

DOCKETED
February 10, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 FEB 17 AIO:16

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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

SUFFOLK COUNTY, STATE OF NEW YORK
AND TOWN OF SOUTHAMPTON RESPONSE TO
LILCO'S MOTION FOR SUMMARY DISPOSITION
OF CONTENTIONS 7 AND 8 (INGESTION
PATHWAY AND RECOVERY AND REENTRY)

Suffolk County, the State of New York and the Town of Southamton (the "Governments") hereby respond to LILCO's Motion for Summary Disposition of Contentions 7 and 8 (Ingestion Pathway and Recovery and Reentry) ("LILCO 7/8 Motion"). For reasons described below, as well as those in the Governments' Overview,^{1/} the Motion must be denied.

In the instant Response, we address two primary reasons for rejection of the 7/8 Motion. First, LILCO fails to deal with the actual issues identified by the Board in its September 17 Order:

^{1/} Overview Memorandum in Support of Governments' Opposition to LILCO's Motions for Summary Disposition of Contentions 1-2 and 4-10, Feb. 10, 1988 ("Governments' Overview").

the nature and adequacy of the Governments' "best efforts" response; and whether there is a factual basis to find that the response would satisfy the Section 50.47(c)(1)(iii) "reasonable assurance" standard.^{2/} Since LILCO has set forth only unsupported assertions, it clearly has failed to meet its burden of proof, and the Motion must be denied.^{3/}

Second, LILCO's 7/8 Motion proceeds from a fundamental misunderstanding regarding how ingestion pathway and recovery and reentry activities are planned and carried out. LILCO's Motion makes it appear as if these activities are simple to plan and implement. Exactly the opposite is the case: they require detailed, site-specific pre-planning of a type not even mentioned by LILCO. Since this has not occurred for Shoreham, there clearly is no basis upon which the Board could grant LILCO's Motion. Rather, as set forth in the Statement of Material Facts in Dispute which is attached to this Response, there are multiple factual issues in dispute which require denial of the Motion.

^{2/} See 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 and 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 _____ (Sept. 17, 1987) (hereafter, "September 17 Order").

^{3/} See Governments' Overview, Section IV, for a discussion of why LILCO has the burden of demonstrating that it complies with the regulations.

I. LILCO's Motion Ignores the Law of this Case

LILCO's 7/8 Motion must be rejected because it disregards -- indeed, never even deals with -- this Board's prior ruling that there are material factual issues which must be resolved on Contentions 7 and 8. Since LILCO has proceeded without even attempting to address the guiding law of the case, the Motion must be denied.

On September 17, 1987, this Board issued rulings on Contentions 7 and 8 establishing the law that must be applied. Thus, in rejecting LILCO's March 1987 summary disposition motion on these contentions, the Board stated with respect to Contention 7:

Here the question is one concerning exactly what would occur if LILCO proceeded independently while the State and local Governments did something unspecified to further the same ends.

It is by no means clear to the Board at this time that the two groups would not work at cross purposes, nor is it clear that if LILCO simply withdrew the resulting actions by the Governments, presently unspecified, would comply with NRC regulations. Thus we cannot grant summary disposition on Contention 7.

September 17 Order at 38. With respect to recovery and reentry issues, the Board rejected LILCO's summary disposition motion in the following words:

Addressing Contention 8, the Applicant alleges that this Board has already found that recovery and reentry decisions would be made

by a committee, that LILCO would invite participation on that committee by State and local authorities, and that the committee would have time to deliberate and decide what it should recommend. Given these findings and a "best efforts" assumption, Applicant says, there exists no litigable issue over whether the plan would work. (Motion at 27, citing 21 NRC 644, 880). We see no logical nexus. The possible participation by local authorities and the "best efforts" assumption do not combine to assure that proper reentry and recovery procedures will either be evolved or enforced without some knowledge concerning who will decide and by what standards. We must agree with the Intervenor's position that the record does not support a conclusion that the proper decisions, recommendations, or action concerning recovery and reentry would materialize.

Id. at 38-39.

LILCO ignores these issues in its 7/8 Motion. Indeed, LILCO does not even mention the September 17 Order or how the 7/8 Motion purports to address these issues which were specifically identified by the Board. Since LILCO has not attempted to explain why that earlier decision is not still valid, the present Motion must be denied as well.

