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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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 MOTION TO REOPEN RECORD

Pursuant to 10 CFR § 2.734, Suffolk County, the State of New York and the Town of Southampton (hereinafter, the "Governments") hereby move to reopen the evidentiary record in this proceeding for the purpose of considering new evidence relating to three offsite emergency planning issues. These issues are as follows:

1. The withdrawal of WALK Radio as the primary emergency broadcast system ("EBS") station, responsible for activating tone alert radios and broadcasting all EBS messages under the LILCO Plan;

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2. The lack of any agreement from the American Red Cross to LILCO indicating either the ability or willingness to provide emergency services or assistance in the event of a Shoreham emergency, as assumed and required under the LILCO Plan; and
3. The lack of congregate care center facilities for use in a Shoreham emergency under LILCO's Plan, now acknowledged by the Nassau County Chapter of the American Red Cross, and the Red Cross' inability and refusal to agree, identify, designate, open, or operate such centers in a Shoreham emergency.

The factual bases which demonstrate that the criteria of 10 CFR § 2.734(a) have been satisfied and the evidence which document the need for reopening are set forth in the attached Affidavit of Michael S. Miller, including the attachments thereto, and are discussed in Section II below.

I. Background

This motion to reopen is necessitated by recent events which make clear that provisions and assumptions in LILCO's Plan, as well as evidence previously submitted by LILCO, which were relied upon by this Board in ruling in LILCO's favor on certain issues in this proceeding, are no longer true. The facts concerning LILCO's proposed EBS and "prompt notification" systems, the role of the Red Cross, and the existence of congregate care facilities

have all materially changed from those previously "found" by this Board, such that a different result would almost certainly have been reached by the Board if, at the time of its decision, it had been aware of the facts which now exist. The Governments submit that the reopening criteria are met with respect to each of the three issues identified above. The following discussion places these issues and the events which triggered this reopening motion in proper context.

A. WALK Radio

Under the LILCO Plan, notification to the public in the event of a Shoreham emergency is commenced by activating 89 fixed sirens located throughout the 10-mile EPZ. This siren system is designed to provide only initial notification, however; the desired response is for people to obtain information and instruction via "EBS" messages broadcast by local radio stations. Under the LILCO Plan, the public is to be informed as to what, if any, protective response(s) are recommended by LILCO by way of such radio broadcasts. For example, if evacuation were recommended, participating radio stations are expected to broadcast information regarding what zones or population groups should leave the area. See Appendix A at IV-2 through -3.

Under LILCO's Plan, WALK Radio station (97.5 FM, 1370 AM) is the "lead radio station for disseminating information to the public" since it is "the most powerful broadcasting station in the area and simultaneously broadcasts on AM and FM." Id. at

IV-3. The LILCO Plan flatly states that WALK is the "primary direct communication link to the public" in the event of a Shoreham emergency. OPIP 3.8.2 at 1. Thus, LILCO's proposed public information materials, draft EBS messages, sample press releases, and instructions to LERO workers include the instruction that the public is to listen to WALK Radio for information about a Shoreham emergency and protective action advisories. See, e.g., Plan at 3.3-4 through 3.3-5, 3.8-1 through 3.8-6; OPIPs 3.3.4, 3.8.1, and 3.8.2.

The LILCO Plan also relies upon WALK Radio to activate LILCO's emergency broadcast system -- a system which can, in fact, only be activated by WALK. OPIP 3.8.2 at 2. And, it is only after WALK activates the EBS and begins broadcasting LILCO's emergency messages that any of the other radio stations which have agreed to participate in LILCO's local EBS network can retransmit such messages on their frequencies. See Plan at 2.2-2 through -2a. Thus, the Plan states:

LILCO has arranged for the prompt notification of the public through the voluntary participation of local radio stations in accordance with 43 CFR Section 73.913(b) and 73.935(a).

WALK-FM Radio Station provides Emergency Broadcast System (EBS) message transmission capabilities in support of the public notification efforts of LERO. Upon notification from LERO, WALK-FM Radio activates the EBS message control system and broadcasts to the general public, information supplied by the LERO Coordinator of Public Information. Numerous other radio stations . . . have agreed to retransmit the message on their frequencies.

