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OFFICE OF SECRETARY  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

OPPOSITION OF SUFFOLK COUNTY, THE STATE OF  
NEW YORK, AND THE TOWN OF SOUTHAMPTON TO LILCO'S  
MOTION FOR SUMMARY DISPOSITION  
OF CONTENTION 10 (ACCESS CONTROL AT THE EPZ PERIMETER)

On December 18, 1987, LILCO filed a Motion for Summary Disposition of Contention 10 (Access Control at the EPZ Perimeter) (the "LILCO 10 Motion" or "Motion"). Suffolk County, the State of New York and the Town of Southampton (the "Governments") hereby respond in opposition to LILCO's Motion and submit that the Motion should be denied. The Affidavit of County Executive Patrick G. Halpin and the 1988 Affidavit of Assistant Chief Inspector Richard C. Roberts and the Governments' Statement of Issues of Material Fact in Dispute (the "Governments' Statement") are submitted herewith in support of this Opposition. In addition, the Overview Memorandum in Support of Governments'

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Opposition to LILCO's Motions for Summary Disposition of Contentions 1-2 and 4-10 ("Governments' Overview"), filed simultaneously herewith, also supports this Opposition. The matters addressed in the Governments' Overview will not be repeated in detail herein.

### I. BACKGROUND

For the purposes of LILCO's Motion, Contention 10 concerns the issue of controlling access to evacuated areas.<sup>1/</sup> The contention reads as follows:

LILCO is prohibited by law from performing law enforcement functions at the EOC, at relocation centers, and at the EPZ perimeter. N.Y. Penal Law Sections 190.25(3), 195.05, 240.20(5) (McKinney); N.Y. Transp. Corp. Section 30 (McKinney). N.Y. Veh. & Traf. Law Sections 1102, 1602 (McKinney); N.Y. Exec. Law Section 20 et seq. (McKinney). The LILCO Plan identifies LILCO employees as being responsible, during an emergency, for establishing and maintaining security and access control for the EOC, directing traffic into the relocation centers, and establishing and maintaining perimeter/access control to evacuated areas. (OPIP 2.1.1, at 60-61; Plan, Appendix A at IV-8; OPIP 3.6.3, Attach. 4.) Section 50.47(b)(1) of 10 C.F.R. requires LILCO to demonstrate that it "has staff to respond and to augment its initial response on a continuous basis." LILCO must also specify the functions and responsibilities for major elements . . . of emergency response," including law enforcement response. NUREG-0654 Section II.A.2.a. Without the ability to provide security at the EOC and relocation

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<sup>1/</sup> LILCO's Motion correctly states that the Governments are not pursuing that portion of Contention 10 pertaining to security at reception centers.

centers, and provide perimeter control, the LILCO Plan and the protective actions contemplated therein could not and would not be implemented. The Plan thus fails to comply with 10 C.F.R. Sections 50.47(b)(1) and 50.47(b)(10), and NUREG-0654 Sections II.A.2.a, II.J.9 and J.10.

Several LILCO attempts to obtain summary disposition on Contention 10 have already failed, the most recent being LILCO's Second Renewed Motion for Summary Disposition of the "Legal Authority" Issues (Contentions EP 1-10) (March 20, 1987).<sup>2/</sup> At that time, LILCO relied heavily, as it does in the instant Motion, on the so-called "best efforts" principle to support its assertion that a response by the State and County to a radiological emergency at Shoreham would necessarily be adequate and that, therefore, summary disposition on Contentions 1-10 should be granted. See September 17 Order.<sup>3/</sup> The Board rejected LILCO's assertion that the "best efforts" assumption justified a ruling in LILCO's favor:

LILCO in its motion would have the Board accept that all questions related to how a response specified by the 10 contentions will be implemented is to be answered by reliance

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<sup>2/</sup> The truth of the contention -- that LILCO lacks the required legal authority to implement access control -- has also been decided in favor of the Governments. Cuomo v. Long Island Lighting Co., Consol. Index No. 84-9644 (1985), aff'd, 511 N.Y.S. 2d 857 (1987), appeal pending.

