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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Commission

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)

BRIEF OF SUFFOLK COUNTY, THE STATE OF NEW YORK,
AND THE TOWN OF SOUTHAMPTON ON THREE
ALAB-832 ISSUES TO BE REVIEWED BY COMMISSION

October 9, 1986

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ALAB-832 ISSUES TO BE REVIEWED BY COMMISSION

In its Order dated September 19, 1986, the Commission took review of three issues identified in the Petitions for Review filed by LILCO and by Suffolk County, the State of New York and the Town of Southampton with respect to the Appeal Board's decision ALAB-832, 23 NRC 135 (1986). This brief is filed on behalf of Suffolk County, the State of New York, and the Town of Southampton ("Governments"), and addresses the three issues identified in the September 19 Order. The Governments note, however, their strong objection to the Commission's refusal to take review, or even to explain its decision to decline review, of the numerous Appeal Board errors identified in their Petition for Review dated April 15, 1986.¹

1 For example, as set forth in the Governments' April 15 Review Petition (at pages 7 and 8), the record demonstrates that not one of the 17 school districts with children in the EPZ has adopted, or agreed to implement, any plan for a Shoreham

I. Contention 22.B Does Not Challenge NRC Rules;
It Merely Seeks Enforcement of, and Compliance
With, The Rules

The first issue identified by the Commission in its September 19 Order is "Whether the admission of Contention 22.B impermissibly challenges the generic rulemaking finding that a 10-mile EPZ will provide an adequate basis for satisfactory ad

emergency. Thus, there exist no plans whatsoever for the evacuation of the over 60,000 school children who are in those districts and who could be in danger. And, the very school officials who would be responsible for implementing a Shoreham-related emergency plan, if one existed, are on record stating that early dismissal procedures used for "snow days" -- the so-called "plans" touted by LILCO -- could not and would not be implemented effectively by them during a Shoreham emergency. The NRC's own precedents clearly require the existence of plans, approved and adopted by schools; they also uniformly hold unacceptable the suggestion that children's safety should be at the mercy of ad hoc arrangements, or based upon mere hopes or assumptions. E.g., Cincinnati Gas & Elec. Co. (Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 772-73 (1983); Consolidated Edison Co. (Indian Point, Units 2 and 3), LBP-83-68, 18 NRC 811, 982-85 (1983); Pennsylvania Power & Light Co. (Susquehanna Steam Elec. Station, Units 1 and 2), LBP-82-30, 15 NRC 771, 781-82, 798, sua sponte review, ALAB-702, 16 NRC 1530 (1982); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-81-59, 14 NRC 1211, 1640-41 (1981). See also Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1984), cert. denied 105 S.Ct. 815 (1985).

The ASLB's rulings in this case on school "plans" and "preparedness" clearly violated this well-established precedent and Section 50.47. The Appeal Board refused to even address these issues of crucial safety significance, and ignored the settled NRC precedent without so much as a word on the subject. The Commission now has closed its eyes as well to these critical errors, while accepting for review only matters addressed in LILCO's review petition. This casts a deep suspicion that the Commission is interested only in examining issues which are decided against LILCO -- issues decided against the Governments are simply ignored despite their safety significance.

hoc emergency response beyond ten miles should this be required." For the reasons detailed below, the answer to this Commission inquiry is No.

First, it is essential to focus on the actual allegations made in Contention 22.B, since a review of the contention makes clear that it challenges no regulation. The text of Contention 22.B and its preamble reveals that it is based on the 10 CFR § 50.47(c)(2) requirement that "the exact size and configuration of the EPZs . . . shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." (Emphasis added). The so-called generic finding referenced by the Commission in its September 19 Order is simply irrelevant to Contention 22.B. The contention cannot properly be construed as a challenge to any generic finding; instead, it simply seeks to enforce the Commission's own explicit regulatory requirement, a requirement with which the Commission obviously is required to comply.

