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LILCO, March 13, 1986

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 Proceeding)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LONG ISLAND LIGHTING COMPANY'S MOTION FOR ESTABLISHMENT OF LICENSING BOARD AND INSTITUTION OF EXPEDITED PROCEDURES FOR LITIGATION OF SHOREHAM EMERGENCY PLANNING EXERCISE ISSUES, AND RESPONSE TO INTERVENORS' MARCH 7, 1986 "MOTION CONCERNING PROCEEDINGS RELATING TO THE SHOREHAM EXERCISE"

Long Island Lighting Company (LILCO) hereby moves that the Commission establish a Licensing Board to hear issues properly arising out of the February 13, 1986 offsite emergency planning exercise for the Shoreham Nuclear Power Station, and that it provide that Board with initial guidance, as set out below, on definition of issues and expedition of procedures for their resolution. LILCO also responds to the related motion filed on March 7 by intervenors Suffolk County, the State of New York, and the Town of Southampton (hereinafter, "Intervenors").

I.

Factual and Procedural Background

Since 1980 the Commission's regulations have required the conduct of as full-scale an emergency planning exercise as is reasonably achievable without mandatory public participation, within

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a year before initial issuance of a full power operating license. 10 CFR § 50.47(a)(1). Pursuant to that requirement, a full-scale exercise of the radiological emergency response plan for Shoreham was conducted under FEMA's supervision on February 13, 1986.[1/]

Intervenors, who have adamantly refused to participate in emergency planning for Shoreham in recent years, attempted by motion filed on December 24, 1985[2/] to persuade this Commission to rescind its then-pending request to FEMA to conduct the Shoreham exercise. Intervenors argued, inter alia, that the exercise would be a futility since a Licensing Board and an Appeal Board had held that LILCO lacked the legal authority to implement its emergency plan over the objection of Suffolk County and New York State, and that they had, in Intervenors' misleading terms, "denied LILCO a full power license." December 24 Motion at 6. The Commission rejected this argument in a January 30 Memorandum and Order denying

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1/ Intervenor Suffolk County attempted to prevent the conduct of that exercise by enactment of a criminal statute in early January, which would have made it a crime in Suffolk County punishable by up to a year in prison and a $1000 fine to conduct or participate, without the Suffolk County Legislature's advance approval, in an emergency planning exercise in which the roles of Suffolk County officials were "simulated." The Local Law was held to conflict unconstitutionally with the Atomic Energy Act of 1954 and was preliminarily enjoined on February 10, 1986 by the U.S. District Court for the Eastern District of New York. Long Island Lighting Co. v. County of Suffolk, Civ. Act. No. 86-0174, ____ F. Supp. ____ (1986).

2/ Suffolk County, State of New York and Town of Southampton Motion for Cancellation of Emergency Planning Exercise, December 24, 1985.

the motion, pointing out that it has not yet reviewed the emergency planning record at Shoreham and thus there is no final agency action denying LILCO an operating license. Id. at 6 note 1.3/

Intervenors were enabled to observe the February 13 exercise in depth and detail. By pre-agreement with LILCO, 19 designated representatives of Intervenors were permitted access to all 9 offsite facilities manned by LERO personnel and one onsite facility in the exercise, as well as to the 12 LILCO-controlled bus transfer points and the facilities of the participating school district. Intervenors' observers at the exercise's nerve center, the EOC, were provided with all exercise controllers' messages (including free play messages) at the same time that players received them. In addition, telephones were made available to the Intervenors at the EOC and at two of the three staging areas (Intervenors used a mobile telephone at the third staging area). Suffolk County police observers were also discernible in quantity on the public roads and streets of the Shoreham EPZ on exercise

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3/ Only the refusal of New York State and Suffolk County to commit in advance to do that which they admit they are required to do, and in reality would do, in a real emergency -- respond to protect their citizens -- stands in the way of completion of this proceeding. Of course, the February 13 exercise was structured so as to permit evaluation of this "realism" argument, by the use of federal officials simulating Suffolk County and New York State personnel. Consequently, the litigated results of this facet of the exercise should be of great value to the Commission in evaluating the consistency of LILCO's "realism" legal-authority argument with the compensating-measures rationale and the other rationalia of 10 CFR § 50.47(c)(1).

day, and police helicopters made fly-overs of various exercise facilities. Thus, Intervenors were enabled to observe the exercise in detail, with timely information about exercise events, and to communicate with one another.

In the days immediately following the exercise, FEMA observers delivered preliminary oral critiques of the exercise.[4/] FEMA is currently in the process of preparing its exercise report, which is expected to be provided to the NRC approximately 60 days after the exercise, or in mid-April. However, there is no guarantee of this schedule and FEMA has encountered delays in completion of exercise reports in previous cases.

