that LILCO's Plan failed to comply with the specific guidance of MS-1.[6/] LILCO opposed the motion on the grounds that it was premature, that it failed to meet the standards for reopening a closed evidentiary record, and that it failed to meet the standards for late-filed contentions. LILCO's Opposition to Intervenors' Motion to Admit a New Contention (March 9, 1987). The NRC Staff also opposed Intervenors' motion on the ground that the contention failed to meet the standards for late-filed contentions. NRC Staff Response in Opposition to Motion to Admit a New Contention (March 17, 1987). The Commission has not acted on Intervenors' motion.

II. INTERVENORS' MOTION IS MOOT BECAUSE LILCO HAS COMPLIED WITH ALL GUIDANCE OF MS-1

Intervenors' motion to admit a new contention should be dismissed as moot. Whether Intervenors' claims were ever accurate, they are no longer true in light of LILCO's actions to comply with MS-1. Intervenors' motion has been overtaken by events and is now moot.

6/ This was Intervenors' second attempt to litigate these issues. On February 25, 1985, shortly after the Court of Appeals decision in GUARD v. NRC, supra, but before the issuance of any regulatory guidance, they had sought admission of a new contention concerning the adequacy of LILCO's arrangements for medical services. See Motion of Suffolk County and New York State to Admit New Contention (February 25, 1985). LILCO opposed the motion as premature. See LILCO's Answer to "Motion of Suffolk County and New York State to Admit New Contention" (Including a Request that the Issue be Certified to the Commission and that the New Issues be Severed from the Rest) (March 11, 1985). The NRC Staff responded by requesting the Licensing Board to defer any ruling on Intervenors' motion until such time as the Commission had issued guidance or taken other action in light of the GUARD decision. See NRC Staff Response to "Motion of Suffolk County and New York State to Admit New Contention" (March 12, 1985).

On August 21, 1985, the Licensing Board denied the Intervenors' motion, holding that litigation on the question of what constitutes adequate arrangements for medical services for contaminated injured individuals, if necessary at all, should be deferred until the Commission had issued a rule or other generic guidance on the matter. Memorandum and Order Denying Suffolk County's and State of New York's Motion to Admit New Contention at 7 (August 21, 1985).

FEMA Guidance Memorandum MS-1 imposes essentially four obligations on organizations responsible for offsite emergency planning.[7/] First, organizations responsible for emergency planning should obtain written agreements with a primary and a backup medical facility and with transportation providers assuring that they have adequate technical information and capabilities to handle and treat contaminated injured individuals. MS-1 at 2. Second, the organizations responsible for emergency response should develop a list of public, private and military hospitals and other emergency medical service facilities within the area of the plant which are capable of providing medical support for contaminated injured individuals. MS-1 at 3. Third, the responsible organizations should provide training for medical services and transportation personnel for the handling and treatment of contaminated injured members of the public. MS-1 at 4. Finally, the responsible organizations should arrange annual medical emergency drills involving both the primary and backup medical facilities. MS-1 at 5.

Intervenors' proposed contention is a mere recitation of the guidance contained in MS-1. Following a general preamble in which the Intervenors' allege that LILCO has failed to comply with the guidance of MS-1 and therefore cannot be found to comply with 10 C.F.R. § 50.47(b)(12) or NUREG 0654, § II.L, the contention makes the following specific allegations:

> A. LILCO does not have written agreements with the required medical facilities and transportation providers containing assurances that those medical facilities and transportation providers have adequate technical information and treatment capabilities for handling contaminated injured individuals in the event of a radiological emergency at Shoreham . . . .

7/ In the instance of state and local government refusal to participate in emergency planning, the licensee or license applicant is the organization responsible for offsite emergency planning. See Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654/FEMA-REP-1, Rev. 1, Supp. 1 at I.D.

B. While the LILCO Plan contains a bare listing of public, private and military hospitals which LILCO contends are capable of treating contaminated injured persons, OPIP 4.2.2, att.1, the list does not include any description of the special radiological capabilities of each facility . . . .

C. The LILCO Plan does not provide adequate arrangements for the transportation of members of the public who are victims of radiological accidents to medical support facilities, with provisions for the use of contamination control in transporting contaminated personnel to medical facilities . . . .

D. LILCO has not trained or established a training program for the medical services and transportation personnel who will assist in an emergency, including (1) the one physician and one nurse who must be on call within 2 hours and who can supervise the evaluation and treatment of radiological contaminated members of the public; (2) the transportation providers who must be trained in contamination control; and (3) the other personnel reference in subparts C and D above . . . .