The preamble to Contention 22 states in pertinent part:

LILCO proposes a plume exposure pathway EPZ of approximately 10 miles in radius. (See Plan Figure 3.5.1 and Appendix A, Figure 3.) Intervenors contend that LILCO's proposed 10-mile EPZ is inadequate in size. Under the site specific circumstances existing on Long Island, an EPZ larger than 10 miles . . . is necessary. The bases for Intervenors' contention that a plume exposure pathway EPZ greater than 10 miles is required are: . . . special topographic, geographic, governmental and social conditions existing on Long Island; [and] the fact that LILCO's 10 mile EPZ does not provide a sufficient base for

expanding emergency response to larger areas should the need arise These bases are described in greater detail in paragraphs A-D below.

The text of Contention 22.B is as follows:

The NRC has recognized that in the event of certain serious accidents, protective actions would need to be taken beyond a 10-mile EPZ. See NUREG 0654, Section I.D.2 at 11 and 12. The site specific characteristics and consequences of a severe accident at Shoreham would make such protective actions essential to comply with the Federal PAG guidance and 10 CFR Section 50.47(b)(10).

The area of Long Island which surrounds Shoreham, particularly the area which lies east of LILCO's proposed EPZ (including the towns of East Hampton, Southold, Shelter Island, most of Riverhead and virtually all of Southampton), possesses a number of distinguishing characteristics, which taken together, contribute to the need to plan beyond the 10-mile EPZ proposed by LILCO. Among these distinguishing characteristics are the following:

1. A significant seasonal increase in population, particularly during the five months of May through September;

2. A highly transient, dispersed seasonal population, much of which depends upon limited public transportation;

3. A road network which is inadequate to accommodate this seasonal population and which is heavily congested during ordinary seasonal conditions;

4. Due to Long Island's configuration, the inadequate road network on the north and south forks connects to two principal east-west arteries, the Long Island Expressway and Sunrise Highway, both of which pass through or very close to LILCO's proposed EPZ;

5. The area east of the EPZ provides no means of exodus to the east, meaning that persons deciding to evacuate must travel toward and through LILCO's EPZ. Studies show that large numbers of people in this area will spontaneously evacuate toward the EPZ;

6. The governmental resources available to control, communicate with, direct, shelter, provide security and otherwise accommodate this seasonal population are inadequate. Further, as noted in part A, no governmental resources will be available and thus all response is a LILCO responsibility. LILCO's LERO lacks capability to expand response to an emergency from the 10 mile EPZ to a larger area unless detailed advance planning is in place. (This might be different if governmental entities hav[ing] greater resources and experience than LILCO were participating in the response);

7. One of the five towns east of the EPZ (Shelter Island) is itself an island, which further aggravates its traffic and transportation concerns; and,

8. In addition to the complications caused by seasonal population, transportation east of the EPZ is affected by flooding and snow storms at various times during the year.

Intervenors contend that these site specific characteristics which exist for Shoreham demonstrate that local emergency response needs and capabilities require planning and preparedness beyond LILCO's proposed 10 mile EPZ. Such planning and preparedness are necessary to assure the existence of an adequate response base to support expanded response efforts which may be required in the event of a serious accident. LILCO has failed to provide planning or preparedness for any area beyond 10 miles from the plant, despite the site specific consequences which could result from a severe accident at Shoreham. Thus, the LILCO Plan does not provide a substantial base for the expansion of response efforts which is likely to prove necessary and such efforts could not be developed during the course of an accident

based on LILCO's Plan. This is contrary to the guidance of NUREG 0654, Section II.D.2 and 10 CFR Section 50.47(b)(10).

Clearly, this contention seeks only what is expressly required by Section 50.47(c)(2) -- that is, a determination of the size and configuration of the EPZ "in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." If by alleging that local emergency response needs and capabilities, as affected by precisely the types of local conditions specified in the regulation, Contention 22.B can be said to "challenge[]" the generic rulemaking finding that a 10-mile EPZ will provide an adequate basis for satisfactory ad hoc emergency response beyond ten miles should this be required," then the Commission's own regulation, Section 50.47(c)(2), constitutes such a so-called "challenge" as well. There is no basis, in law or logic, for the proposition that merely because a general ten-mile guideline has been identified as a starting point for the determination of EPZ size, it is "impermissible" to challenge the EPZ ultimately determined, particularly when the NRC's regulations explicitly contemplate, and require, that the exact size and configuration of the EPZ is to be determined in relation to local emergency response needs and capabilities as affected by local conditions.