Id.

WALK Radio is also relied upon by LILCO to activate the tone alert radios which LILCO has provided to special facilities with "unique evacuation problems," such as schools, hospitals, nursing homes, handicapped residences, and major employers. These tone alert radios are designed to be automatically activated by WALK's broadcast signal and, upon activation, would indicate that an incident has occurred at Shoreham (even if such incident would not require setting off the LILCO siren system). See Appendix A at IV-3, -166a, -170, -172, and -173; Plan at 3.3-4, 3.4-6.

In light of the foregoing, it is clear that WALK Radio is the central element in the LILCO Plan's so-called "prompt notification system" (i.e., sirens, local radio stations, tone alert radios). See Plan at 3.4-6.

By letter dated September 16, 1986 (a copy of which is Attachment A to the Affidavit of Michael S. Miller filed in support of this reopening motion), LILCO informed the NRC and the Governments that WALK Radio was no longer willing to participate in the LILCO Plan. As discussed in Section II.A below, WALK had informed LILCO of its withdrawal by letter dated August 8, 1986. A copy of the WALK letter is in Attachment B to the Affidavit of Michael S. Miller. WALK's withdrawal as the primary station in LILCO's EBS, and its decision to cease being a participant in LILCO's Plan, is a highly significant change in circumstances which necessitates the reopening requested herein.

The significance of WALK's withdrawal is evidenced not only by the numerous references to, and reliance upon, WALK activities in the LILCO Plan itself (as noted above), but also by the findings and conclusions made by this Board in its Partial Initial Decision ("PID"). Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644 (1985). For example, in ruling for LILCO on EP Contention 20 (which alleged that LILCO's reliance on WALK-FM and AM to broadcast EBS messages, although WALK-AM does not operate at night, would lead to the result that persons without FM radios would not receive EBS messages), the Board found that WALK Radio is "obviously the key station [under LILCO's Plan]" and concluded that "WALK-AM, and other backup stations, are all prepared to broadcast EBS messages at any time of day." 21 NRC at 764 (emphasis added). Similarly, in ruling for LILCO on EP Contention 57 (which challenged LILCO's reliance on tone alert radios to notify and warn special facilities of a Shoreham emergency), the Board expressly acknowledged that if WALK-FM were unwilling or unable to broadcast, LILCO's tone alert radio system would fail to function. See 21 NRC at 760.

Clearly, WALK's refusal to serve as the central element in LILCO's proposed prompt notification system creates a set of facts dramatically different from those which existed during the litigation of LILCO's Plan which resulted in the Board findings cited above. In that litigation, all parties and the Board

assumed that WALK Radio would be the central element of the EBS, that it would be the primary broadcast station, and that it would be willing to perform all the functions assigned to it in the LILCO Plan, since even the earliest versions of LILCO's Plan asserted that WALK had agreed to perform all such functions. WALK's withdrawal, however, has left a substantial void in LILCO's Plan. It has also rendered invalid the factual premises of the previous litigation and the Board's findings, and thus necessitates a reopening of the record.

B. The American Red Cross

The LILCO Plan, upon which this Board's prior decision was based, provides that the Nassau County Chapter of the American Red Cross ("ARC" or "Red Cross") is relied upon to perform many functions at both the so-called "reception center," to which evacuees would be initially directed for registration, monitoring, decontamination, and other assistance, including direction to so-called "congregate care centers," and at such congregate care centers, where evacuees would be fed, housed, and cared for as required. Specifically, according to the LILCO Plan, the Red Cross is expected to "provide staff at the reception center . . . [who] will provide assistance to evacuees, and assign those who have a need for shelter to a congregate care center." Reception center "assistance" is to include registration of evacuees. The Red Cross is also expected to identify, designate, open and operate congregate care centers for the sheltering of Shoreham

evacuees, and at such centers Red Cross staff are expected to provide information, counselling, food, clothing, and nursing and medical services to evacuees. Plan at 2.2-2, 3.6-7a, 4.2-1, 4.8-1. LILCO's Plan also assumes that an ARC representative would be present at the LILCO EOC. Plan at 2.2-2.