E. The LILCO Plan fails to provide for adequate exercises and drills involving the hospitals on which LILCO intends to rely, as referenced in subpart A, above.

See Intervenors' Proposed Contention appended to Intervenors' Motion of Feb. 25, 1987.

As demonstrated below, LILCO has fully complied with the guidance of MS-1. Intervenors' proposed contention therefore is moot and should be dismissed.

A. Written Agreements

FEMA Guidance Memorandum MS-1 provides that the organization responsible for offsite emergency planning should make pre-accident arrangements for both a primary and a backup hospital which are capable of evaluating radiation exposure and uptake and that have personnel adequately prepared to treat contaminated individuals. MS-1 at 2. MS-1 further provides that the responsible organization should obtain written agreements with these qualifying medical facilities. Id. These written agreements should contain:

> simply assurances that the providers have adequate technical information (e.g. treatment protocols) and treatment capabilities for handling "contaminated injured" individuals.

Id. Assurance is demonstrated by evidence that a hospital is accredited by the Joint Commission on Accreditation of Hospitals (JCAH). Id.

LILCO has complied with this guidance. LILCO has obtained letters of agreement with two local hospitals which are capable of receiving and treating contaminated injured members of the general public. By agreement signed on October 29, 1987, Brunswick General Hospital will serve as LILCO's primary MS-1 hospital. Brunswick General Hospital is a JCAH-accredited hospital located in Amityville, New York. See Affidavit of Diane P. Dreikorn, ¶3. A copy of the letter of agreement with Brunswick Hospital is Attachment C. This agreement has been judged by FEMA to be adequate. RAC Review at 77 (Attachment B).

LILCO also has a written agreement with Mid-Island Hospital located in Bethpage, New York, under which Mid-Island Hospital agrees to serve as a backup facility for the treatment of contaminated injured individuals. The agreement with Mid-Island Hospital, also a JCAH-accredited hospital, was signed on March 8, 1988. See Affidavit of Diane P. Dreikorn, ¶4. Although this agreement was executed too late to have been included in FEMA's RAC Review of Revision 9 of the LILCO plan, it is essentially identical to the agreement with Brunswick General Hospital which the RAC found to be adequate. A copy of the agreement with Mid-Island Hospital is Attachment D.

In addition, LILCO's Offsite Plan Implementing Procedures (OPIPs) provide that if additional medical facilities are needed, contaminated injured individuals can be sent to the federal Veterans Administration Hospital in Northport, New York, and the Nassau County Medical Center in East Meadow, New York. See OPIP 4.2.2, § 5.3.1, attached as Attachment H. These facilities would be available under the Commission's

"realism" rule, 10 C.F.R. § 50.47(c)(1), 52 Fed. Reg. 42,078, 42,086 col. 1 (Nov. 3, 1987). FEMA has reviewed this aspect of LILCO's Plan and judged it to be adequate. RAC Review at 77 (Attachment B).

LILCO also maintains written agreements with eleven commercial ambulance companies which are capable of transporting contaminated injured members of the general public. A copy of one of these essentially identical agreements is Attachment E (proprietary information has been redacted). Each agreement requires that:

> The Contractor's drivers shall be duly licensed and shall have received Emergency Preparedness Training prior to vehicle operation.

See Attachment E at 2. As described infra pp. 11-13, LILCO provides ambulance personnel with training on all aspects of radiological emergency response, including the handling of contaminated injured individuals. Thus, these written agreements provide the required "simple assurance" that transportation contractors have the necessary information and capabilities to handle and treat contaminated injured individuals.[8/] See MS-1 at 2.

The LILCO Plan also relies on the resources of local government to respond to the needs of contaminated injured members of the general public in the event of an actual emergency. In the absence of written agreements with local governments which refuse to participate in emergency planning for the Shoreham plant, the LILCO Plan contains the following statement:

8/ A list of the commercial ambulance companies under contract to LILCO is maintained in OPIP 3.6.5 Attachment 6, attached as Attachment F. In its decision on LILCO's Plan, the Licensing Board found that LILCO has adequate ambulances and ambulettes under contract to conduct an evacuation of special facilities and the handicapped at home within the EPZ. See LBP-85-12, 21 NRC 644, 830 (1985). The Board also noted that LILCO's estimates of the average capacity of ambulances and ambulettes are both "reasonable and conservative." Id. The Licensing Board further concluded that separate agreements with ambulance personnel are not required under the NRC's regulations. Id. at 831-32. Thus, to the extent that these issues are raised by Intervenors' pending contention, they are res judicata.