<sup>3/</sup> Memorandum and Order (Ruling On Applicant's Motions of March 20, 1987 for Summary Disposition of the Legal Authority Issues and of May 22, 1987 for Leave to File a Reply in Interpreting Rulings Made by the Commission in CLI-86-13 Involving the Remand of the Realism Issue and Its Effect on the Legal Authority Question), Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-26, \_\_\_ NRC \_\_\_ (September 17, 1987).

on the Commission's "best efforts" assumption under which the Governments would have no choice but to respond in conformance to LILCO's plan and delegate to it the authority it needs to implement a response. LILCO's Statement of Facts contains nothing that would compel that conclusion.

We have found that the "best efforts" assumption is rebuttable in this case to the extent that it leaves open the question of the adequacy of response. We do not accept LILCO's argument because we are not free to gloss over important factual matters by assumption without inquiry into the factual basis for that assumption. The Commission itself was unwilling to take that step in CLI 86-13 where it raised factual questions relating to the adequacy of performance of the State and County Governments in an emergency response under the "best efforts" assumption. Our analysis of the 10 contentions earlier in this decision reaches the conclusion that there remain factual questions of adequacy of the Governments' response for each of them. Furthermore LILCO's belief that the "best efforts" assumption compels but a single conclusion favorable to itself has been controverted by the Intervenor's in their response to LILCO's motion because while the State and County Governments do not deny that they would respond to an emergency with their best efforts they assert that there is no basis in this motion or in the record thus far compiled for determining the nature and adequacy of their response.

September 17 Order, at 45-46 (emphasis added).

In short, the Board found that the "best efforts" assumption does not obviate the need to consider and resolve genuine issues of fact about the nature and adequacy of a governmental response

-- even assuming that that response is made using "best efforts." Indeed, with respect to Contention 10, the Board recognized several questions not answered by the "best efforts" assumption:

Whether or not the public can effectively be kept out of contaminated areas or areas threatened with imminent contamination is clearly a health and safety issue. What would occur if the local authorities were attempting to enforce one situation while LILCO was "advising" another; what standards would the local authorities use for exclusion and over how wide an area; how would these organizations interact and to what end? All these questions must be answered before we can properly decide whether we have reasonable assurance that health and safety will be protected.

September 17 Order, at 40.

The new emergency planning rule, 10 CFR § 50.47(c)(1)(iii), upon which LILCO now relies in support of its Motion, does not alter the Board's conclusion that the "best efforts" assumption is not determinative of all issues regarding the nature and adequacy of a governmental response. See Governments' Overview, Section III. Nevertheless, LILCO, in its Motion, stubbornly continues to seek summary disposition of Contention 10 by arguing, as it has in the past, that access control implemented by the Suffolk County Police Department ("SCPD"), using its "best efforts," would necessarily be adequate. This worn, recycled and discredited argument, however, has previously been rejected by the Board, and must now be rejected again. The primary reason

for this result is that LILCO ignores outstanding issues which must be resolved (including those recognized by the Board in its September 17 Order) before summary disposition can even be considered. Moreover, the Roberts 1988 Affidavit establishes that even if the SCPD did attempt to implement access control using its "best efforts," such efforts might not be adequate.<sup>4/</sup>

For instance, there are no plans or preparedness on the part of the SCPD for implementing access control in a radiological emergency; no meaningful familiarity with the LILCO Plan; no radiological protection training for SCPD personnel; no County or SCPD standards for determining the area to be controlled; no assurance that sufficient personnel would be available given the large geographic scope of the task involved in access control and the other duties which the SCPD might be required to attempt to implement in the event of a Shoreham emergency; no assurance that means exist for coordination between the Suffolk County Police and LILCO or LERO; no indication of what access control strategies would actually be implemented by the SCPD; and no assurance that the police would or could mobilize quickly enough for access control to be effective. See Roberts 1988 Affidavit, ¶¶ 5-10, 13, 16, 22-28. As these facts demonstrate, the issues raised by the Board in its September 17 Order, as well as other

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<sup>4/</sup> It also is established that no Suffolk County personnel, including the SCPD, would respond pursuant to LILCO's Plan or would rely upon or work with LILCO personnel. Halpin Affidavit, ¶¶ 4-6, 8-9, 11, 15; see Governments' Overview, Section III.

issues raised herein, must be considered and addressed before there can be a decision on the merits of LILCO's Motion. Accordingly, summary disposition in LILCO's favor cannot be granted.