EP Contention 24.P alleged that although LILCO relies upon the ARC to provide extensive services at reception centers and congregate care facilities, LILCO had no agreement with the ARC to assure that such services in fact would or could be provided.¹ In its Concluding Partial Initial Decision ("CPID"), this Board found for LILCO on Contention 24.P. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-31, 22 NRC 410, 416-17, 419-20 (1985). The Board found that "the Red Cross has agreed in writing to provide Red Cross staff to assist evacuees and to direct evacuees to congregate care centers. . . . [T]he agreement between LILCO and the Red Cross is adequate to support our conclusion that the Red Cross will provide assistance and information to evacuees at the Coliseum." CPID, 22 NRC at 416-17. In addition, it found that "the letter of agreement between LILCO and the Red Cross is adequate to provide reasonable assurance that the Red Cross will perform the duties upon which LILCO relies in its emergency plan." Id. at 420.

¹ At the time the contention was drafted, LILCO proposed to have only "relocation centers" which would serve as both "reception" and "congregate care" facilities.

The Board's findings concerning the Red Cross were based upon a letter, dated July 25, 1984, from Frank Rasbury, then Director of the Nassau County Chapter, to LILCO (Cordaro et al., ff. Tr. 14,707, Att. 1) which, in the Board's opinion, provided reasonable assurance that the ARC would perform all the functions relied upon by LILCO in its Plan. In addition, the Board reasoned that testimony provided by Mr. Rasbury on LILCO's behalf was sufficient to support a conclusion that the ARC would identify, locate, and staff congregate care facilities as well as provide shelter, staff, food, beds, medical care, counselling and other aid as necessary at reception and congregate care facilities during a Shoreham accident. 22 NRC at 419, 422-23.

Not unlike WALK Radio's withdrawal from LILCO's Plan, the factual underpinnings of the Board's earlier rulings regarding the ARC and EP Contention 24.P have dramatically changed and compel a reopening of the evidentiary record. Indeed, apparently on August 21, 1986, LILCO was informed that there is no agreement by the Nassau County Chapter of the ARC to provide the emergency services and assistance relied upon by LILCO in its Plan. See letter, dated August 21, 1986, from Walter Oberstebrink, the Nassau County Chapter Chairman, to LILCO, which is Attachment C to the Affidavit of Michael S. Miller. See also Plan, App. B (Rev. 8). LILCO did not advise the Governments or this Board of this highly significant development until on or about September 18, when Revision 8 of its Plan was served. The present Chairman of the Nassau County Chapter subsequently confirmed that there is

no agreement between his organization and LILCO regarding implementation of LILCO's Plan, and called into question LILCO's, and apparently the Board's, interpretation of the testimony of Mr. Rasbury. See Newsday article entitled "Red Cross: We Can't Help on Shoreham," dated September 30, 1986, which is Attachment D to the Affidavit of Michael S. Miller.

The new set of facts brought about by the Red Cross statement that there is in fact no agreement between it and LILCO concerning the Red Cross' response to a Shoreham accident requires a reopening on EP Contention 24.P; the dispositive fact relating to that contention has now been unequivocally enunciated by the Red Cross, and that fact is directly contrary to the Board's earlier findings.

C. Congregate Care Centers

Under LILCO's Plan, the Nassau Chapter of the ARC is relied upon "to open and operate as many congregate care centers as necessary" to handle Shoreham evacuees. Plan at 3.6-7a. LILCO asserts in its Plan that the Nassau County Chapter has made all necessary arrangements for the use of congregate care facilities and, at the time of a Shoreham accident, would designate the centers to be activated. Id. at 4.8-1. Activated centers, according to LILCO, would come from a list of facilities attached to the previously mentioned July 25, 1984, letter from the Nassau County Chapter to LILCO. See Cordaro et al., ff. Tr.

14,707, Att. 1. The LILCO Plan asserts that "Letters of Agreement with . . . the congregate care centers are maintained by the ARC." Plan at 2.2-1.