The Appeal Board's ruling that the Licensing Board erred in denying admission to Contention 22.B is correct, and is consistent with NRC precedent. See Duke Power Co. (Catawba

Nuclear Station, Units 1 and 2), LBP-84-37, 20 NRC 933, 979-89 (1984), aff'd, ALAB-813, 22 NRC 59 (1985); Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1236 (1985), aff'd in relevant part, ALAB-836, 23 NRC 479, 492-500, NRC review denied, July 24, 1986. Thus, while acknowledging the "generic considerations" which gave rise to the ten-mile starting point for EPZ determinations (i.e., that "(1) projected doses from most accidents would not exceed Federal Protective Action Guide dose levels beyond that distance from the facility and (2) detailed planning within 10 miles would provide a substantial base for expansion of response efforts if this became necessary"), the Appeal Board went on to state:

Notwithstanding these generic considerations, however, section 50.47(c) goes on to direct that the "exact size and configuration" of the plume EPZ "shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries."

ALAB-832, 23 NRC at 145 (emphasis added). The Appeal Board noted that Contention 22.B (and also Contention 22.C, discussed below) "do not appear to seek anything more than that to which Section 50.47(c)(2) entitles intervenors: a determination of the 'exact size and configuration' of the EPZ based upon, inter alia, local conditions." Id. at 148 (footnote omitted). The Appeal Board correctly concluded that "it cannot be said that the contentions amounted to an impermissible attack upon a Commission regulation." Id. The Commission must do the same.

II. The Appeal Board's Ruling That Contention 22.C
Should Be Admitted for Litigation Was Correct

The second issue identified by the Commission in its September 19 Order involves Contention 22.C. The Commission asked: (a) whether there is a logical connection between plume EPZ size and the ability to respond to problems associated with possible spontaneous evacuation; and, (b) whether the regulations contemplate that the possibility of spontaneous evacuation is a "local condition" which should result in adjustments to an EPZ. We address each question in turn below, and demonstrate that the Appeal Board's ruling that Contention 22.C must be admitted for litigation is correct and should be affirmed.

A. The Logical Connection Between the Exact Size
of the EPZ and Voluntary Evacuation is Set
Forth in Contention 22.C

Again, the crucial starting point in responding to the Commission's questions is the text of Contention 22.C. A review of the contention's allegations provides the answer to the Commission's first question. The text of Contention 22.C follows.

An EPZ larger than 10 miles is required for the additional reason that people from outside the 10 mile EPZ will attempt to evacuate, whether ordered to do so or not. Without planning and preparedness for an area beyond 10 miles, which takes local conditions (see [B] above) and voluntary evacuation into account, the voluntary evacuation will impede the evacuation of persons within the 10 mile EPZ and will result in inadequate protection for persons both inside and outside the 10 mile EPZ. Thus, in light of local conditions

and the voluntary evacuation which will exacerbate the effects of such local conditions, an EPZ that is larger than 10 miles is required. LILCO's plan essentially ignores any planning for voluntary evacuees and this is inadequate. (For a detailed discussion of voluntary evacuation (the "evacuation shadow" phenomenon), see Contention 23).

An EPZ larger than 10 miles is further necessary to provide planning and preparedness for the education, notification, and safe movement and relocation of the large number of people likely to be on the roads in the event of a Shoreham emergency. A high proportion of the voluntary evacuees will be from the eastern end of Long Island. Due to their perception that they would be trapped if the wind blew to the east, many East End residents will choose to evacuate in the event of an emergency at Shoreham. In voluntarily evacuating, they will move to the west, in some cases entering the 10-mile EPZ. In order to protect these people, and to ensure that their voluntary evacuation does not adversely affect people within 10 miles of the plant, the EPZ must be extended so that detailed planning encompasses the people to the east of the plant.

Further, large numbers of people to the west of the plant may also voluntarily evacuate, creating congestion for those attempting to leave the 10-mile EPZ proposed by LILCO and also affecting the safety of those people east of the plant who may also voluntarily evacuate. Extension of the EPZ to the west to encompass those persons who may be involved in protective actions is essential.