Other asserted grounds are raised by LILCO in favor of its Motion. Of these, the most preposterous is LILCO's claim that the issue raised in its Motion has already been litigated. These LILCO arguments, addressed in greater detail below, are specious and unworthy of serious Board consideration. Again, they compel the denial of LILCO's Motion.

## II. DISCUSSION

### A. Contention 10 Is Not Restricted to "Short-Term" Access Control

As a preliminary matter, LILCO claims, for the first time since Contention 10 was filed in 1983, that the contention should be limited to what LILCO deems "short-term" access control (i.e., control of the EPZ perimeter only at the time of an evacuation) and that the contention should not be interpreted to include "long-term" access control (i.e., control of access to an already evacuated area). LILCO 10 Motion at 2. This transparent and baseless attempt by LILCO to narrow the contention beyond its intended and acknowledged bounds must be rejected for multiple reasons.

First, the argument is grossly untimely. This is the first time that such a narrow interpretation of Contention 10 has ever been raised by LILCO. If LILCO truly believed that the contention should be so limited, it should have raised that issue much earlier, not in its fourth attempt at summary disposition of the contention.

Second, nothing in the wording of the contention even remotely suggests the artificial distinction that LILCO now raises. The contention discusses access control "during an emergency," not during only one phase of an emergency. In addition, the contention specifically refers to, among other things, "establishing and maintaining perimeter/access control to evacuated areas" (emphasis added). Thus, it is clear that the contention was intended to cover not only "short-term" access control, but also access control during the post-evacuation stage of an emergency.<sup>5/</sup>

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<sup>5/</sup> LILCO also asserts that Section J.10 of NUREG 0654 (regarding the plume exposure pathway), rather than Section J.11 (regarding the ingestion pathway), supports LILCO's argument that Contention 10 concerns only "short-term" access control. LILCO 10 Motion at 2, n.2. This assertion is logically incoherent. The pathways referenced in Sections J.10 and J.11 are geographical areas, while the artificial "short-term"/"long-term" distinction which LILCO attempts to create is temporal. The logic of LILCO's leap from one to the other is not explained and thus is a mystery known only to LILCO. The obvious reason that Section J.11 was not cited in Contention 10 is that access control of the perimeter of the ingestion pathway (which is several times larger than the plume exposure pathway) is not part of the contention.



B. The Issues Raised in LILCO's Motion Have Never Been Litigated

Applying its unwarranted "short-term"/"long-term" distinction, LILCO next argues that the adequacy of "short-term" access control has already been litigated and decided in LILCO's favor. Thus, LILCO concludes, the Governments are barred from litigating any matter pertaining to access control ever again. See LILCO 10 Motion at 3-4. This argument is specious. As LILCO well knows, entirely different facts and issues were in controversy in the earlier litigation. LILCO ignores that fact and, in doing so, misleads the Board.

The proceeding which LILCO claims resolved the issue of access control in LILCO's favor concerned Contention 23.H. It is true that Contention 23.H was resolved in LILCO's favor in this Board's Partial Initial Decision ("PID"), 21 NRC 544, 804-05 (1985). However, the prior litigation took place in a factual context completely different from the circumstances presented here. Specifically, the litigation on Contention 23.H concerned the adequacy of perimeter control to be implemented by LILCO personnel in accordance with the LILCO Plan. The current focus of LILCO's Motion, however, is implementation of access control by the SCPD in the context of LILCO's affirmative defense to Contention 10. The Board in the September 17 Order acknowledged that it was the Governments' performance that now is at issue. September 17 Order at 40.

Not only are the personnel who are relied upon to implement access control different in the current proceeding, but there are several other factual differences as well. For instance, in the litigation on Contention 23.H, the LERO Traffic Guides assigned to implement access control were assumed to be familiar with the LILCO Plan and trained to implement it. See, however, Exercise Decision, LBP-88-2 (Feb. 1, 1988) (LERO Traffic Guides' inability to mobilize promptly and inability to communicate effectively deemed to be "fundamental flaws," among others, in LILCO's Plan). See also Governments' Overview, Section VI (Exercise Decision compels rejection of LILCO Motions). There is no evidence in the current record, however, that the SCPD is familiar with the LILCO Plan or is prepared and trained to implement its provisions regarding access control -- whether under the LILCO Plan or any other plan. Indeed, the opposite is the case. See Roberts 1988 Affidavit, ¶¶ 5-9, 22-23; Halpin Affidavit, ¶¶ 9, 14 n.6.