Although LILCO never mentions the September 17 Order, LILCO proceeds as if the September 17 Order can be summarily reversed -- without even being discussed -- by LILCO's reliance on the so-called "best efforts" principle. See LILCO 7/8 Motion at 2. Thus, by ritualistic invocation of the words "best efforts,"^{4/} as well as similar assertions to the effect that the Governments

^{4/} See LILCO 7/8 Motion at 2 (twice), 5, 6, 9, 14 (twice), 19 (twice), 24, 25.

would take particular actions in the event of an emergency, LILCO urges the Board to find in LILCO's favor.

The Board must reject LILCO's erroneous and factually unsupported assertions. The same types of assertions regarding the Governments' response have previously been made by LILCO and, as noted above, were rejected in the September 17 Order. As the Board made clear therein, the "best efforts" principle does not permit the Board to license on the basis of a "response theorized . . . without a factual basis." September 17 Order at 26. LILCO has added no new factual bases to attempt to answer the questions posed by the Board. See September 17 Order at 38. Further for reasons discussed at length in the Governments' Overview, the NRC's amendment of 10 CFR Section 50.47(c)(1) does not alter the law of the case as enunciated initially in CLI-86-13, 24 NRC 22 (1986), and reaffirmed by this Board in the September 17 Order and then again on October 29, 1987.^{5/} See Governments' Overview, Section III. Therefore, since LILCO has plainly failed to provide any rationale why the September 17 Order should be disregarded, the Motion must be denied.

It also must be stressed that LILCO's assertions that the Governments will use LILCO's Plan or work with LILCO personnel in connection with an ingestion pathway or recovery and reentry response are devoid of any support in the record. To the contrary, the Governments have made clear that they will not rely

^{5/} Memorandum and Order (Ruling on Applicant's Motion of October 5, 1987 for Reconsideration and Other Relief), Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-29, ___ NRC ___ (Oct. 29, 1987).

on LILCO's Plan or rely upon LILCO's personnel. Cuomo Affidavit ¶ 3; Halpin Affidavit ¶ 4. See Governments' Overview, Section III. LILCO's assertions, therefore, have been disputed. This is an additional reason why the 7/8 Motion must be rejected.

II. LILCO's Motion Demonstrates that LILCO
Does Not Understand the Fundamentals
of Ingestion Pathway and Recovery and
Reentry Planning

LILCO's 7/8 Motion must be rejected for a second fundamental reason -- LILCO's assertions about ingestion pathway and recovery and reentry matters are just plain wrong. Indeed, as documented in the REPG Affidavit, LILCO's Motion reflects a serious misconception of how ingestion pathway and recovery and reentry response proceeds. E.g., REPG Affidavit ¶¶ 5-10.

LILCO's 7/8 Motion takes the form primarily of a lengthy exegesis on the New York State Radiological Emergency Preparedness Plan for Commercial Nuclear Power Plants ("New York State Plan"). Based on the inferences LILCO draws from the New York State Plan, LILCO speculates about what the State and counties "would" do in the ingestion pathway and recovery and reentry phases of a response to a Shoreham accident. Yet, LILCO's speculation is factually wrong. In particular, LILCO misapprehends the true nature of the New York State Plan and fails to account for the detailed site-specific planning which must be part of any adequate response pursuant to that Plan. In fact, LILCO's Motion is nothing but a collection of unfounded assertions which, taken as a

whole, describe a fantasy rather than a realistic response scenario.

The Governments have submitted the Affidavit of James D. Papile, James C. Baranski and Lawrence B. Czech. These three affiants are emergency planners with the New York State Radiological Emergency Preparedness Group ("REPG"). The REPG Affidavit establishes that the New York State Plan does not work the way LILCO postulates. Moreover, of the purported facts of which LILCO claims there is no genuine issue to be heard ("LILCO Facts"), the REPG Affidavit identifies a substantial number which are either wrong or irrelevant, or both. See REPG Affidavit, Section IV. Indeed, because there is at a minimum a sharp disagreement as to how the New York State Plan works, including the response by counties in conjunction with that Plan, there are clearly genuine issues of material fact concerning the ingestion pathway and recovery and reentry phases of a response to a Shoreham accident. See the attached Statement of Material Facts in Dispute. A motion for summary disposition is not the proper procedural vehicle for resolving factual disputes. LILCO's 7/8 Motion must therefore be denied.

The Governments highlight below a number of LILCO assertions which document LILCO's fundamental lack of understanding of how an ingestion pathway or recovery and reentry response is undertaken. These examples underscore that there is no basis for granting LILCO's Motion.