Based upon such LILCO representations, this Board concluded in its CPID that LILCO's reliance on the Nassau County Chapter of the ARC to designate congregate care centers for sheltering Shoreham evacuees was "a satisfactory means of operation that meets the legitimate needs of all concerned." 22 NRC at 422. Specifically, the Board made the following findings to support its approval of LILCO's proposed scheme to provide necessary shelter and "congregate care" services:²

- "A list of the organizations with whom agreements are maintained for the congregate care centers is attached to the July 25, 1984 letter of agreement between LILCO and the Red Cross." (CPID, 22 NRC at 422).
- "At the time of an emergency, evacuees arriving at the reception center and needing shelter will be directed by the Red Cross to congregate care centers." (Id.).
- "Up to 48,000 persons could be sheltered within the facilities that have been identified by the Red Cross." (Id.).
- "The Board also concludes that it may place its confidence in the Red Cross for the assessment of adequacy of the shelters it has identified." (Id. at 423).

² These Board conclusions were made in ruling upon EP Contention 75, which alleged that there is no assurance that the relocation centers designated by LILCO will be of sufficient capacity to provide necessary services for the number of evacuees that would require them. This Board, in dealing with LILCO's January 1985 Motion to Reopen the Record to identify the Nassau Coliseum as a new reception center, interpreted Contention 75 as challenging the adequacy of congregate care centers designated by the Red Cross to serve the needs of, and to collectively shelter, Shoreham evacuees. See 22 NRC at 420.

- "In the event that some agreements [between shelter facilities in Nassau County and the Red Cross] are not confirmed, we would expect that the Red Cross would find other suitable facilities according to their normal procedures, that would be able to shelter the anticipated number of evacuees." (Id.).
- "The Board finds that the facilities to be made available are adequate and that the Red Cross has adequate procedures to provide others if needed." (Id.).

The recent letter from the Nassau County Red Cross renders all these Board findings invalid because their factual predicates are no longer true.

In its August 21, 1986 letter to LILCO (see Attachment C to the Affidavit of Michael S. Miller), the Nassau County Chapter ARC Chairman stated:

In the [July 25, 1984] letter to you, the Chapter also appended a list of facilities normally relied upon by the Red Cross to provide space for relocation [congregate care] centers in the event of a natural disaster. It is our understanding that our letter and list of facilities was submitted to the Nuclear Regulatory Commission in the Shoreham licensing proceeding. A significant number of the owners of these facilities have informed us that their facilities would not be permitted for use as relocation centers in the event of a radiological emergency at Shoreham. Others have advised us that their facilities have been withdrawn for use in any event either natural or radiological.

Thus, as of this time, the facts are: (1) the Red Cross has not agreed to identify, designate, open, or operate congregate care centers in the event of a Shoreham emergency; and (2) in any

event, the facilities to which LILCO -- and this Board -- previously assumed evacuees could and would be sent in the event of a Shoreham accident, are not available for that purpose.

Indeed, the facilities in the June 25, 1984 Red Cross list, once relied upon by LILCO and this Board to shelter evacuees, have themselves advised LILCO that no agreements for their use as congregate care centers exist. Unequivocal statements from school districts, churches and other facilities to this effect were presented to this Board on September 26, 1986, when Mr. Howard M. Koenig, the Superintendent of Schools of the East Meadow Union-Free School District, testified at the Mineola, New York, limited appearance sessions. See Tr. 16,999-17,009. Letters from 34 facility owners, collectively representing almost all the congregate care centers relied upon by LILCO as being available for designation by the Red Cross, were attached to Superintendent Koenig's statement. These letters make clear that, contrary to LILCO's Plan and the findings made by this Board in its CPID, there are no agreements between the Nassau County Chapter of the ARC or LILCO and shelter facilities in Nassau County which indicate their availability to serve as congregate care centers in the event of a Shoreham emergency.

II. Bases for Reopening

The criteria for reopening an evidentiary record have recently been codified by the Commission in 10 CFR § 2.734. See 51 Fed. Reg. 19,535, 19,539 (May 30, 1986). The proponent of a motion to reopen must satisfy three criteria:

1. The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
2. The motion must address a significant safety or environmental issue.
3. The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Id. at 19,539 col. 3. The Governments submit that the above three criteria are satisfied with respect to each of the three issues raised by this motion.