LILCO has not adequately provided for communications, security, blockades, relocation centers, medical facilities or any other protective actions for the area outside the proposed 10 mile EPZ in order to mitigate the impact of spontaneous evacuation on the adequacy or implementability of protective actions in LILCO's proposed 10 mile EPZ, or to prevent any such impact altogether. Failure to develop at this time emergency planning measures for the area outside the 10 mile EPZ will result in uncontrolled, chaotic evacuation should a serious accident occur at

Shoreham, thereby affecting LILCO's efforts to manage the evacuation of persons within its EPZ and causing fear, panic, accidents, looting, possible violence and other phenomena beyond the control of the officials in the area east of the EPZ. Thus, an EPZ of larger than 10 miles is necessary to achieve compliance with 10 CFR Section 50.47(a)(1).

Clearly, the contention itself sets forth the "logical connection" between the size of the EPZ and the problems created by voluntary evacuation. Specifically, the movement of voluntary evacuees from further than 10 miles from the plant will impede the ability of persons from within the 10-mile area, who have been advised to evacuate, to do so as necessary to protect themselves. Therefore, planning and preparedness for an area larger than the 10-mile zone proposed by LILCO is necessary to assist and control the voluntary evacuees and to prevent them from impeding the evacuation of people who must evacuate the 10-mile zone in order to avoid potential exposure to radiation.

Similarly, again as noted in the contention, planning and preparedness in the area beyond 10 miles is necessary to prevent voluntary evacuees from approaching or entering the 10-mile zone which potentially would be contaminated, and to provide the necessary education, communications, security, traffic control and alternate routes so that voluntary evacuees would not endanger themselves by entering or approaching a contaminated area. And, as the contention further alleges, without pre-planning to deal with the activities of voluntary evacuees, LILCO could not manage an attempted evacuation of the 10-mile zone.

As the Commission is aware, the purpose of a defined EPZ is to identify the area "for which planning is needed to assure that prompt and effective actions can be taken to protect the public in the event of an accident." NUREG 0654, § I.D.2. Thus, the size of the EPZ "represents a judgment on the extent of detailed planning which must be performed to assure an adequate response base." Id. Contention 22.C alleges several specific reasons why on Long Island planning is needed for an area beyond 10 miles from Shoreham in order to assure that effective and adequate protective actions can be taken by the public within 10 miles of the plant, and to assure that there is an adequate response base in place to permit such persons to evacuate if advised to do so. The logical connection between the problems created by voluntary evacuation from a Shoreham accident and the size of the area for which planning and preparedness exists under the LILCO Plan is stated in Contention 22.C and is consistent with the regulatory concept of emergency planning zones. See also Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 494 n. 22 (1986) (Licensing Board should have permitted questioning on impact of spontaneous evacuation on EPZ size).

As the Appeal Board noted in ALAB-832, the validity of a contention alleging that the plume EPZ must be enlarged to deal with the impact of traffic congestion and the conditions outside 10 miles upon the ability of people within 10 miles to evacuate has been upheld in other cases, and the Commission has previously declined review. See, e.g., ALAB-832, 23 NRC at 149, n.40,

citing Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1236 (1985), aff'd in relevant part, ALAB-836, 23 NRC 479 (1986), NRC review denied, July 24, 1986; Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 NRC 933, 979, 988-89 (1984), aff'd, ALAB-813, 22 NRC 59 (1985), There is no basis to apply any different contention admissibility standard in this case, particularly since to do so would fly in the face of the Commission's own regulations which expressly require that local conditions be considered in determining the exact size and configuration of EPZs.

- B. The Regulations Not Only Contemplate, They Require Consideration of the Local Conditions, Including the Impact of Voluntary Evacuation, Upon Which Contention 22.C is Based

The answer to the Commission's second question concerning Contention 22.C is also provided by the regulations themselves. Obviously, every conceivable "local condition" which must be considered with respect to any particular site, has not and could not have been, listed in Section 50.47(c)(2). The language of that section, however, clearly indicates that local conditions such as those identified in Contention 22.C (including those set forth in Contention 22.B which are incorporated by reference in 22.C) are precisely the type of conditions which can impact the public safety, and which are intended by the wording of Section 50.47(c)(2).