First, LILCO summarizes its entire argument when it states that for the ingestion pathway and recovery and reentry phases:

Counties, for the most part, play minor roles. For these counties, New York State has developed a radiological emergency plan (Admitted Fact 34) that details what it will do during the recovery and reentry and ingestion pathway response phases of a radiological emergency and who on the state and local government level will be responsible for carrying out those functions.

LILCO 7/8 Motion at 1 (emphasis added). While it is true that the New York State Plan exists, LILCO's extravagant statement ignores the fact that for the ingestion pathway and recovery and reentry phases, the New York State Plan requires site-specific procedures and data if persons are to perform their roles and provide an adequate response. REPG Affidavit ¶¶ 5-6, 9. In addition, the roles played by counties are not minor. REPG Affidavit ¶¶ 6, 9. Indeed, the counties play crucial roles in such planning, which requires months of State/county interaction. REPG Affidavit ¶¶ 6, 9, 11. Further, the New York State Plan does not contain detailed procedures about what the State would do during the ingestion pathway and recovery and reentry phases of a radiological emergency. Instead, the New York State Plan is an outline, and detailed site-specific addenda and procedures are an integral part of the Plan. Thus, LILCO's Motion is in error and an alleged undisputed fact (LILCO Fact No. 1) clearly is in dispute. REPG Affidavit ¶¶ 6, 25 (Fact No. 1).^{6/}

^{6/} At page 2 of LILCO's 7/8 Motion, it is asserted that the State "can apply its recovery and reentry and ingestion pathway procedures in the 'generic plan' section of the State Plan to a Shoreham emergency." As made clear in the attached Affidavit, however, it
(footnote continued)

In addition, contrary to the above LILCO statement, the New York State Plan does not indicate who in the State and local governments will be responsible for carrying out each ingestion pathway and recovery and reentry function. REPG Affidavit ¶¶ 6, 9. In fact, the precise responsibilities for carrying out various portions of the Plan are worked out in detailed planning sessions between State, county and local groups. REPG Affidavit ¶¶ 6, 9. Summary disposition is therefore impossible because LILCO's factual assertions (as well as LILCO's Fact No. 2) are in dispute. See REPG Affidavit ¶ 25 (Fact No. 2).

LILCO also asserts that effective ingestion pathway and/or recovery and reentry activities could be implemented by State or local government personnel despite the fact that those personnel have not participated in Shoreham-specific drills and exercises. This assumption is also wrong. REPG Affidavit ¶ 8. Indeed, the Ginna plant experience (referred to at page 26 of LILCO's 7/8 Motion) made clear that the only way State and local government personnel develop site-specific capabilities is through detailed planning, interacting with personnel, drilling, and exercising. REPG Affidavit ¶¶ 13, 15. Since no such drills have occurred at Shoreham, no effective response would be possible. REPG Affidavit

(footnote continued from previous page)
would not be possible in a Shoreham emergency to do as LILCO asserts. State personnel have no familiarity with the site-specific circumstances at Shoreham. Absent extensive training, and an interfacing and integration with other response personnel, any such "response" would be clearly inadequate. See REPG Affidavit ¶ 6; Zahnleuter Affidavit ¶ 8.

¶ 10. Summary disposition clearly cannot be considered in view of these facts.^{7/}

Not only, however, is there no basis to find that the Governments' "best efforts" response would be adequate, there also is no possible basis to suggest that LERO's response would be adequate, either as conducted alone or as conducted (according to LILCO) in attempted coordination with the Governments. LILCO's February 1986 exercise included no meaningful ingestion pathway or recovery and reentry activities. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-32, 26 NRC _____, slip op. at 42-43, 45-46 (Dec. 7, 1987). The post-February 1986 drills (drills in June, September, October and December 1986), which were the subject of the 1987 OL-5 hearing, also failed to include any meaningful ingestion pathway or recovery and reentry activities. Thus, there is no evidence that the ingestion pathway and recovery and reentry portions of LILCO's Plan have had the type of rigorous drill and exercise training which is necessary. REPG Affidavit ¶ 6. Further, given the OL-5 Board's February 1, 1988, Initial Decision (LBP-88-2), there is no basis to assume that LERO personnel have the capability or training to implement ingestion pathway and recovery and reentry activities in an adequate manner. See Governments' Overview, Section VI.

^{7/} LILCO also implies that because the State of New York received favorable comments on the ingestion pathway response at Ginna, that a similar response could be made at Shoreham. LILCO 7/8 Motion at 26. This is simply wrong. The Ginna response required months of planning, training and drilling. REPG Affidavit ¶ 13. There has been no such training for Shoreham; a similar response is therefore not possible for Shoreham. REPG Affidavit ¶ 10.