There are not at present any formal proceedings in progress with respect to litigation of the results of the exercise, and thus definitionally no contentions admitted or formal discovery

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4/ Intervenors note that they were also permitted to "witness" an informal February 14 meeting between LILCO and FEMA concerning the previous day's exercise, but appear to complain that they were forbidden to "question FEMA or otherwise interject themselves into this meeting." Intervenors' March 7 Motion at 4 note 5. Intervenors' complaining on this score only illustrates the Orwellian character of the situation they have created on Long Island, in which each grant to them of unprecedented privileges becomes a new starting point for their claims that their rights are being infringed because they have not been granted still greater privileges. Their very presence at this informal meeting, which is intended to provide an informal opportunity for FEMA and the exercise participants to exchange observations on the exercise, was extraordinary: LILCO knows of no other case in which a nonparticipant in an exercise has been permitted to attend this informal meeting; nor did any FEMA personnel whom LILCO asked know of any precedent for such attendance.

rights available. Nevertheless, as is evident from Attachments 2-4 to their March 7 Motion, Intervenors have already commenced peppering the other parties with extremely broad requests for document discovery, not focused on any particular theories or allegations about the exercise but predicated, rather, upon the proposition that they are entitled to conduct their own plenary review of the complete documentation associated with the exercise. Indeed, their assumptions about what they are entitled to are not limited to the exercise, but apparently extend even to "documents concerning how the exercise scenario was 'negotiated'". March 7 Motion, Attachment 2, at 1.[5/]

II.
Legal Background

In 1982, the Commission amended § 50.47(a)(2) of its emergency planning regulations to make clear that, while it considered the results of emergency planning exercises to be material to its ultimate decision on issuance of a full power license, they should not be routinely subject to litigation in licensing cases. 47 Fed. Reg. 30,232 (July 13, 1982). The Commission based its determination on three basic rationalia: (1) the predictive nature

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5/ Although these issues will no doubt become the subject of discovery proceedings in due course if they are formally pursued, they would appear presumptively outside the definition of permissible "contested issues" relating to the exercise under the Commission's February 13 Memorandum and Order in this proceeding, relating to exercise discovery. Id. at 3 and note 1.

of emergency planning findings; (2) the availability of hearings, either by reopening a closed record or by filing a show cause request under 10 CFR § 2.206, to convene a hearing with respect to truly significant issues suggested for the first time by an exercise;[6/] and (3) the concern that exercises, if routinely litigable, either would have to be conducted prematurely or their litigation would risk delaying license issuances. See id. The Commission reaffirmed these rationalia the next year in denying a petition by the Union of Concerned Scientists that it rescind its 1982 amendment to the regulations. 48 Fed. Reg. 16,691 (April 19, 1983).

6/ The Commission noted at that time the relationship between predictive findings and limitation of exercise-related litigation to fundamentally significant issues:

> Moreover, if the actual conduct of an exercise should identify fundamental defects in the way that the emergency plan is conceived such that it calls into question whether the requirements of 10 CFR 50.47 can or will be met, a party to a license proceeding may seek to reopen a concluded hearing or file a petition for action pursuant to 10 CFR 2.206 as appropriate. This is distinct from deficiencies identified by an exercise which only reflect the actual state of emergency preparedness on a particular day in question but which do not represent some basic flaw in emergency planning.

47 Fed. Reg. 30,232, 30,233 (col. 3).

Upon review of the 1982 amendment, the U.S. Court of Appeals for the District of Columbia Circuit vacated the rule and held that the results of exercises could not be routinely excluded from otherwise available prelicensing litigation under Atomic Energy Act § 189(a) so long as the NRC believed -- as the court concluded it did -- that exercise results were material to its ultimate licensing decision. Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984). However, the Court of Appeals did not throw open exercise results to indiscriminate litigation. Rather, it repeatedly indicated its deference, within only very broad bounds, to the Commission's implementation of its statutory duties. Two examples are particularly pertinent.

First, the court noted and accepted the Commission's argument about the significance of exercise results, as follows:

> [W]e find that [AEA] section 189(a)'s hearing requirement does not unduly limit the Commission's wide discretion to structure its licensing hearings in the interests of speed and efficiency. For example, the Commission argues throughout its brief that the exercise is only relevant to its licensing decision to the extent it indicates that emergency preparedness plans are fundamentally flawed, and is not relevant as to minor or ad hoc problems occurring on the exercise day. Today, we in no way restrict the Commission's authority to adopt this as a substantive licensing standard.20/

20/ Of course, if such a standard were challenged in court, the NRC might still have to defend itself against allegations that it had acted arbitrarily and capriciously.

735 F.2d 1437, 1448 (emphasis added) (statutory citation in footnote omitted).

Second, the Court of Appeals was mindful of the undesirable potential, pointed out by the Commission, that routine litigation of exercise results might either compel exercises to be held prematurely or delay issuance of licenses. Here again, the court deferred to the Commission's concern and even went so far as to make suggestions for expediting review and avoiding delay. The court noted:

> [W]e see nothing to prevent the Commission from holding a special supplementary hearing solely on issues raised by the emergency exercises closer to the date of full power operation. And, certainly the Commission can limit that hearing to issues -- not already litigated -- that it considers material to its decision.