Moreover, in contrast to the earlier hearing regarding LILCO's capabilities, there is no evidence before this Board regarding the types of access control strategies the SCPD would attempt to implement, what geographic areas would be covered, whether the strategies implemented would or could be coordinated with other responding organizations (especially LILCO), and whether the SCPD could mobilize quickly enough to implement access control effectively. See September 17 Order, at 40; Roberts 1988 Affidavit, ¶¶ 5-10, 13, 16, 22-28.

In light of the foregoing, and LILCO's utter failure to even attempt to discuss how the earlier Plan litigation under Contention 23.H is similar to the issues now before the Board by virtue of LILCO's Motion, LILCO's argument that the Governments are barred from raising issues about the nature and adequacy of a "best efforts" governmental response is absurd. Furthermore, it flies in the face of the Board's September 17 Order. Accordingly, LILCO's argument should be rejected out of hand.<sup>6/</sup>

**C. The Absence of Effective Access Control Would Violate the NRC's Regulations and Guidance**

LILCO also argues that SCPD testimony submitted in the earlier emergency planning hearing concerning the inherent difficulty of effective access control in the event of a Shoreham

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<sup>6/</sup> LILCO also claims that summary disposition is appropriate because "virtually identical contentions have been ruled inadmissible." LILCO 10 Motion at 4. This argument is equally baseless, not to mention untimely. The two contentions which LILCO relies on were ruled inadmissible because the Board rejected the assumption that the SCPD would "refuse to provide reasonable and appropriate protection." The issue here, however, is whether a "best efforts" response would be adequate and provide the basis for the required Section 50.47(c)(1)(iii) reasonable assurance finding. Even if such a response is assumed, there is no basis at this time to determine that it would be adequate. The Board recognized this fact in its September 17 Order, and thus LILCO's "inadmissibility" claim is baseless.

In any event, LILCO's argument is untimely. Contention 10 and LILCO's "realism" argument have been in existence for a number of years now. If LILCO's argument had any merit, it would -- and should -- have been raised well before now.

emergency is proof that LILCO's inability to ensure effective access control is not significant and would not "jeopardize the public health and safety." LILCO 10 Motion at 3-4. This argument (which is simply another version of LILCO's discredited immateriality argument) defies the September 17 Order and the NRC's own regulations and guidance, not to mention logic and common sense.

First, the law of the case is that access control is required. The Board has ruled it to be a "health and safety issue." September 17 Order, at 40. It is absurd for LILCO to suggest it does not matter.

Second, Section 50.47(a)(1) of the NRC's regulations requires a finding of "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Section 50.47(b)(10) further requires "[a] range of protective actions" for the public and that "[g]uidelines for the choice of protective actions during an emergency . . . are developed and in place . . . ."

Pursuant to these regulatory requirements, Section J.10.j of NUREG-0654 requires "[c]ontrol of access to evacuated areas . . . ." The provision does not say that access control need not be planned for and implemented if doing so would be difficult, and LILCO offers no authority to support its implied argument

that a regulatory standard should be relaxed if it would be difficult to meet. Of course, no such authority exists. The NRC's standards are plain -- access control is a planning requirement and the failure to provide effective access control is a failure to meet those standards. If LILCO, by its argument, is now conceding that access control cannot be implemented effectively in the event of a Shoreham accident, then it is also conceding that it is unable to meet the Commission's regulations and a license should accordingly be denied.

D. There Are Numerous Issues of Material Fact in Existence Which Are Not Resolved by the "Best Efforts" Principle

Turning now to LILCO's principal argument, LILCO argues that the "best efforts" principle of 10 CFR § 50.47(c)(1) "compels the conclusion that the police would provide long-term access control if necessary." LILCO 10 Motion at 5-6.<sup>1/</sup> On the basis of that assumption, LILCO simply concludes, without factual basis, that the SCPD is capable, prepared, trained, and equipped to implement access control in a radiological emergency. In leaping to this conclusion, however, LILCO once again places excessive reliance

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<sup>1/</sup> By addressing its argument only to "long-term" access control and ignoring "short-term" access control, LILCO appears to concede that application of the "best efforts" assumption to "short-term" access control does not necessarily lead to the conclusion that an SCPD response under such circumstances would be adequate. In any event, as stated above, the Board must reject the artificial "short-term"/"long-term" distinction developed by LILCO and address all phases of an emergency in which access control is required.

on the "best efforts" principle and ignores many issues which must be resolved before this Board can decide Contention 10 on the merits.