A. Timeliness

First, a motion to reopen must be timely. This motion satisfies this criterion in all respects.

As noted above, it was not until September 16, 1986, that LILCO chose to inform the Board and the Governments of WALK's withdrawal as the primary broadcast station under LILCO's Plan; the Governments received that letter on September 17. Furthermore, it was not until on or about September 24 that the Governments received a copy of the actual letter from WALK notifying LILCO of the station's withdrawal and the reasons therefor. Even then, the copy was received not from LILCO, but rather from the NRC's Docketing and Service Branch, which served the letter because it had been sent by WALK Radio itself to the NRC. It is noteworthy that the WALK letter in question bears the date of August 8, 1986, and thus was presumably in LILCO's

possession for almost six weeks before LILCO chose to notify either this Board or the other parties to this proceeding of WALK's withdrawal. The Governments have acted promptly in filing this motion within one month after receiving notice from LILCO of WALK's withdrawal.

The Red Cross letter which forms the basis for the other two issues raised in this motion was served on the Governments with Revision 8 of the LILCO Plan, on September 18, 1986. That letter is dated August 21, 1986. Again, it must be assumed that this letter was in LILCO's possession for almost a month before LILCO chose to notify either the Board or the other parties that the Red Cross (a) had disavowed the existence of any agreement with LILCO to open and operate congregate care centers or otherwise to provide emergency services or assistance in the event of a Shoreham accident, and (b) had informed LILCO that the facilities earlier relied upon to be congregate care centers were not available for that purpose. The Governments have acted promptly in filing this motion less than one month after receiving from LILCO the information upon which it is based.

In addition, and also pertinent to the timeliness issue, there is no danger here that any party will be surprised or otherwise prejudiced by this motion. As noted, representatives of LILCO have been aware of WALK's withdrawal and the August 21 Red Cross letter far longer than the other parties to this proceeding. LILCO chose to withhold such information and cannot now be heard to complain about the consequences of such action.

B. Significant Safety Issue

A motion to reopen must also address a "significant safety or environmental issue." 51 Fed. Reg. 19,539 col. 3. Certainly, there can be no question that the matters discussed herein meet this criterion. This Board, for example, previously ruled in response to a January, 1985 LILCO motion to reopen the record on reception center issues that the mere identity of LILCO's relocation center "presents a significant safety issue." Memorandum and Order Granting LILCO's Motion to Reopen Record, at 7-8 (Jan. 28, 1985). The logic of that ruling must apply with at least equal force here. Indeed, in the instant case, it is not merely the identity of a facility which is at issue. Rather, the questions which must be asked include the following:

- Whether LILCO's prompt notification system, including the transmission of EBS messages and information to the public, and the activation of tone alert radios, can be implemented without WALK Radio which, as the most powerful broadcasting station on Long Island, is relied upon by LILCO as the "primary direct communication link to the public" (see, e.g., Plan at 3.4-6; OPIP 3.8.2).
- Whether LILCO's proposed reception center and congregate care center schemes can be implemented -- and, therefore, evacuees' registered, monitored, decontaminated, fed, housed, counselled, and otherwise cared for -- without an agreement by the Red Cross to provide emergency services and assistance in the event

of a Shoreham accident, including the opening and operation of congregate care centers, and provision of information, counselling, food, clothing, nursing and medical services, as assumed by the LILCO Plan (see, e.g., Plan at 2.2-2, 3.6-7a, and 4.8-1).

-- Whether LILCO can provide reasonable assurance that its Plan can be implemented and the safety of the public will not be imperiled if, contrary to LILCO's assertions (see, e.g., Plan at 4.8-1), there are no congregate care centers available for evacuees in the event of a Shoreham accident.