Id. at 1447-48 (emphasis added) (footnote omitted).

Even more telling, the court went on to suggest specific expedited procedures of which the Commission or its licensing boards could avail themselves in tandem with a threshold pleading standard requiring any admissible contention to demonstrate a "fundamental flaw" with the plan. Under this standard, according to the Court of Appeals,

1. "[T]he NRC could summarily dismiss any claim that did not raise genuine issues of material fact about the fundamental nature of the emergency preparedness plans. See 10 CFR § 2.749 (1983)." Id. at 1448.7/

7/ A recent licensing board decision has construed this passage in the Court of Appeals' opinion to permit contentions not only to

(footnote continued)

2. "To survive summary disposition, a party would have to identify and support specific facts upon which a reasonable inference could be drawn that the plan provided inadequate assurances of safety." Id. (citations omitted).

3. "If a party's claim survived summary disposition, the Commission might then use expedited procedures to shorten the period between the exercises and the date of license." Id. (footnote omitted).8/

(continued from previous page)

be dismissed on summary disposition, but also to be dismissed at the very threshold. The licensing board noted that the Court of Appeals had, at this point, cited with approval BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974), which approved threshold exclusion of contentions. Carolina Power & Light Co. (Shearon Harris Nuclear Plant), LBP-85-49, ____ NRC ____, slip op. at 16 note 1 (December 11, 1985). This decision, which is the only case disclosed by research to construe the UCS case, also endorses the use of the "fundamental flaw" pleading threshold in emergency planning exercise litigation. Id. at 16.

8/ In the omitted footnote, the court noted various existing provisions in NRC regulations permitting licensing boards to expedite proceedings by "focusing the proceeding on key contested issues" and by "strictly limiting the presentation of evidence and cross-examination to relevant and non-repetitive material." While the court declined to express any opinion about expedited proceedings on emergency planning exercises, it noted "past criticisms that the Commission has overformalized its procedures." Id. at 1448 note 21. It also rejected the dissent's criticism based on the delay potential inherent in litigation, stating that the dissent "ignores the potential for time savings by use of expedited procedures." Id.

III.
Recommendations for Commission Action

It scarcely bears repeating that the Shoreham plant has been physically complete for over a year and that it successfully completed its low power testing program in October 1985. Litigation of the results of the February 13 emergency planning exercise is the final matter to be tried before Shoreham can be released from four continuous years of thralldom and allowed, assuming the merits justify, to commence its ascent toward commercial operation.

Those four years and their untold grinding trials have taught many hard lessons, one of the clearest of which is that the Commission cannot trust any potentially litigable situation to sort itself out. Intervenors have, indeed, already made clear that if they disagree with FEMA's exercise report they will want to litigate those disagreements. March 7 Motion at 5. Conversely, in the event that aspects of FEMA's report, if accepted, would prevent LILCO from being able to obtain a license, LILCO will be forced to test those aspects.

FEMA's report is not the only datum point for information underlying potential litigation of the exercise: the exercise itself affords the primary raw material, and Intervenors were present in force for it. Though their extensive document requests have not been fully satisfied they have already a wealth of information available. Certainly the publicly reported remarks of their principal attorneys in the days immediately surrounding the

exercise suggest that they had reasonably well developed theories about it, at least at that point. See Attachments 1 to 4. Thus there are various present bases to begin framing and resolving potentially litigable issues.

LILCO believes that the sooner the process is begun the better, and moves the Commission to set in motion the inevitable trial of issues on the February 13 exercise forthwith. LILCO makes the following suggestions for the Commission's consideration:

1. The Commission should appoint a licensing board, preferably consisting of members who have participated in the earlier Shoreham emergency planning proceedings and thus have knowledge of the LILCO Plan and the mammoth record in this case, and issue an appropriate notice of hearing at the earliest convenient date.

2. The Commission should instruct the licensing board how to proceed, consistent with the guidance of the UCS case. As indicated above, that case would permit, LILCO believes and advocates, the following guidance to the Board:

a. That no contention will be admitted if it involves issues which were or could have been litigated earlier.

b. That contentions which, as pleaded, do not demonstrate with adequate specificity and basis a fundamental flaw in the Shoreham Offsite Radiological Emergency Response Plan sufficient to prevent compliance with the requirements of 10 CFR § 50.47 shall be rejected by the Board at the threshold, without the need for summary disposition proceedings.

c. That contentions which survive at the threshold pleading stage shall be subject to summary disposition on an expedited basis.

d. That discovery and preparation of testimony on admitted contentions shall proceed on an expedited basis.

e. That the Board is empowered and expected to use the full range of powers granted it under the regulations to expedite progress toward hearings, conduct them with maximum focus, efficiency and dispatch, and produce post-hearing papers for submission on an expedited schedule.