> All local law enforcement agencies, fire departments and snow removal agencies within the 10-mile EPZ will continue to carry out their normal response functions during an emergency.

LILCO Plan at 2.2-7, attached as Attachment G. This reliance is based on the Commission's realism rule. FEMA has reviewed this arrangement and judged it to be adequate. RAC Review at 12 (Attachment B).

Specifically, OPIP 4.2.2 § 5.4 (Attachment H) provides that Local Emergency Response Organization (LERO) personnel may contact the local police or a fire and rescue company to arrange for the transportation of a contaminated injured individual to a qualified medical facility. A list of police and fire and rescue companies is contained in OPIP 3.1.1 Attachment 11. A copy of OPIP 3.1.1 Attachment 11 is Attachment I. FEMA has reviewed the list in OPIP 3.1.1 Attachment 11 and judged it to be adequate. RAC Review at 78 (Attachment B).

For all of these reasons, LILCO has complied with the guidance of MS-1 concerning written agreements with medical services and transportation providers for contaminated injured individuals.

B. Qualifying Public, Private and Military Hospitals

FEMA Guidance Memorandum MS-1 also specifies that each state should develop lists indicating the location of public, private and military hospitals and other emergency medical facilities within the state or within contiguous states which are considered to be capable of providing medical support for any contaminated injured individual. MS-1 at 3. This listing should include the name, location, type of facility and capacity and any special radiological capabilities. These emergency medical services should be able to radiologically monitor contaminated personnel, and have facilities and trained personnel able to care for contaminated injured individuals. Id.

LILCO has complied with this guidance. LILCO maintains such a list of hospitals and medical facilities in Suffolk County, Nassau County, Queens County, and Kings (Brooklyn) County in New York which are capable of receiving contaminated injured individuals. Each of the listed facilities is JCAH-accredited; thus, each facility is capable of receiving and treating contaminated injured individuals. See MS-1 at 2. The list also contains the name, location, telephone number and capacity of each hospital or medical facility. The list is maintained in LILCO's Plan as OPIP 4.2.2, Attachment 1, and is updated periodically. See Affidavit of Diane P. Dreikorn, ¶ 5. Revision 9 of the list was reviewed by FEMA and judged to be adequate. RAC Review at 78 (Attachment B). Revision 10 of Attachment 1 contains only minor changes from the previous version. Revision 10 of OPIP 4.2.2, including Attachment 1, is Attachment H.

In sum, LILCO has complied with the guidance of MS-1 concerning the development of a list of other regional hospitals capable of treating contamined injured members of the general public.

C. Training

FEMA Guidance Memorandum MS-1 specifies that the organization responsible for emergency response shall establish a training program for instructing and qualifying medical support personnel who will implement radiological emergency response plans. MS-1 at 4. Specifically, the responsible organization must assure that each qualifying hospital has at least one physician and one nurse on call within two hours who can supervise the evaluation and treatment of radiologically contaminated injured members of the general public. Id. Transportation providers should also have a basic training in contamination control. Id.

LILCO has complied with this guidance. LILCO has contracted with Radiation Management Consultants ("RMC") of Philadelphia, Pennsylvania, to train hospital medical and maintenance personnel. A copy of the agreement with RMC is attached as

Attachment J (confidential information has been redacted). Under the terms of this agreement, training of hospital personnel has occurred and will occur periodically to assure that Brunswick General Hospital and Mid-Island Hospital have the necessary trained staff available to treat radiologically contaminated injured individuals. See Affidavit of Diane P. Dreikorn, ¶¶ 6-13.

A separate training program for the eleven commercial ambulance companies under contract to LILCO provides training in various aspects of emergency response, including the handling and treatment of contaminated injured members of the general public. See Affidavit of Diane P. Dreikorn, ¶¶ 14, 16-18. A copy of the lesson plan for LILCO's contractor ambulance personnel training is Attachment K. FEMA has reviewed these arrangements for the training of emergency medical support personnel and transportation providers under contract to LILCO and has judged them to be adequate. RAC Review at 87 (Attachment B).

As specified by recent joint NRC/FEMA guidance, LILCO makes its training for commercial ambulance personnel available to non-participating State and local government officials. See Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654/FEMA-REP-1, Rev. 1, Supp. 1 at O.6.[9/] The LILCO Plan provides as follows:

> LERO will offer the same exact LERO training to their State and County counterparts and shall attempt to involve Suffolk County and New York State officials in the exercises and drills, but their participation is not required.