The law applicable to summary disposition was recently summarized by this Board in its September 17 Order and by the Vogtle Board in its unpublished Memorandum and Order of October 3, 1985. See Memorandum and Order (Ruling on Motion for Summary Disposition of Contention 8 re: Vogtle Quality Assurance), Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), ASLBP No. 84-499-01-OL, Doc. Nos. 50-424 OL and 50-425 OL (Oct. 3, 1985), slip op. at 2-3.

A licensing board is empowered to grant summary disposition if it finds that "there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 CFR § 2.749(d). The party seeking summary disposition has the burden of proving the absence of any genuine issue of material fact, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977), with the record viewed in the light most favorable to the party opposing the motion. Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982) (emphasis added). LILCO has not met its burden of demonstrating an absence of material factual issues. In fact, many genuine issues of material fact exist.

LILCO begins the "best efforts" sections of its Motion by claiming that the SCPD has already "made preparations for establishing access control" in a radiological emergency at Shoreham. LILCO 10 Motion at 7. In support of this assertion, LILCO relies on an attachment to testimony submitted by the SCPD on Contention 23.H in connection with the earlier emergency planning hearing. Id. at Att.2. LILCO's reliance on the referenced list, however, is unsupportable. First, the list was prepared approximately four years ago in the context of the previous hearing, which assumed that LILCO personnel would be implementing access control and that the 10-mile EPZ was the perimeter at issue. A response by the SCPD, however, would not utilize the LILCO Plan<sup>8/</sup> and therefore would not be guided by the perimeter and access control locations that LILCO has defined in its Plan. Thus, even if the SCPD were to attempt to implement access control in a Shoreham accident, the geographic area to be controlled could be completely different than that defined by LILCO's EPZ. Under such circumstances, the list at issue would be entirely inapplicable to determining where access control would actually be needed. See Roberts 1988 Affidavit, ¶ 22.

Second, LILCO's attempt to equate the preparation of a list for a hearing on the LILCO Plan with actual preparedness to implement traffic control is unfounded. Actual preparation includes issues of planning, adequate personnel, timely mobiliza-

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<sup>8/</sup> Halpin Affidavit, ¶¶ 4-6, 8-9, 11, 15.

tion, training, coordination, and other issues -- none of which has been addressed by the SCPD with respect to access control during a Shoreham emergency. If access control were in fact attempted by the SCPD, it would therefore be ad hoc with unknown results. Roberts 1988 Affidavit, ¶ 23; Halpin Affidavit, ¶ 9.

Third, the list at issue was prepared approximately four years ago. Even if it were still applicable, it could well be outdated due to development which has occurred in Suffolk County over that time period. Roberts 1988 Affidavit, ¶ 24.

LILCO also asserts that under the "best efforts" assumption, the County "would be willing to coordinate with LERO and other response organizations . . . to effect access control" and that "[t]here is no reason to believe that the process of identifying access control points could not be undertaken during the latter stages of the evacuation . . . ." LILCO 10 Motion at 7. Then, arguing that this process was simulated during the February 1986 Exercise using a simulated police official, LILCO comes to the remarkable conclusion that "the ability of LERO to work with the police in a coordinated fashion has been demonstrated." LILCO 10 Motion at 7 (emphasis added). Once again, LILCO places more weight on the "best efforts" principle than it can carry.



First, the 1986 Exercise demonstrated nothing about how LERO would work with police. The 1986 demonstration involved simulators playing totally passive roles. See Governments' Overview, Section VI. Second, any reliance by LILCO on any demonstration of LERO competence arising out of the Exercise is clearly wrong, given the February 1 Exercise Decision. See Governments' Overview, Section VI.