3. The Commission should instruct the Board to convene a prehearing conference immediately, not awaiting the issuance of the FEMA report. At that prehearing conference (or even earlier, by Order) the Board should set a schedule for filing, on the basis of the parties' present knowledge, of all contentions except those which cannot be known until the issuance of the FEMA report. All contentions arising out of the basic concept or structure or, to the extent observed, the conduct of the February 13 exercise -- in short, all contentions based on knowledge or information other than that uniquely dependent on the forthcoming FEMA report -- should be filed now. Upon those contentions' survival of threshold pleading and expedited summary disposition processes, discovery with respect to them should start promptly, and should be limited in time.

4. A second round of contention filing, for issues alleged to arise uniquely out of the FEMA report, should be permitted promptly following its issuance. Threshold dismissal and summary

disposition processes, followed by discovery limited to surviving issues and limited in time, should commence with respect to these issues.9/

5. The commitment of FEMA personnel, and of all federal employees and contractors associated with them, to the timely completion of the FEMA report should take short-term precedence over their being burdened by discovery until the FEMA report has been issued. No such personnel should be forced to testify in depositions or to engage in major document searches until after completion of their report.

9/ The concept of time limits on discovery is essential to forcing the parties to draw meaningful priorities rather than permitting them to continue litigating on the basis of the scorched-earth policy which has, over the past four years, merely produced untold misery and resulted in the expenditure of literally tens of millions of dollars in litigation costs, without disclosing a single major flaw in the Shoreham plant. The emergency planning exercise involved on the order of 1500 players from LILCO plus several hundred supporting personnel. While LILCO does not know the exact extent of the federal commitment, it is not unreasonable to imagine that it involved at least 100 to 200 personnel. In the past Intervenors have shown a desire to depose everyone, from the top of an organization to the bottom, who could not be protected somehow. It is not intuitively obvious that any depositions would necessarily be warranted in connection with litigation of exercise-related issues sufficiently major to raise "fundamental flaws" in an emergency plan. Whether they are or not, however, it is clear that massive deposition discovery, if permitted, could go on virtually endlessly, and without productive purpose.

IV.
Miscellaneous Remaining Observations on the Intervenors' March 7 Motion

While LILCO believes that the preceding discussion has covered most of the issues relevant to prompt, effective litigation of the results of the February 13 exercise, it is useful to respond briefly to miscellaneous arguments advanced by Intervenors in their March 7 Motion.

1. Intervenors misapprehend the nature of their contribution to the current discourse by suggesting (March 7 Motion at 3) that they "have attempted to determine the procedural rights and duties which arise from the February 13 exercise and the time that those rights and duties should properly be pursued." They have done no such thing. Rather, they have (a) tried to pursue informal discovery against the other parties on unspecified issues, while trying before the Commission to (b) defer the start of any proceedings and (c) cast aside the perfectly applicable structure of the Commission's Rules of Practice and, if possible, shift the burden of going forward to LILCO.

2. Intervenors' suggestion that all proceedings should await completion of FEMA's report (March 7 Motion at 4-6) is ill-taken, for the reasons outlined above. Enough is known now to get proceedings underway. Contentions can be supplemented later, with respect to issues disclosed only by the FEMA report. Particularly since there is no guarantee when FEMA's report will issue, doing

nothing before its issuance will lead only to unnecessary and wasteful delay, while Shoreham continues to incur huge carrying charges.

3. Intervenors' discussion of the UCS case (March 7 Motion at 5) cannot be taken literally in its focus on the FEMA report's significance for the exercise litigation, unless Intervenors are indicating that they intend to limit the scope of litigation to fundamental flaws disclosed by that report and not observable earlier from other sources. Their pleadings and discovery requests to date do not appear consistent with such a voluntary restriction on the scope of their inquiry.

4. Intervenors' omission of the Court of Appeals' emphasis in the UCS case on limitation of the scope and on expedition of the conduct of post-exercise litigation, see pages 7-9 above, substantially limits the value of their treatment of that case.

5. Intervenors' argument (March 7 Motion at 6-8) that the legal-authority holdings of the Licensing and Appeal Boards mean that they have "won" this proceeding and that the burden is on LILCO to justify, on the basis of the FEMA report, any "basis for changing the ASLB decision which denied a license to LILCO," merely reclamors old arguments and ignores the structure of the Commission's Rules of Practice. The only basis for this argument is that the Licensing and Appeal Boards did not accept LIILCO's legal-authority arguments. However, the Commission has expressly

agreed to take review of this issue in order to determine whether any complications caused by the County's and New York State's refusal to participate in emergency planning are either not significant for Shoreham, as permitted under 10 CFR § 50.47(c)(2), or are adequately compensated for by LILCO's LERO organization and the reality of the County's and State's response in an actual emergency, as contemplated by 10 CFR § 50.47(c)(1).[10/] The Commission is free to either accept or reject Intervenors' argument at that time. Meanwhile, as the Commission noted in rejecting this argument in its January 30 Memorandum and Order at 6 note 1, there is simply no final agency action on this issue, and thus no basis for arguments which presume that there has been.[11/]

10/ As noted in footnote 3 above, the Commission's consideration of these issues may be aided by the results of the February 13 exercise.