LILCO Plan at 5.1-3 (Revision 10), attached as Attachment L. On January 25 and 26, 1988, LILCO wrote to representatives of both Suffolk County and Nassau County, respectively, to invite the participation of County law enforcement and rescue personnel

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9/ NUREG-0654 Supp. 1, supra n.7, at Planning Element O.6 provides that "[t]he offsite response organization shall offer training to non-participating State and local governments and other organizations."

mergency response training, drills and exercises. See letters from Ira I. Freilicher, LILCO Vice President, to Robert McDonald, Deputy Nassau County Executive (January 25, 1988), and to Robert Kurtter, Deputy Suffolk County Executive (January 26, 1988), attached as Attachment M.[10/] See Affidavit of Diane P. Dreikorn, ¶¶ 19-22. LILCO need not do more.

For the above reasons, LILCO has complied with the guidance in MS-1 concerning the training of medical services and transportation personnel for the handling and treatment of contaminated injured individuals.

D. Drills and Exercises

Finally, FEMA Guidance Memorandum MS-1 specifies that annual medical emergency drills should be conducted at which a simulated contaminated injured individual is transported by ambulance to a qualified medical treatment facility. MS-1 at 5. These drills should also test the ability of relocation centers to direct contaminated injured members of the general public to an appropriate treatment facility. Id. These annual drills may be conducted as part of the required biennial exercise of emergency response capabilities. Id.

10/ Although local police and public rescue personnel have not participated in LILCO's training for handling radiologically contaminated individuals, evidence exists that Suffolk County public rescue personnel receive appropriate training. In the Suffolk County Emergency Operations Plan produced to LILCO on July 8, 1988, the "mission" of the County Rescue Service is described in the following terms:

> The mission of the Rescue Service in an emergency is to direct and coordinate action to locate and save lost persons and persons trapped or injured in damaged buildings, shelters, vehicles and other enclosures an[d] in radiologically contaminated areas, and to aid and assist in the recovery of critical supplies, materials and equipment from affected areas.

Suffolk County Emergency Operations Plan, Annex L, Appendix 2 at 1 (emphasis added), attached as Attachment N. Fulfillment of this mission would logically require training for the handling and transportation of contaminated injured members of the general public.

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Suffolk County Emergency Operations Plan, Annex L, Appendix 2 at 1 (emphasis added), attached as Attachment N. Fulfillment of this mission would logically require training for the handling and transportation of contaminated injured members of the general public.

LILCO has complied with this guidance. LILCO's emergency response procedures mandate annual medical emergency drills. See OPIP 5.1.1 § 5.3.1c, attached as Attachment O. These procedures have been judged by FEMA to be adequate. RAC Review at 83 (Attachment B).

RMC's agreement with LILCO requires it to organize and supervise annual medical emergency drills at Brunswick General Hospital and Mid-Island Hospital. See Attachment J and attached Affidavit of Diane P. Dreikorn, ¶¶ 6-8. RMC has fulfilled this obligation. On June 7, 1988, the first day of the three-day FEMA-graded exercise for Shoreham, RMC supervised a full-scale drill at Mid-Island Hospital in which a simulated contaminated injured individual was transported by ambulance from a relocation center to the hospital for diagnosis and treatment. Similarly, on June 8, 1988, RMC supervised a full-scale drill at Brunswick General Hospital in which the hospital staff demonstrated their ability to receive and treat a contaminated injured individual and a relocation center demonstrated its ability to direct a contaminated injured victim to the appropriate medical facility. Earlier, on May 14, 1988, Mid-Island Hospital had conducted a partial[11/] drill of its ability to evaluate and treat a contaminated injured individual. See Affidavit of Diane P. Dreikorn, ¶¶ 23-25.

In short, LILCO has fully complied with the guidance of MS-1. Intervenors' proposed contention addresses the situation six months before LILCO was obligated to comply. Now, in light of LILCO's response to MS-1, Intervenors' proposed contention is moot.

11/ This drill differed from a full-scale drill only in that it did not involve the actual transportation of a simulated contaminated injured individual to the hospital.

III. INTERVENORS' MOTION FAILS TO MEET THE CRITERIA FOR REOPENING THE RECORD

A second reason for denying Intervenors' motion to admit its proposed contention is that the motion does not comply with NRC requirements for reopening a closed record.[12/] See 10 C.F.R. § 2.734. A party seeking to reopen an evidentiary record faces a "heavy burden" to show that the criteria for granting such relief are met. See Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986). This policy ensures that the Commission's resources will not be diverted "unless there has been a strong showing that reopening is justified." Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-22, 24 NRC 685, 691 n.3 (1986).