Finally, LILCO's attempt to base its 7/8 Motion on references to plans for other counties in New York State is improper. See LILCO 7/8 Motion at 3-4 and Attachments 2-4 and 9-12. Such a LILCO effort violates the amended rule. See Governments' Overview, Section VII. Further, as a factual matter, the REPG experts explain in detail why LILCO's reliance on those plans is irrelevant. REPG Affidavit ¶ 9. Thus, LILCO's assertions are in dispute.^{8/}

The discussion above demonstrates that LILCO's 7/8 Motion clearly must be denied. The REPG experts dispute virtually every "fact" asserted by LILCO. See, e.g., REPG Affidavit, Section IV, ¶ 25. We now discuss below some of the other matters which further demonstrate why LILCO's Motion is without basis.

A. Ingestion Pathway

LILCO's basic approach to the ingestion pathway issue is to argue that "there can be no question that the State's response to an ingestion pathway incident would be adequate." LILCO 7/8 Motion at 26. The Governments dispute this assertion, because it

^{8/} LILCO also asserts that since "the State applies the Plan generically to all other nuclear power plants in New York, it can apply it to Shoreham without modification." LILCO 7/8 Motion at 9. This is not true. The REPG Affidavit conclusively establishes that the New York State Plan can only be effectively implemented when there is site-specific planning, training and drills. REPG Affidavit ¶ 6. Further, LILCO contends that with regard to the ingestion pathway, none of the other sampling activities requires site-specific information. LILCO 7/8 Motion at 21. This is not true. For example, LILCO does not mention agricultural land, which requires substantial site-specific information. REPG Affidavit ¶ 11.

is based on false assumptions and misapprehensions about the nature of the New York State Plan. REPG Affidavit ¶¶ 11-18.

LILCO asserts that the "New York State Plan also contains a detailed ingestion pathway procedure for directing and implementing protective measures for all operating nuclear power plants that have ingestion pathways extending into the State." LILCO 7/8 Motion at 18. This statement, and the LILCO Facts which purport to support this statement, are wrong: LILCO fails to account for the fact that the New York State Plan on ingestion pathway response is only an outline. An adequate ingestion pathway response requires detailed site-specific procedures, and personnel who are trained and tested in those site-specified procedures. REPG Affidavit ¶ 14.

For example, the REPG Affidavit establishes that the first and most basic step of an ingestion pathway response occurs when the New York State Commissioner of Health chooses among numerous response options. REPG Affidavit ¶ 11. These response options range from simply increasing environmental surveillance to the removal of surface soil and isolating and prohibiting land use.^{9/}

^{9/} The range of decisions which the Commissioner must make is illustrated by the options available for agricultural land, which include:

alter use of land, to allow radioactive decay of short-land radionuclides; remove contaminated surface crops and decay, for grasses, cutting and rolling sod - raking and removing mulch; remove of surface soil, allow natural surface erosion, or irrigate and leach; add excess lime to decrease nuclide solubility; and isolate and prohibit land use.

New York State Plan III. 38; REPG Affidavit ¶ 11.

Indeed, the Commissioner must choose from a variety of response options concerning agricultural land, milk, consumable fruits and vegetables, meat and meat products, grains and animal feeds. New York State Plan III.38; REPG Affidavit ¶ 12.

Contrary to the glib assertions in LILCO's 7/8 Motion, the choice among response options is not simple. For the Commissioner to intelligently select the proper response option, there must be personnel trained to collect and analyze substantial quantities of data.^{10/} Proper training of State, county and industry officials requires time and the dedication of resources, as well as site-specific drills and exercises. At Shoreham, there has been no such training, drills or exercises. Thus, the existence of a generic State Plan and a LILCO Plan which no State or county officials know about or have reviewed and exercised would not make it possible to take any effective protective action. REPG Affidavit ¶ 11; Halpin Affidavit ¶ 9; Zahnleuter Affidavit ¶ 8.