11/ While the emergency planning factual issues stand in no more conclusive shoes at this point than the legal authority issues (except for the presumption of validity given to the factual findings of the trier of fact), it is worth noting that LILCO has prevailed on substantially all of the material factual issues brought out in the emergency planning litigation to date. The appeal of those factual issues was argued to the Appeal Board on February 12. The Commission has indicated its intent to take up review of the legal authority issues simultaneously with its review of any factual issues whose review it accepts. And, of course, LILCO has prevailed in the litigation of the innumerable non-emergency issues in this proceeding; the quality assurance, diesel, low power and hundreds of other health and safety issues litigated at length in the Shoreham docket have, with no significant exception, all been resolved in LILCO's favor. Far from "winning" below, the Intervenors have almost always lost.

6. Intervenors' open-ended request to the Commission for a declaration of how the apparently unavoidable litigation on the February 13 exercise should be structured fails to allege, much less demonstrate, any basis why the Commission should effectively scrap the procedural format of its Rules of Practice as they may be expedited in conformity with the UCS case. While LILCO agrees with the Intervenors that the Commission's attention is necessary to initiate these proceedings, LILCO believes that its suggestions, on pages 10-13 above, outline the proper direction for the proceeding.

V.
Conclusion

For the reasons stated above, LILCO requests that the Commission promptly initiate proceedings on the February 13 exercise required by the UCS case as implemented by the guidelines proposed on pages 10-13 above. LILCO also urges the Commission to deny Intervenors' March 7 Motion to the extent that it is inconsistent with this request.

Respectfully submitted,

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DATED: March 13, 1986

CERTIFICATE OF SERVICE

In the Matter of
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(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of Long Island Lighting Company's Motion for Establishment of Licensing Board and Institution of Expedited Procedures for Litigation of Shoreham Emergency Planning Exercise Issues, and Response to Intervenors' March 7, 1986 "Motion Concerning Proceedings Relating to the Shoreham Exercise" were served this date upon the following by hand as indicated by an asterisk, by telecopier as indicated by two asterisks, by Federal Express as indicated by three asterisks, or by first-class mail, postage prepaid.

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DATED: March 13, 1986

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ATTACHMENT 1

THE SHOREHAM DRILL

LILCO Goes It Alone, Stages Mock Evacuation of 138,000

LILCO Holds N-Plant Drill; Cuomo Calls It 'a Charade'

By Rick Brand and Rex Smith

Long Island Lighting Co. simulated a major accident at the Shoreham nuclear power plant yesterday, following a script that called for the imaginary evacuation of 138,000 people within a 10-mile radius of the plant.

More than 1,000 LILCO workers participated in the drill, which was observed by federal officials as part of the utility's effort to win an operating license for the controversial plant. LILCO employees conducted mock news conferences, drove cars along bus evacuation routes, pretended to notify 13 school districts to call off classes and set up a radiation monitoring program at Nassau Veterans Coliseum to handle 98,000 evacuees.

But no warning sirens really sounded, no homeowners were actually evacuated and no schoolchildren were sent home. Company officials, appearing at press briefings in a Ronkonkoma hotel throughout the day, issued statements about the imaginary accident but refused to answer questions about what LILCO workers were actually doing. At one point, for instance, reporters were left confused as to whether telephone service between Shoreham and the emergency operations facility in Hauppauge had actually broken down or had only been scripted to do so. "This is not the real world — this is an exercise," said Frank Petrone, the regional director of the Federal Emergency Management Agency, which supervised the drill.

Two participants in the drill were injured in minor accidents and six protesters at LILCO's Brentwood operations center were arrested in a planned exercise of civil disobedience.

FEMA officials are to meet with LILCO today for a preliminary assessment and plan to release those findings tomorrow. A complete report is to be sent to the Nuclear Regulatory Commission in about six weeks.

LILCO Chairman William Catacosinos last night issued a statement lauding "the tremendous effort" and "quick, responsive turnout" of LILCO workers participating in the drill.

But Gov. Mario Cuomo called the drill "a joke, a charade . . . meaningless." Suffolk County Executive Peter F. Cohalan likened the exercise to "an off-Broadway play in the theater of the absurd," and added, "The disquieting concern that I have is that this absurd exercise will be used by the federal government or the federal courts as an excuse to license the plant."

Officials of Suffolk County and New York State, who sought unsuccessfully to block the drill, boycotted it.