Intervenors' motion fails to meet the "heavy burden" of § 2.734 in two principal respects: First, the motion fails to show that a materially different result would occur; second, the motion is not accompanied by the required affidavits. Intervenors' motion therefore should be dismissed.[13/]

12/ The evidentiary record for the proceeding involving the Shoreham Emergency Response Plan was closed on August 29, 1984. See supra n.5.

13/ This motion is directed to Intervenors' proposed contention as it now exists. Although Intervenors theoretically could seek to raise this issue yet again by a reformulated contention specifically addressed to Revisions 9 and 10 of the LILCO Plan, the Commission would be justified in foreclosing such an attempt. Intervenors have had access to Revision 9 since January 1988 and Revision 10 since May 1988: a revised contention submitted in the future would be untimely. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-867, 16 NRC 460, 469 (1982), approved as to "good cause" test for late-filed contentions, CLI-83-19, 17 NRC 1041, 1045-47 (1983) (a late-filed contention must be tendered promptly once a previously unavailable document comes into existence and is accessible for public examination). Nor is it possible for Intervenors to meet the "exceptionally grave issue" exception to the timeliness requirement of 10 C.F.R. § 2.734(a)(1): as described previously in this motion, LILCO has fully complied with the guidance of MS-1.

Additionally, a resubmitted contention would be Intervenors' third attempt to raise an issue on which there is no serious merits question. As the Commission noted in a recent decision in this docket, "[m]otions to reopen cannot be permitted to be a means for parties to pass off old, unsuccessful contentions as new and relitigate them in hopes of a better result the next time around." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-03, slip op. at 4 (July 15, 1988). As the Commission also observed: "At some point the adjudicatory process must come to an end." Id.

A. Intervenors Fail to Show That The Result Would Be Materially Different If Newly Proffered Evidence Had Been Considered Initially

Subsection (a) of § 2.734 requires that a motion to reopen a closed record must satisfy three criteria:

1. The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.

2. The motion must address a significant safety or environmental issue.

3. The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Intervenors' motion fails to meet the third criterion of § 2.734(a), i.e., that a materially different result would have been likely if Intervenors' newly proffered evidence had been considered initially. Indeed, they have offered no new evidence at all. The only "evidence" relied on in Intervenors' motion is FEMA Guidance Memorandum MS-1; the motion itself does not cite any evidence of LILCO's noncompliance. As demonstrated in the preceding section, no such evidence exists because LILCO has fully complied with the guidance of MS-1.

To the extent that Intervenors allege that LILCO's compliance is incomplete or insufficiently detailed, the contention still fails to raise a litigable issue. In its September 17, 1986 Statement of Policy following the GUARD decision, the Commission noted that "[t]he minimally necessary arrangements for the person that may be exposed need not be elaborate" and that "the Commission continues to believe that the long-term treatment needs of exposed individuals can be adequately met on [an] ad hoc basis." 51 Fed. Reg. 32,905. In other words, Intervenors are not entitled to compel litigation of aspects of LILCO's compliance with MS-1 merely because the arrangements do not satisfy their notions of appropriate arrangements for contaminated injured individuals.

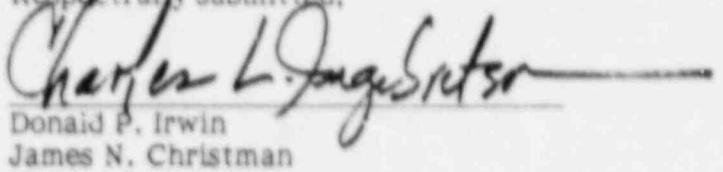
B. Intervenors' Motion Is Not Accompanied By Supporting Affidavits

By failing to offer any evidence in support of their motion, Intervenors also fail to meet the standard of 10 C.F.R. § 2.734(b), which requires that a motion to reopen an evidentiary record must be accompanied by an affidavit setting forth the factual and technical bases for the movant's claim. While Intervenors' motion promises to make information available which will support the contention, Intervenors' Motion at 11, no affidavits or other supporting documentation are attached or have been provided in the seventeen months since the motion was filed. Absent supporting evidence, Intervenors' motion fails to comply with § 2.734(b) and should be dismissed. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-7, 21 NRC 1104, 1106 (1985) quoting Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983) ("It is not enough merely to express a willingness to provide unspecified, additional information in support of the motion at some unknown date in the future").

CONCLUSION

In accordance with the foregoing, LILCO respectfully moves the Commission to dismiss Intervenors' proposed contention of February 25, 1987, on the grounds that it is moot or, in the alternative, that it fails to meet the criteria of 10 C.F.R. § 2.734 for reopening the record of a proceeding.

Respectfully submitted,



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