The Governments submit that each of these questions must be answered in the negative. Moreover, these questions, raised by the new facts which give rise to this motion, are undisputedly of substantial safety significance for two reasons. First, each one raises a significant new void in the LILCO Plan, caused by the withdrawal, or acknowledged non-existence, of elements of LILCO's own Plan which, by the words of that Plan, are essential to its implementation.³ Second, each one deals with an element of emergency preparedness required by the regulations, e.g., 10 CFR

³ Moreover, with respect to the third issue, it must be noted that the availability of "congregate care centers" is critical to LILCO's overall relocation scheme, including its plans for registering, monitoring, and decontaminating evacuees. If some kind of "congregate care" or relocation facilities are not provided for evacuees in need of a place to stay after they have been forced to leave their homes, there would be massive overcrowding at monitoring and decontamination locations (since evacuees would have no place to go) making it impossible for monitoring and decontamination functions to be performed as planned.

§§ 50.47(b)(3), 50.47(b)(5), 50.47(b)(6), 50.47(b)(8),
50.47(b)(10), 10 CFR Part 50 Appendix E § IV.D.3, NUREG 0654
§§ II.A.3, C.4, E.5, E.6, F, J.9, J.10, and Appendix 3 thereto.
Accordingly, the Governments submit that it is beyond dispute
that the issues raised in this motion constitute serious safety
issues.

C. Different Result Would Be Likely

Finally, a motion to reopen must show that a "different
result would be or would have been likely had the newly proffered
evidence been considered initially." 51 Fed. Reg. 19,539 col. 3.
This criterion is satisfied with respect to each of the three
issues raised.

First, in its prior rulings, this Board determined that:

- WALK Radio is the "key station" in LILCO's EBS and that
EP Contention 20 was without merit because, inter alia,
WALK-AM "[is] prepared to broadcast EBS messages at any
time of day" (PID, 21 NRC at 764);
- Contrary to the assertions of EP Contention 24.P, the
July 25, 1984 letter of agreement between LILCO and the
ARC "provides reasonable assurance that the Red Cross
will perform the duties upon which LILCO relies in its
emergency plan" (CPID, 22 NRC at 420); and
- EP Contention 75, interpreted by the Board to challenge
the adequacy of congregate care centers designated by
the Red Cross, including the capability of such
facilities to serve the needs of and collectively
shelter Shoreham evacuees, was without merit (CPID, 22
NRC at 420, 422-23).

Clearly, a "different result" than was previously reached by the Board with respect to EP Contentions 20 and 24.P is likely -- indeed, required -- under circumstances where there is no longer any agreement between LILCO and either WALK Radio or the Red Cross regarding implementation of the LILCO Plan. Similarly, there must be a "different result" reached by the Board on EP Contention 75 (concerning the adequacy of congregate care centers) given the acknowledgement by the Red Cross that the congregate care centers assumed to be available for sheltering evacuees in the event of a Shoreham accident in fact are not available for that purpose.

Second, the Board also made more general findings which indicate that a different result would be likely in light of the new circumstances which now exist. Specifically, the Board found in the PID that LILCO's Plan will provide adequate notification and information to the public, in ruling for LILCO on the set of contentions concerning LILCO's public notification and information proposals (EP Contentions 55-59, 20, 18, 21.C). See PID, 21 NRC at 756-68. Because the availability and willing participation of WALK Radio is the central factual predicate to the operation of LILCO's entire public notification and emergency information system, the Board's findings that the LILCO Plan complies with the requirements of 10 CFR § 50.47(b)(4), 50.47(b)(5), 50.47(b)(6), 50.47(b)(7), 50.47(b)(10), 10 CFR Part

50 Appendix E § IV.D, and NUREG 0654 §§ II.E.5, E.6, G.1, G.2, J.9, J.10, and Appendix 3 thereto are no longer correct, since that central factual predicate has been withdrawn.⁴

Similarly, the Board found (and LILCO did not appeal the ruling), in the context of special facility populations (other than hospital patients), that the LILCO Plan was defective in failing to identify, and include supporting agreements for the use of, so-called "reception centers" to which evacuees from schools and special facilities could be taken and cared for. See CPID, 22 NRC at 430. In light of the Red Cross statement that there is no agreement by which it would perform emergency services, including the identification or operation of centers for general evacuees to be sent for shelter and other necessary services, and the Red Cross' acknowledgment that facilities are not available for that purpose in any event, the Board's analysis of LILCO Plan deficiencies with respect to school children and special facility (other than hospital) residents must now also be applied to find the Plan deficient with respect to post-evacuation services for the general population.