The state and Suffolk have refused to participate in emergency planning, contending that the area around Shoreham cannot be evacuated safely in the event of a nuclear accident. As a result, LILCO submitted an emergency plan to the NRC that uses company employees instead of government workers in key roles. Despite decisions saying that LILCO does not have the authority to implement its plan, FEMA, at the NRC's request, scheduled yesterday's drill, in which the roles of some state and county officials — including Cohalan's — were played by federal employees.

Although it was the first time that federal officials had been asked to evaluate a drill in which no local officials had participated, LILCO officials

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hope that it will convince federal regulators that the plant is safe for licensing without local participation in emergency planning, and that such cooperation would follow licensing.

Petrone said the drill would not be sufficient for FEMA to find a "reasonable assurance" that public safety could be protected in an accident. Asked if he would be concerned if the NRC broke with tradition and issued a license without such a finding, Petrone said, "I'd be concerned, yeah."

The scenario for the drill was shaped by a committee of federal officials and LILCO employees, but was kept secret from the utility's managers, LILCO officials said. It was controlled by 11 federal "simulators" who passed written messages to LILCO workers informing them of the progress of the imaginary disaster, including two traffic accidents during evacuation.

The drill began at 5:40 a.m. when Shoreham plant operators were notified by a simulator that a gauge was showing a leak in the plant's primary containment building. The accident escalated rapidly after that, including the breakdown of systems that led to a radioactive release into the air.

LILCO employees, notified at home of the scheduled drill, reported to "staging areas" in Riverhead, Patchogue and Port Jefferson. Those assigned to traffic control — filling in for Suffolk County police, who were forbidden from cooperating by a resolution of the county legislature — drove to assigned intersections and parked their cars. Those who would drive evacuation buses drove cars along assigned routes, ending at the Nassau Coliseum, where they went through radiation screening. Those deemed contaminated were sent to one of 14 congregate care facilities.

LILCO spokeswoman Elaine Robinson reported that the imaginary traffic was "slow-moving, but it moves fairly steadily" and that there were "absolutely no reports of panic." In the scenario, only citizens who were officially urged to evacuate did so, she said.

In contending that the area around Shoreham cannot be safely evacuated, Suffolk and the state maintain that Suffolk's road network could not handle a mass evacuation, especially because many people outside the evacuation area also would leave.

County and state officials who observed the drill at the 10 fixed sites used by the utility were critical. Fabian Palomino, special counsel to Cuomo, called it "a complete farce." Herbert Brown, the lawyer who is handling Suffolk's fight to block the plant, said, "All we're doing is proving that drivers and trucks can be sent to certain locations on Long Island . . ." They said voluntary evacuation would be widespread in an actual accident.

Steven Latham, an attorney representing Southampton Town in the Shoreham fight, charged last night that LILCO mishandled at least one aspect of the drill — the simulated road accidents. In one case, he said, county observers noted that the FEMA worker playing the role of an accident victim "waited two hours for LILCO to show up, then finally gave up and left." He said LILCO workers did not respond to the second accident for more than an hour. "If you did have an evacuation and roads were clogged, this could be a catastrophe," he said.

LILCO spokesman George Sooe said the company "will not comment at this time regarding its performance in response to specific parts of the scenario."

In addition to the two imaginary traffic accidents written into the drill script, two actual injuries were reported during the exercise. A LILCO contract employee working at Shoreham lost part of a finger while closing a tailgate, and a FEMA official from New Hampshire slipped and gashed his leg at the Nassau Coliseum.

Anti-Shoreham activists demonstrated at several locations. Six protesters in colonial-era garb were arrested at the utility's Brentwood office — the drill's emergency operating center — when they sat down in a driveway and blocked LILCO trucks. They were carried to a waiting police bus by officers and were later charged with trespassing and released for later court appearances. At the plant site, demonstrators released scores of black helium-filled balloons bearing messages to warn finders that they "could have been contaminated had there been a radiation release on this day."

John McDonald and Shirley Perlman contributed to this story.

ATTACHMENT 2

NEWSPAPER Newsday DATE 2-15-86 PAGE 4 of 13

LILCO Drill Rated Mostly Good

By John McDonald

The Federal Emergency Management Agency told LILCO yesterday it was generally pleased with the utility's drill Thursday of the emergency plan for the Shoreham nuclear power plant, although it found some minor problems, according to officials who attended a confidential briefing.

"It was very good overall," John Weismantle, LILCO's emergency-plan director, said after FEMA officials briefed the company and three lawyers for Shoreham opponents on the agency's preliminary findings. "FEMA had many good things to say about LILCO's interface with [simulated] local officials, and said LILCO's management during the drill was excellent."

Weismantle acknowledged that FEMA criticized LILCO for several occurrences during the drill, including an incident in which utility workers appeared to take an excessive amount of time to respond to one of the drill's two simulated highway accidents.