Third, as the Board stated in its September 17 Order (at pages 45-46), even if a "best efforts" response is assumed, one cannot take the further leap, as LILCO continually does, of concluding that that effort will be adequate. Indeed, in relying on the SCPD's asserted willingness to coordinate with other organizations, LILCO has ignored the many unresolved issues expressly raised by the Board in its September 17 Order, such as "how would these organizations interact and to what end"; "what standards" would be used "for exclusion" and "over how wide an area"; and other similar questions. Id. at 40. Other pertinent issues are raised by the Roberts 1988 Affidavit, including the absence of any SCPD means or mechanism to coordinate activity with LILCO. See Roberts 1988 Affidavit, ¶¶ 7, 13, 16; see also ¶¶ 22-28.

LILCO's Motion also appears to assume that the SCPD will be able to mobilize sufficient numbers of police officers rapidly enough to implement access control effectively. See LILCO 10

Motion at 6. This assumption, however, is without factual basis. If, as LILCO argues elsewhere, the SCPD were expected to implement traffic control and perform other necessary police functions, it is questionable whether sufficient additional personnel could be placed in the field to provide access control over the very large geographic area which could be involved in a radiological emergency.<sup>9/</sup> Even if it were assumed, contrary to fact, that sufficient personnel were available, there is no assurance that sufficient personnel could be mobilized quickly enough to implement adequate access control. While it is true, as LILCO states, that the SCPD has provided access control in response to some prior disasters, the SCPD has never attempted to exercise access control over as large an area as could be involved in a radiological emergency. Roberts 1988 Affidavit, ¶¶ 21, 25, 28.

LILCO also asserts that LERO Traffic Guides might supplement the SCPD in implementing access control "acting under the authority of the police." LILCO 10 Motion at 6. Suffolk County, however, could not and would not grant LERO traffic guides such authority. Halpin Affidavit, ¶ 7; Roberts 1988 Affidavit, ¶ 26; see also the Governments' Overview, Section V. Further, even if it were lawful for the Governments to grant LILCO such authority,

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<sup>9/</sup> LILCO cites NUREG 0654, Supp. 1 at page 2 for the proposition that it should be assumed that a local government has the resources sufficient to implement the portions of the utility plan assigned to it. See Governments' Overview, Section VII, for multiple reasons why the draft 0654 supplement must be ignored.

the Exercise Licensing Board's recent finding that the LERO emergency workers were inadequately trained "amateurs" underscores further that Suffolk County could never rely on LERO. Exercise Decision, at 63-64; see Halpin Affidavit, ¶ 7.

LILCO also argues that the SCPD's "'best efforts' would certainly be adequate to protect the public health and safety," because people will have a strong incentive to stay out of radioactively contaminated areas. LILCO 10 Motion at 7-8. However, while it is undoubtedly true that many people will not want to enter a supposedly contaminated area, others will have a strong motivation to enter the area for such reasons as to locate family members, to obtain belongings, or to protect property. See Roberts 1988 Affidavit, ¶ 28. The existence of this strong motivation to enter contaminated areas is evidenced by the requirement that there must be effective means to control the entry of people into an evacuated area. See NUREG 0654 § J.10.j.<sup>10/</sup>

In light of the foregoing, it is plain that there are numerous issues of material fact which must be resolved before this Board can decide Contention 10 on the merits. Those issues are summarized in the Governments' Statement of Issues of Material

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<sup>10/</sup> LILCO's further assertion (LILCO 10 Motion at 8) that "[m]erely making available the information about what areas should be avoided would be sufficient" is clearly wrong in light of Section J.10.j of NUREG 0654, which requires access control.

Fact in Dispute, attached hereto. In addition, this Opposition, the Halpin Affidavit, and the Roberts 1988 Affidavit demonstrate clearly that all three of LILCO's alleged "undisputed" facts (see Attachment 1 to LILCO's Motion) are, in fact, in dispute. Accordingly, summary disposition is inappropriate and LILCO's Motion must be denied.

E. LILCO Has Ignored the Board's Concerns Regarding Access Control

It is also noteworthy that LILCO's Motion gives very little attention to the concerns expressed in the Board's September 17 Order. In less than a single page, LILCO attempts to sweep all those concerns aside by merely changing the words "best efforts." See LILCO 10 Motion at 8. The Board's September 17 Order, however, has already informed LILCO that the words "best efforts" do not magically eliminate existing factual issues about the nature and adequacy of a governmental response. LILCO has apparently not understood the Board's message.