Thus, Section 50.47(c)(2) states that the determination of the exact size and configuration of the EPZ must be made "in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." (Emphasis added). The term "such conditions as" plainly indicates that the listed conditions are demonstrative only and not all-inclusive. The Commission must comply with this regulation. See Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1985).

Further, the concept of "local emergency response needs and capabilities" clearly encompasses matters such as the LERO organization's failure to plan for, or be prepared to deal with, the emergency response needs created by voluntary evacuation, as well as with the impact of voluntary evacuees upon LILCO's ability to implement protective actions for persons within 10 miles of the plant, as discussed in Contention 22.C. See Philadelphia Elec. Co., ALAB-836, 23 NRC at 492-95. And, the voluntary evacuation referenced in Contention 22.C is alleged to be a direct result of some of the conditions explicitly listed in Section 54.47(c)(2) (i.e., demography, land characteristics, and access routes). Accordingly, the regulations do contemplate that in determining the exact size and configuration of an EPZ, voluntary evacuation, its impact upon the ability of persons within 10 miles to evacuate or otherwise protect themselves, and its impact upon the emergency response needs in the event of a Shoreham emergency and upon LILCO's response capabilities, must

be considered. These are the factors identified in Contention 22.C.² Accordingly, the Appeal Board's ruling on Contention 22.C should be affirmed.³

III. The NRC's Regulations Require Pre-existing Plans and Preparedness for Evacuation of Hospital Patients in the EPZ

The third issue identified by the Commission in its September 19 Order is also clearly answered in the NRC's regulations and controlling precedent. The Commission asked whether 10 CFR § 50.47 requires evacuation plans for hospitals in the EPZ even though sheltering would be the preferred option in most circumstances. The answer is Yes. Accordingly, the Commission should affirm the Appeal Board's decision that LILCO's proposed reliance only on ad hoc activities during an actual emergency,

2 The Governments note again that the Appeal Board's ALAB-832 ruling that Contention 22.C should be admitted for litigation, is consistent with NRC precedent as well as the regulations. See ALAB-832, 23 NRC at 148-49 & n.40. For example, as noted above, the Limerick case involved a contention alleging the need to expand the EPZ because activities creating traffic congestion beyond the 10-mile zone would impede the evacuation of persons within the 10-mile area. See 21 NRC at 1236. Again, there is no basis to apply any different rules in this Shoreham proceeding. Furthermore, at the beginning of the emergency planning proceeding, the Brenner ASLB stated that the Board itself would pursue the need for adjustments in the size of the Shoreham EPZ due to Long Island's local conditions whether, contentions were filed on that subject or not. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 618-19 (1982).

3 The Governments reiterate, however, that the Appeal Board's limitation to 1-2 miles of any EPZ adjustment resulting from Contentions 22.B and 22.C (ALAB-832, 23 NRC at 149, n.41) was in error. See Suffolk County, State of New York, and Town of Southampton Petition for Review of ALAB-832, April 15, 1986, at 9-11. For reasons not explained in its September 19 Order, the NRC refused to review this aspect of ALAB-832.

and the absence from the LILCO Plan of evacuation time estimates, relocation centers, vehicles, or plans for the evacuation of hospital patients, complies with the regulatory requirements.

To place this discussion in the proper context, it must be emphasized that LILCO's failure to plan for evacuation of hospital patients is total. There are approximately 850 patients in the four facilities at issue (three hospitals plus the Suffolk County Infirmary), of which approximately 155 are designated maternity, newborn, or pediatric -- i.e., particularly radiosensitive. The LILCO Plan expressly acknowledges that in the event of a Shoreham accident, the evacuation of the three hospitals and the Suffolk County Infirmary would be done on an ad hoc basis, after completion of evacuation of the general public and after completion of evacuation of patients from all other special facilities, if vehicles became available for that purpose after such time. See, e.g., Plan, Appendix A at II-28, IV-172-74. Furthermore, LILCO has failed to identify any relocation centers for hospitals, in blatant violation of NUREG 0654 Sections II.A.3, J.10.d, and J.10.h. And, there are no evacuation time estimates for hospital patients contained in the LILCO Plan for the obvious reasons that vehicles necessary to perform such an evacuation have not been identified, there is no identified place to which evacuees would be taken, and there are no preplanned routes or procedures for accomplishing such an evacuation. It is most significant that with respect to other special facilities such as nursing and adult homes and schools,

even the Licensing Board found the LILCO Plan deficient in failing to identify or obtain agreements from relocation facilities. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 840 (1985) (lack of identification of and agreements with relocation centers for persons from nursing and adult homes); id. at 860 (lack of reception centers for schools).⁴