Given the need of the Commissioner to have reliable data on a multitude of subjects, comprehensive and precise site-specific planning is needed to ensure that such information is provided. Although the State Plan broadly divides the responsibility for obtaining this information among various state departments and

^{10/} For example, to make the decision as to the proper protective response option on the issue of agricultural land use, substantial information is needed on soil conditions, crop rotations, water flow patterns, and the resources and time required to perform each option. Moreover, this information must be collated with information concerning the amount of radiological contamination. To provide this information, State officials, and county and agricultural industry personnel must be trained and organized so each will know who will perform which particular tasks. REPG Affidavit ¶ 11.

local agencies, the New York State Plan does not have the detailed site-specific procedures required to collect and analyze these data. As is clear from Part II, Sec. 1, Procedure K, § 5.0 of the New York State Plan and the REPG Affidavit, the Plan specifically reserves to State agencies the task of working out on a site-specific basis how information will be collected and analyzed, and how personnel will be trained. No New York State agency has worked out procedures, dedicated resources or trained personnel for ingestion pathway data collection and analyses for Shoreham. REPG Affidavit ¶ 12. Therefore, there is no basis to find that an adequate response would be possible.

LILCO claims to have information available to make the needed ingestion pathway decisions. LILCO 7/8 Motion at 21. However, a review of the LILCO Plan shows that there are no provisions for obtaining information to make decisions on agricultural land, and inadequate procedures to obtain information on other areas. REPG Affidavit ¶ 12. Moreover, even if the LILCO Plan had such procedures, they could not be implemented absent detailed training, drills, and exercises. None of this has occurred or can be predicted to occur for Shoreham. REPG Affidavit ¶ 12. Again, therefore, this Board cannot find that an adequate response would be possible.

Similarly, LILCO wrongly asserts that with regard to the ingestion pathway, the State Plan has "clearly defined responsibilities" for counties such as Suffolk County. LILCO 7/8 Motion at 2. In fact, the New York State Plan does not define responsi-

bilities, since the details of an ingestion pathway response are established in detailed discussions in the course of coordinating the State and county Plans and the procedures which implement those plans. Nine months of extensive discussions to delineate State and county responsibilities and to coordinate with local agricultural producer groups were required to prepare for the Ginna exercise, despite the existence of a generic State Plan and a site-specific county plan. These discussions had to occur at the pre-planning stage, and then needed to be implemented and refined during many drills, table-top exercises, and similar training sessions. REPG Affidavit ¶ 15. This has not been done for Shoreham. There is no basis to find that any assumed State response would be adequate in the absence of the required preparations.

In fact, LILCO's 7/8 Motion reflects the complicated nature of the ingestion pathway procedures:

Departments of Health, Agriculture and Markets, Environmental Conservation, State Police, and Transportation, the State Emergency Management Office (SEMO), and the Radiological Emergency Preparedness Group (REPG) will participate in assessing the impact of the radiological emergency on the ingestion pathway and will work with local governments in their response.

LILCO 7/8 Motion at 20-21. This statement illustrates the types of information which must be gathered and the extensive coordination which must occur to make ingestion pathway recommendations. This coordination can only occur when there is a site-specific plan that is fully understood by all participants,

extensive integration of response personnel, and training and drills. REPG Affidavit ¶ 16. None of these exist for Shoreham, and they simply cannot be supplied on an ad hoc basis. LILCO's 7/8 Motion is clearly without basis.

LILCO argues that there is no need for a Shoreham site-specific ingestion pathway plan or site-specific planning because Suffolk County and Nassau County are already part of ingestion pathway zones for other sites. LILCO 7/8 Motion at 10 n.12, 19. This fact does not support LILCO's position, however, because specific planning related to the source of the radiation threat is critical to how one makes plans for the ingestion pathway. Indeed, as established in the REPG Affidavit, a fundamental premise of radiological emergency planning is that such planning must be site-specific to a certain plant in order to have the necessary coordination of State, county and utility activities. In addition, resources are dedicated and personnel are trained to react to an emergency at a specific site. REPG Affidavit ¶ 17. Therefore, the fact that Suffolk and Nassau Counties are part of other plants' ingestion pathways is irrelevant, for it fails to provide the basis for any meaningful ingestion pathway planning, capabilities, or preparedness concerning a Shoreham accident. REPG Affidavit ¶ 17.

In short, therefore, LILCO's 7/8 Motion, insofar as it pertains to ingestion pathway activities, is clearly without basis. Material facts are in dispute. Even assuming a best efforts government response, there is no basis upon which this

Board could find that the response would satisfy 10 CFR § 50.47(c)(1)(iii). The Motion must therefore be denied.