For instance, LILCO states:

The Board, in denying LILCO's Second Renewed Motion, noted that "[w]hether or not the public can effectively be kept out of contaminated areas or areas threatened with imminent contamination is clearly a health and safety issue." Memorandum and Order, at 40 (Sept. 17, 1987). But since under the "best efforts" principle the police would maintain EPZ perimeter control, the public would be effectively kept out of the evacuated area.

GOVERNMENTS' STATEMENT OF ISSUES  
OF MATERIAL FACT IN DISPUTE

1. Whether the Suffolk County Police Department ("SCPD") is familiar with LILCO's access control plan and strategies.
2. Whether the SCPD's lack of familiarity with LILCO's access control plan and strategies would negatively affect the implementation of access control.
3. Whether the SCPD has made any plans or preparations to implement access control in the event of a radiological emergency at Shoreham.
4. Whether the lack of such plans or preparations to implement access control would negatively affect the implementation of access control during a Shoreham emergency.
5. Whether the SCPD would use the LILCO Plan in implementing access control.
6. What would occur if local authorities were attempting to enforce one situation while LILCO was advising another?
7. What access control strategies would the SCPD use?
8. What standards would the local authorities use for exclusion and over how wide an area?

LILCO 10 Motion at 8. Thus, LILCO does precisely what the Board said it cannot do -- summarily assume that a "best efforts" response would necessarily be adequate, timely and effective. LILCO's stubborn refusal to heed the Board's concerns and respond to them should not be countenanced by this Board. The new rule does not in any way relieve this Board of the obligation to pursue the factual issues which have been identified. See Governments' Opposition, Section III.

With respect to the remainder of the concerns expressed by the Board in its September 17 Order, LILCO argues that the questions "have already been answered" or are addressed in "other contentions" (although Contention 8 is the only one specifically mentioned). LILCO 10 Motion at 8. The paucity of LILCO's argument again demonstrates that it is not to be taken seriously. Simply put, LILCO does not demonstrate how the Board's concerns are answered. In the absence of any such showing, the Governments are at a loss to understand what LILCO is talking about. Nowhere in the Motion itself does LILCO address the Board's concerns. It merely recites the words "best efforts" with each breath, hoping that by doing so all factual issues will magically go away. Likewise, LILCO's summary disposition motion on Contention 8 is silent on the issues raised by the Board and the Governments concerning the nature and adequacy of a SCPD response. Thus, it provides no support to LILCO.

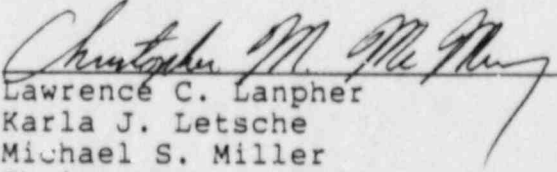
In light of LILCO's refusal -- or inability -- to address the Board's concerns, LILCO's Motion must be denied.

III. CONCLUSION

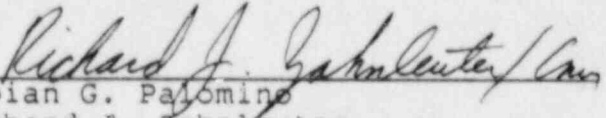
For the foregoing reasons, LILCO's Motion should be denied.

Respectfully submitted,

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9. How would the response organizations involved interact and to what end?

10. Whether the SCPD's response would be affected by the absence of radiological protection training or equipment.

11. Whether the SCPD could mobilize sufficient personnel rapidly enough to implement access control effectively.

12. Whether the SCPD has sufficient personnel to implement access control given the large geographic area likely to need coverage.

13. Whether the SCPD ever would or could authorize LERO Traffic Guides to implement access control.

14. Whether a "best efforts" governmental response would satisfy the requirements of 10 CFR 50.47(a)(1) and (b)(10).

15. Whether a "best efforts" governmental response would satisfy NUREG 0654 § J.10.j.

16. Whether a "best efforts" governmental response would adversely affect the public health and safety in terms of reduced dose savings.