Fabian Palomino, special counsel to Gov. Mario Cuomo, who opposes the plant's opening, confirmed that FEMA's report was generally favorable to LILCO. But Palomino said the drill, in which LILCO workers and contractors played the parts of state and county emergency workers, "takes us back to the days before Three Mile Island. The Nuclear Regulatory Commission found that the reaction to Three Mile Island was hampered because there was no coordination between the utility and local officials. LILCO's plan also calls for no coordination with state or local officials."

FEMA officials, who will make public their preliminary findings at a news conference today, declined to comment on yesterday's briefing. Palomino was allowed to attend, along with Herbert Brown, a lawyer for Suffolk County, and John Shea, a lawyer for Southampton Town. The county and town, like the state, oppose opening the Shoreham plant.

Although Weismantle said that FEMA praised LILCO for its interaction with simulated state and county officials, Brown noted that, in fact, "there weren't any state or county officials participating," and charged: "This is the most dangerous form of fantasy playing."

State and Suffolk County officials have refused to participate in emergency planning for the plant, contending that the public could not be protected in a radiological emergency. State and federal courts, a Nuclear Regulatory Commission licensing board and an NRC appeals board have rebuffed LILCO's efforts to license Shoreham without state and local cooperation in emergency planning. But the issue is still under consideration by the regulatory commission, which asked FEMA to schedule the drill.

Shea described FEMA's briefing as "superficial and vague. They glossed over what happened with terms like 'excessive response time to highway impediment removal,' but didn't say

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what that is supposed to mean."

Weismantle said that the highway impediment was a simulated truck accident and that a FEMA evaluator said LILCO took too long to respond. "We are checking into this case," Weismantle said. "There was a response, but we think there may have been a line of sight problem that caused the FEMA person not to see the . . . [LILCO] person . . . A tow truck responded, but I can't say right now how long it took."

The drill was held without LILCO exercising any functions that require the legal authority it lacks — functions such as directing traffic, sounding sirens, and putting out messages over the emergency broadcast system. Of the 78 federal objectives in an emergency-plan drill, 27 require the exercise of legal authority. FEMA officials have said they will be unable to give "reasonable assurance" that the public can be protected by the plan because of the drill's limited nature.

LILCO lawyer Donald Irwin said that despite FEMA's position, the regulatory commision can grant a commercial operating license for Shoreham without another drill.

ATTACHMENT 3

NEWSPAPER N. Y. Times DATE 2-14-86 PAGE B2

Lilco Stages Shoreham Drill, as State and County Refuse to Attend

By CLIFFORD D. MAY
Special to The New York Times

RONKONKOMA, L.I., Feb. 13 — After months of contention between the Long Island Lighting Company and state and local governments, Lilco officials and employees today conducted a mock emergency at the nuclear power plant in Shoreham, L.I.

The federally supervised drill to test Lilco's responses to an emergency is one of the final steps in the process of obtaining a commercial license for Lilco's beleaguered $4.5 billion plant. For months it had appeared unlikely that such a test would be held since both New York State and Suffolk County, which oppose licensing the plant, had refused to participate.

But the Federal Nuclear Regulatory Commission and a Federal judge allowed Lilco to conduct the test using its own employees as stand-ins for state and county officials, the first time such a drill has been held in the United States without the participation of either state or county officials.

Herbert Brown, an attorney representing Suffolk County, said, "You can't safely evacuate this area," noting that there are few roads leading off Long Island.

The Opposing Positions

Lilco spokesmen respond that it would not be necessary to move people off the island. Citing Federal health guidelines, they said radiation would pose no threat to the health of those more than 10 miles from the plant.

Lilco's opponents say such regulations are irrelevant. "The reality of the situation would be a lot of people panicking, traffic congestion and accidents, mothers separated from their children at school," Mr. Brown said.

Suffolk County tried to block today's drill but a Federal judge ruled Monday that the county could not interfere with a "pre-empted Federal area."

The drill began at 5:40 A.M. when an "unusual event" was declared at the Shoreham plant in response to a mock emergency described by the Federal Emergency Management Agency to the Lilco official in charge at the plant.

138,000 People 'Evacuated'

By early afternoon, after a series of simulated mishaps, Lilco officials declared a "general emergency," and company workers and officials began the preparations prescribed in their five-volume emergency plan. By the end of the day more than 138,000 people had theoretically been evacuated from the area around the plant.

As in similar drills at other nuclear facilities, no civilians were actually moved. Other measures, such as the use of sirens and warnings to the public on the Emergency Broadcast System, were also simulated.

More than a hundred Federal observers monitored responses at the Shoreham plant and throughout the region.

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ATTACHMENT 4

LILCO to Cite Drill in License Push

By John McDonald

LILCO lawyers said they will press for an operating license based on the positive preliminary assessment of the Shoreham drill issued publicly yesterday by federal officials.

But Frank P. Petrone, regional director of the Federal Emergency Management Agency, reiterated that the lack of state and local participation in last week's evacuation drill for the nuclear plant meant that "the plan cannot be implemented and we cannot give 'reasonable assurance' that public health and safety can be protected."