B. Recovery and Reentry

LILCO's analysis of recovery and reentry matters is just as lacking in basis as LILCO's ingestion pathway discussion. LILCO asserts that the New York State Plan details what the State will do during the recovery and reentry phase of a radiological emergency, and who on the State and local government level will be responsible for carrying out those functions. LILCO 7/8 Motion at 1. This is not true. The New York State Plan simply sets forth a general overview of recovery and reentry procedures. Because recovery and reentry operations are complicated, they require detailed advance planning beyond the generalities contained in the State Plan to determine what tasks should be performed and who should perform them. REPG Affidavit ¶ 19.

The New York State recovery and reentry operations are predicated on a decision of what recovery actions are to be taken. State Plan at IV.23; REPG Affidavit ¶ 20. As LILCO acknowledges, the following activities must be done before any such determination can be made:

- a. Sampling and monitoring of radiation and evaluation of data by the Department of Health.
- b. Decontamination activities, including waste disposal, under the direction of the Department of Health, undertaken by the appropriate local agency depending on the method utilized.

- c. Security, including police and fire protection for affected areas -- will be provided by State and local police, and local fire agencies.
- d. Availability of medical service -- will be ascertained by State and local health offices.
- e. Availability of electric power and telephone communications -- will be ascertained by Public Service Commission.
- f. Adequacy of food and water supply -- will be determined by Department of Agriculture and Markets and Department of Health.
- g. Operability of sanitary systems -- will be determined by Department of Environmental Conservation.
- h. Availability of transportation -- will be determined by local officials.
- i. Availability of sources of heat -- will be ascertained by State Energy Office.
- j. Condition and needs of the affected population -- will be surveyed and determined by Department of Social Services with assistance from the American National Red Cross.

REPG Affidavit ¶ 20; LILCO 7/8 Motion at Table 1. Each one of these determinations requires extensive fact gathering and analysis. To perform this fact gathering and analyses, trained personnel would have to be dedicated to respond to the Shoreham site. Given the numbers of persons that would have to be involved and the complex tasks to be accomplished, these jobs could not be done on an ad hoc basis during an emergency, even with the assistance of a generic State Plan, a LERO Plan, and LERO workers.

LILCO also asserts that the State "directs all recovery and reentry activities for radiological emergencies for all nuclear power plants in New York State other than Shoreham" LILCO

7/8 Motion at 3 and LILCO Proposed Facts No. 4. Indeed, LILCO attempts to limit the Suffolk County recovery and reentry functions as follows:

Consequently, the only functions that a county performs independently of the State are (1) providing security and fire protection, (2) determining the availability of transportation, and (3) gathering data and submitting them for federal aid. None of these functions require special radiological expertise. Rather, they are the types of activities that counties normally perform during any emergency. The only function that may require special assistance during a Shoreham emergency would be assessing the transportation needs of the public.

LILCO 7/8 Motion at 14 (footnote omitted). This is not true. Much of the direction in recovery and reentry comes from local personnel, because the New York State Plan specifically provides that "Local Chief Executives assess the needs of their affected areas in connection with the State Energy Management Office. They direct recovery operations in their jurisdiction." State Plan at IV.1; REPG Affidavit ¶ 21. To make such recommendations and direct such recovery activities, the local officials must be trained and have the necessary resources.^{11/} That has not

^{11/} The counties assume substantial recovery and reentry responsibilities. For example, the Monroe County Plan states that the State Plan provides only "guidelines" for recovery and reentry operations. See Monroe County Radiological Emergency Preparedness Plan at I-D-2 (May, 1987). The County's responsibilities include: (i) completion of radiation surveys by the County Department of Health (CDOH) and the New York State Department of Health (NYSDOH); (ii) determination that a threat to public health, as a consequence of a release of radiation, no longer exists; (iii) completion of the CDOH and NYSDOH directed decontamination activities; (iv) notification to incoming traffic control check points of the area for which reentry is authorized; (v) the preparation and issuance of announcements to the communications media and Reception/Congregate Care Centers specifying the areas which may be reentered; (vi) continuation of security for evacuated areas; (vii) provisions of transportation for those individuals who were assisted during the (footnote continued)

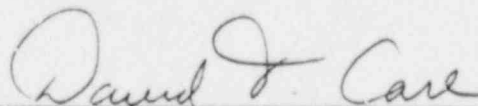
occurred for Shoreham, underscoring again why summary disposition must be denied.

III. Conclusion

The foregoing discussion, together with the Governments' Overview and the attached REPG Affidavit, make clear that LILCO's 7/8 Motion cannot be granted. Not only are LILCO's arguments contrary to the new rule, and not only does the Motion fail to deal with the issues identified in the September 17 Order, the Motion plainly conflicts with the realities of how ingestion pathway and recovery and reentry activities are conducted in response to nuclear power plant emergencies. Since material facts are so clearly in dispute, the Motion must be denied.