NRC regulations are explicit in requiring that there exist advanced planning and preparedness for the protective action of evacuation as well as for sheltering. For example, Section 50.47(b)(10) requires that:

A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place⁵

Similarly, 10 CFR Part 50 Appendix E expressly states that emergency plans "shall . . . provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations."

4 In addition, the need to have letters of agreement documenting the availability of reception centers for hospital patients was recognized in Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 70-71 (1984).

5 The "Federal guidance" referenced in Section 50.47(b)(10) refers to the EPA Protective Action Guidelines (EPA-520/1-75-001), which expressly refer to pre-planning for evacuation as well as for sheltering in the event of an emergency.

NUREG 0654 is even more explicit in setting forth the requirement that there be preexisting plans for evacuation of special facilities in the EPZ, including hospitals. Thus, in addition to the general requirement, which tracks that in Section 50.47(b)(10), that plans shall include "a capability for implementing protective measures based upon protective action guides and other criteria" which "shall be consistent with the recommendations of EPA regarding exposure resulting from passage of radioactive airborne plumes, (EPA-520/1-75-001)," (NUREG 0654, Section II.J.9), NUREG 0654 also expressly requires:

- "means for protecting those persons whose mobility may be impaired due to such factors as institutional or other confinement," (id. at Section II.J.10.d);
- "time estimates for evacuation of various sectors and distances . . . for the plume exposure pathway emergency planning zone" (id. at Section II.J.10.1); and,
- "the bases for the choice of recommended protective actions from the plume exposure pathway [which] shall include . . . evacuation time estimates." Id. at Section II.J.10.m.

Furthermore, in Appendix 4 of NUREG 0654, which sets forth what should be included in the required evacuation time estimates, the fact that such estimates are required for hospitals is made explicit. Thus, Appendix 4 states that time estimates must include three population segments: permanent residents, transients, and "persons in special facilities." It goes on to state that "special facility residents include those confined to institutions such as hospitals and nursing homes." NUREG 0654,

Appendix 4 at 4-2 (emphasis added). See also id. at 4-8 ("[s]pecial facilities, such as hospitals and industrial centers, produce less smooth functions . . ."). With respect to evacuation time estimates for special facility populations, Appendix 4 states further:

An estimate for this special population group shall usually be done on an institution-by-institution basis. The means of transportation are also highly individualized and shall be described.

Id. at 4-3. And, in describing the analysis of evacuation times which must be included in a plan, Appendix 4 states that "estimates for special facilities shall be made with consideration for the means of mobilization of equipment and manpower to aid in evacuation. . . ." Id. at 4-9. Thus, there is no basis to assert that the regulations contain any justification for excluding from regulatory coverage the detailed advanced planning and actual preparedness for evacuation of hospital patients.

The Appeal Board's observations in ALAB-832 are correct:

[W]e are satisfied that the Commission's regulations and the guidance contained in NUREG-0654 provide sufficient reason for treating hospital patients in the same manner as the residents of nursing/adult homes insofar as planning for evacuation and relocation is concerned. . . .

[T]here is not the slightest suggestion anywhere in [NUREG 0654] that, as a class, hospital patients are not entitled to the benefits of precisely the same emergency planning as are those individuals confined to nursing/adult homes.

With respect to the necessity that the emergency response plan concern itself with the transportation of hospital patients to reception hospitals outside of the EPZ, the regulations . . . counter any thesis that such transportation requires no pre-planning but can be left to ad hoc resolution once the emergency has occurred. Specifically, . . . an [evacuation time] analysis cannot be made for the hospitals without an awareness of the extent of the transportation that might be required to remove the patients from the EPZ, as well as an understanding of how and when the evacuation would be accomplished. Yet the proposal to deal with transportation requirements only after the need arises supplies no insight on either score.