Federal evaluators yesterday also gave examples of problems during Thursday's exercise, when the Long Island Lighting Co. simulated the evacuation of 138,000 residents from the 10-mile zone around the Shoreham plant during a mock reactor accident. The problems ranged from a power-plant worker who began the drill by taking a soda break to photocopying machines breaking and emergency bus drivers taking too long to pick up simulated evacuees.

None of the problems was termed serious and all can be corrected, FEMA and Nuclear Regulatory Commission evaluators said.

LILCO attorney Anthony Early said the utility will move quickly to hold hearings on the drill before an NRC licensing board.

"It will take about 45 days for FEMA's final report," Early said, "but in the meantime we can clear up procedural matters such as setting a timetable for the hearings."

The Shoreham exercise was opposed by the state, Suffolk County and Southampton Town, which all maintain that public safety cannot be protected during a radiological accident at Shoreham. Despite that opposition, the NRC called for the drill to help them decide whether the plant can be licensed.

Although LILCO has no legal authority to implement its emergency plan without state and local authority, LILCO is arguing in a real emergency state and local governments will respond. LILCO also maintains that the NRC can empower LILCO to implement the emergency plan.

Gov. Mario Cuomo, noting in a statement yesterday that the state does not have an emergency plan for Shoreham, said: "Under those circumstances, any attempt to license the plant on the basis of a response by the state would be irresponsible because it would lead to confusion at best, and chaos at worst and unnecessarily place the lives of a substantial number of people in great jeopardy."

Steven Latham, the lawyer representing Southampton Town in opposing Shoreham's opening, said Petrone's statement that the plan cannot be implemented narrows LILCO's chance of getting a license without state or local cooperation. But Petrone said he had only repeated what had been said before by him and other FEMA officials.

NRC officials have said that they, not FEMA have final word on whether the plan protects the public.

FEMA's chief drill evaluator was Roger Kowieleki, who was in charge of assessing offsite response. . "What we offer today are our initial impressions . . . overall management, good . . . Emergency response staff mobilized quickly and had good information," Kowieleki said.

Kowieleki, who said the final report will be ready in six weeks, noted that Emergency Broadcast System messages "should have included traffic flow information, there is a need for greater communication."

He said FEMA "instituted a message that there was an overturned gravel truck and there was some delay in response . . . the response was only able to handle part of the impediment due to a communications problem."

LILCO has maintained that the highway impediment clearing delay was caused by a "line of sight" problem that kept the LILCO traffic spotter from seeing the FEMA evaluator. FEMA evaluates the response outside the power plant site. At the power plant, the evaluation is done by the NRC.

The NRC's chief evaluator David J. Vito also complimented LILCO's performance. "It was obvious that these people have been doing this for a long time . . . They are well trained."

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Vito's said all of his criticism was "correctable." He noted that, "The first guy who shows up [at the Operational Support Center] got a coke and took a break instead of setting up the equipment for the center." Vito said LILCO workers also used LILCO data on radiation releases instead of available data from federal monitoring teams and that the assistant to the emergency response manager was saddled with too many extraneous duties.

LILCO vice president Ira Freilicher said he was pleased with the assessment. "The first purpose of the exercise was to make factual findings on . . . LILCO's ability to physically implement the plan. Today's announcement shows that the federal agencies found that it can be done and it was done."

Satisfactory

"Facilities and resources...very good...Emergency notification of [LILCO Emergency Organization] personnel, good...Internal Communications, clear and efficient...Clear and concise briefings conducted ...Overall management, good."

Roger Kowieski, chairman of FEMA's Regional Assistance Committee.

Needs Improvement

"Emergency Broadcast System messages should include flow of traffic information...Delays in clearing impediments to highway traffic...One bus driver took two hours to get to the Middle Island transfer point...A second driver completed his route only at the urging of federal authorities. These drivers need to be better trained."

"In overall terms, the LILCO team performed very well during the drill. It is obvious that these people have been doing their jobs for a long time. They are well trained. There are a few items that call for improvement but these are all easily corrected."

David J. Vito, chief NRC observer at Shoreham drill

"Personnel in the Emergency Operations Facility were reviewing radiation data...using only LILCO information instead of utilizing information gathered by Brookhaven Lab personnel...At the Operational Support Center...the first guy who showed up got a Coke and took a break...The assistant to the Response Manager...was pulled away on other tasks."

"I thank everyone for their cooperation and I offer my congratulations to [LILCO Emergency Organization] for their dedicated work during the drill...We feel that here at Shoreham, state and local government will respond in a real emergency."

Frank P. Petrone, FEMA regional director.

"This exercise was without state and local government participation...We cannot measure the adequacy of state and local response...Our report will be on what actually happened...We cannot give a finding of reasonable assurance that the public health and safety can be protected."