Respectfully submitted,

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(footnote continued from previous page)
evacuation; (viii) distribution of drinking water and foodstuffs; and
(ix) establishment of a long-term radiation monitoring program for
any contaminated county areas.

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February 10, 1988

STATEMENT OF MATERIAL FACTS IN DISPUTE
(INGESTION PATHWAY AND RECOVERY AND REENTRY)

For the reasons stated in the Governments' Response to LILCO's Motion for Summary Disposition on Contentions 7 and 8 (Ingestion Pathway and Recovery and Reentry) and the supporting Affidavit of James D. Papile, James C. Baranski and Lawrence B. Czech ("REPG Affidavit") and County Executive Patrick G. Halpin, the Governments identify the following material facts as those which must be resolved before the Board can rule on Contentions 7 and 8.^{1/}

1. Whether the New York State Plan would be adequate to guide State recovery and reentry and ingestion pathway activities in the event of a radiological emergency at Shoreham, despite the absence of detailed, site-specific information necessary to permit the State to respond. REPG Affidavit ¶¶ 6, 25 (Fact 1).

2. Whether the State Plan standing alone provides an adequate division of responsibilities between State and local officials to guide such officials in responding to a Shoreham emergency. REPG Affidavit ¶¶ 15, 25 (Fact 2).

^{1/} The Governments incorporate by reference ¶ 25 of the REPG Affidavit to the extent it disputes LILCO factual assertions.

3. To what extent are recovery and reentry and ingestion pathway activities conducted by local governments and to what extent do they therefore require site-specific procedures and plans before an adequate response can be provided at any plant. REPG Affidavit ¶¶ 9, 25 (Fact 4).

4. Whether county personnel make independent decisions on recovery and reentry and ingestion pathway activities. REPG Affidavit ¶ 25 (Fact 5).

5. Whether the counties play significant roles in the ingestion pathway and recovery and reentry activities related to a response to a radiological emergency. REPG Affidavit ¶ 6.

6. Whether ingestion pathway and recovery and reentry activities are so complex that absent pre-planning, it is likely the response to a Shoreham accident would be ad hoc, ineffective, and inadequate. REPG Affidavit ¶ 25 (Fact 6).

7. What are the responsibilities of the counties in the ingestion pathway and recovery and reentry activities related to an emergency response. REPG Affidavit ¶ 6.

8. What is the extent of fact-gathering and analysis required to be conducted before the determination of the appropriate recovery actions. REPG Affidavit ¶ 20.

9. Who will gather the information requested to make the necessary recovery action determinations. REPG Affidavit ¶¶ 21-24.

10. What type and amount of site-specific training is needed for government officials to implement the ingestion pathway and/or recovery and reentry phases of emergency response. REPG Affidavit ¶¶ 6, 8, 11.

11. What is the extent of information needed to select the proper ingestion pathway response option for: (a) agricultural land; (b) meat and meat products; (c) grains; (d) animal feeds; (e) milk. REPG Affidavit ¶¶ 11-12.

12. Whether drills, exercises or other means have been carried out to determine who will gather the information needed to determine the proper response option in a Shoreham emergency for: (a) agricultural land; (b) meat and meat products; (c) grains; (d) animal feeds; (e) milk. REPG Affidavit ¶¶ 11-12.

13. What training is required for those who would gather information concerning (a) agricultural land; (b) meat and meat products; (c) grains; (d) animal feeds; and (e) milk. REPG Affidavit ¶¶ 11-12.

14. Whether any conclusions can be drawn from the performance of the State of New York in the Ginna exercise regarding the adequacy of a State response at Shoreham in light of the fact that lengthy site-specific planning, drills and exercises are required before there can be an adequate response at Shoreham. REPG Affidavit ¶ 8.

15. Whether the training of LILCO personnel is adequate to carry out ingestion pathway and recovery and reentry activities. REPG Affidavit ¶ 25 (Fact 34).

16. Whether the fact that Suffolk County and Nassau County are in the ingestion pathways for other plants has any significance at all to planning for ingestion pathway activities at Shoreham. REPG Affidavit ¶ 17.

17. Whether there are sufficient numbers of trained government personnel to support a recovery and reentry or ingestion pathway response to a Shoreham accident. REPG Affidavit ¶¶ 12, 21.