. . .

The ad hoc evacuation [proposed by LILCO] does not provide a foundation for ascertaining evacuation time estimates in conformity with these criteria.

ALAB-832, 23 NRC at 156-57.

Furthermore, it is well-established in NRC precedent that in light of the NRC's regulations, the likelihood or probability of actually having to implement an evacuation during an emergency is an irrelevant consideration when reviewing the adequacy of an emergency plan and its compliance with NRC regulations. Thus, in Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 713 (1985), review declined, CLI-86-05, 23 NRC 125 (1986), the Appeal Board stated:

The Commission's emergency planning regulations are premised on the assumption that a serious accident might occur and that evacuation of the EPZ might well be necessary. . . . The adequacy of the given emergency plan therefore must be adjudged with this underlying assumption in mind. As a corollary, a possible deficiency in an emergency

plan cannot properly be disregarded because of the low probability that action pursuant to the plan will ever be necessary. Thus, the Licensing Board majority gave undue weight to the fact that evacuation of [a hospital within the EPZ] is remote.

As noted, this Appeal Board decision was approved by this Commission in declining review of the decision. In ALAB-819, the Appeal Board cited Guard v. NRC, 753 F.2d 1144 (D.C. Cir. 1985), which also clearly stands for the proposition that the NRC's requirements that there must exist pre-planning mean what they say. See id. at 1149 ("A provision calling for pre-event arrangements is not sensibly met by post-event prescriptions.")

Similarly, in Cincinnati Gas and Electric Co. (Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 773, 774, n.19 (1983), the Appeal Board stated in the context of evacuation plans for schools (also in the "special facility" category according to NUREG 0654; see Appendix 4 at 4-2, 4-3):

This emphasis on the need for sufficiently developed school evacuation plans should not be taken as implying a belief that, in the event of a serious accident, this particular protective measure necessarily would have to be invoked. To the contrary, depending upon their appraisal of the situation confronting them, the responsible officials might well decide that the better course would be to shelter the students in the school buildings. Our point is instead simply that Commission regulations plainly require the formulation of satisfactory evacuation plans as a part of the overall emergency preparedness effort. Moreover, at least if adequately developed, those plans should aid materially the making of an informed judgment respecting which available protective measures are most suitable in the totality of the circumstances attending the specific emergency at hand.

(Emphasis added).

LILCO's complete failure to plan for the evacuation of hospital patients and its cavalier attitude that all that is required is some sort of ad hoc response at the time of an accident clearly preclude the application of 50.47(c)(1) to overlook that failure. Not only has LILCO never even suggested, much less demonstrated as required by that provision, that it meets any of the criteria set forth in Section 50.47(c)(1) to justify licensing in the face of noncompliance with Section 50.47(b), but clearly LILCO could not do so even if it were to attempt it. It cannot be suggested that the deficiency at issue -- the complete failure to plan at all for the evacuation of hospital patients -- is "not significant."⁶ Similarly, there is no basis to suggest that LILCO has proposed or could propose any "adequate interim compensating actions" that "have been or will be taken promptly." The proposal to rely solely on ad hoc activities during an actual emergency is the only proposal contained in LILCO's Plan. Such a "proposal" was flatly rejected in Guard v. NRC. Furthermore, it is nowhere indicated in the Plan that LILCO intended that proposal to be "interim," or that it would be replaced by any other "proposal" which would satisfy the regulations. Finally, there could be no "other compelling reasons to permit plant operation," in the face of such a serious

⁶ It is particularly absurd to suggest that a failure to plan for the evacuation of persons within 10 miles of the plant is not significant in the wake of the Chernobyl accident, where evacuation was required for a distance of approximately 18 miles from the plant.


and deliberate threat to public safety which is presented by LILCO's attitude with respect to hospital patients. Accordingly, there is no basis to suggest that Section 50.47(c)(1) could justify overlooking the LILCO Plan's failure to comply with the express requirements of the regulations.

IV. Conclusion

For the foregoing reasons, ALAB-832 should be affirmed with respect to its rulings on the admissibility of Contentions 22.B and 22.C, and its reversal of the Licensing Board's ruling concerning LILCO's failure to plan for evacuation of hospital patients.

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