18. Who will coordinate State and federal assistance programs. REPG Affidavit ¶ 25 (Fact 15).

19. Whether the considerations involved in recovery operations are more extensive than LILCO claims. REPG Affidavit ¶ 25 (Fact 19).

20. What standard will be used in making protective action decisions during the recovery phase. REPG Affidavit ¶ 25 (Fact 20).

21. Whether others besides the Commissioner of Health analyze the relevant exposure pathways. REPG Affidavit ¶ 25 (Fact 21).

22. Whether a State Plan Public Information Officer ("PIO") must have extensive site-specific pre-planning and training. REPG Affidavit ¶ 25 (Fact 24).

23. Whether more factors than LILCO recognizes must be considered before any information about recovery actions is disseminated to the public under the State Plan. REPG Affidavit ¶ 25 (Fact 26).

24. Whether counties "normally" provide transportation for members of the public who need it in an area affected by an emergency. REPG Affidavit ¶ 25 (Fact 35).

25. Whether LILCO can adequately provide for the collection and transportation of solid radioactive waste and the sampling of liquid wastes. REPG Affidavit ¶ 34.

26. Who will be in charge of collecting samples. REPG Affidavit ¶ 25 (Fact 52).

27. Whether a "best efforts" ingestion pathway and/or recovery and reentry response by the Governments would rely in any way on LILCO's Plan or would involve cooperation with or reliance on LILCO personnel. See Cuomo and Halpin Affidavits.

28. Whether a "best efforts" ingestion pathway and/or recovery and reentry response by the Governments would satisfy NRC regulations.

29. Whether a "best efforts" government ingestion pathway and/or recovery and reentry response would work at cross purposes with any LILCO activities.

30. Whether a "best efforts" government ingestion pathway and/or recovery and reentry response could ever provide reasonable assurance that proper decisions, recommendations or actions would be taken in the event of a radiological emergency at Shoreham.

31. Whether a "best efforts" State response could or would rely on the State Plan in the absence of Shoreham-specific planning.

32. Whether LERO personnel have adequate training, communications skills, and other skills necessary to implement the ingestion pathway and recovery and reentry portions of LILCO's Plan and to attempt to communicate and coordinate activities with the Governments' personnel.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board '88 FEB 17 AIO:16

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket No. 50-322-OL-3
(Emergency Planning)

NOTICE OF APPEARANCE

The undersigned attorney enters an appearance in this proceeding. In accordance with 10 C.F.R. § 2.713, the following information is provided:

Name	Michael J. Missal
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Telephone	(202) 778-9302
Name of Party	Suffolk County Address: Suffolk County Legislature Legislative Bldg. Veterans Memorial Hwy. Hauppauge, NY 11787


Michael J. Missal

DATED: February 10, 1988

DOCKETED
USNRC

February 10, 1988

'88 FEB 17 A10:16

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

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

CERTIFICATE OF SERVICE

I hereby certify that copies of:

OVERVIEW MEMORANDUM IN SUPPORT OF GOVERNMENTS' RESPONSE
TO LILCO'S MOTIONS FOR SUMMARY DISPOSITION OF
CONTENTIONS 1-2 AND 4-10;

AFFIDAVITS IN SUPPORT OF GOVERNMENTS' OPPOSITION TO LILCO'S
SUMMARY DISPOSITION MOTIONS ON CONTENTIONS 1-2 AND 4-10;

ANSWER OF SUFFOLK COUNTY, THE STATE OF NEW YORK AND THE TOWN
OF SOUTHAMPTON TO LILCO'S MOTION FOR SUMMARY DISPOSITION OF
CONTENTIONS 5 AND 6;

SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON
RESPONSE IN OPPOSITION TO LILCO'S MOTION FOR SUMMARY
DISPOSITION OF CONTENTIONS 1 AND 2;

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);

SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON
RESPONSE IN OPPOSITION TO LILCO'S MOTION FOR SUMMARY
DISPOSITION OF CONTENTIONS 4 AND 9;

SUFFOLK COUNTY, STATE OF NEW YORK AND TOWN OF SOUTHAMPTON
RESPONSE TO LILCO'S MOTION FOR SUMMARY DISPOSITION OF
CONTENTIONS 7 AND 8 (INGESTION PATHWAY AND RECOVERY AND
REENTRY); and

NOTICE OF APPEARANCE (MICHAEL J. MISSAL)

have been served on the following this 10th day of February 1988
by U.S. mail, first class.

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