4 The centrality of the ability to notify the public of an emergency, direct the broadcasting of EBS messages, and make protective action recommendations to the public is further demonstrated by this Board's ruling that LILCO's lack of legal authority to perform such functions is "adequate to support a denial of approval of the emergency response plan under 10 CFR § 50.47(a)(1)." See CPID, 22 NRC at 427-28.

III. New Contentions Relating to WALK's Withdrawal and the Unavailability of Congregate Care Centers

The Governments submit that, under the circumstances, reopening is justified with respect to the three issues identified herein under the rubric of contentions already litigated in this proceeding -- specifically, the contentions dealing with LILCO's proposed public notification system (EP Contentions 20, 55-59), EP Contention 24.P, and EP Contentions 24.O and 75. Nevertheless, for the convenience of the Board and parties, to avoid unnecessary confusion and argument arising from trying to fit new facts into old contentions, and to make absolutely clear at the outset the issues which the Governments believe are presented by the new events and facts which give rise to this reopening, the Governments are submitting with this motion two new contentions. Those contentions set forth the issues to be addressed, upon reopening the record, concerning WALK's withdrawal and the lack of congregate care facilities. The Governments also seek reopening on Contention 24.P, which is still fully applicable to the fact that there is no agreement by the Red Cross to perform the functions assigned to it under the LILCO Plan.

For the reasons discussed below, the Governments believe that the two new contentions and this motion to reopen, in addition to satisfying the criteria discussed in Section II above, also satisfy the requirements for late-filed contentions under Section 2.714, as required by 10 CFR § 2.734. See 51 Fed.

Reg. 19,539. col. 3. The Governments emphasize, however, that these new contentions are being filed solely to avoid unnecessary, non-productive, and wasteful argument about the intended scope and coverage of contentions written in 1983, when facts -- and LILCO's Plan -- were completely different than they are now. Thus, while the proposed new contentions fully satisfy the late-filed contention criteria, by submitting them the Governments do not in any way concede that they are required to file such contentions. Nor do the Governments waive their position that the issues raised by this reopening motion were the subject of the previous litigation of already-admitted EP contentions.

Section 2.714(a)(1) requires a licensing board to consider five factors in determining whether to admit late-filed contentions. Those factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

All these factors are satisfied by the proposed new contentions and the facts disclosed in this motion to reopen.

A. Good Cause Exists for Not Having Filed the Proposed Contentions Earlier

For the reasons previously set forth in connection with the timeliness of this motion to reopen (see Section II.A above), good cause exists for failing to file these contentions earlier. As noted, it was not until late in the week of September 15 that the Governments were notified by LILCO of the existence of the correspondence from WALK and the Red Cross which form the bases for the new contentions. Earlier notice of these developments could have been provided to the Governments, but was withheld by LILCO. Since learning of that correspondence, the Governments have acted promptly in bringing their concerns before the Board, and in filing this motion. Accordingly, the "good cause" requirement of 10 CFR § 2.714(a)(1) has been met.

B. There Are No Other Available Means Whereby the Governments' Interests Will Be Protected

The purpose of this proceeding has been to determine whether LILCO's Plan provides reasonable assurance that adequate protective measures can and will be implemented in the event of a Shoreham emergency. As noted above, the Board previously found that LILCO's Plan was adequate with respect to the issues raised in the proposed new contentions. The WALK withdrawal and recent Red Cross statements require a reversal of such findings. Absent

a reopening to consider the matters raised in the new contentions, there are no other means to pursue the Governments' interest in having such findings reversed, so that the Board's conclusions accurately reflect reality. Apparently, no other party has any interest in having the Board's prior rulings corrected to reflect current facts, since LILCO did not reveal the pertinent new information for more than a month (and even then, only revealed it in an offhanded way that did not even mention its significance or impact on the Board's previous findings) and the NRC Staff has done nothing to indicate any intent to pursue the new information and has not itself sought any reopening.

C. The Governments Can Be Expected to Assist
in Developing a Sound Record

The Governments have participated vigorously in this entire emergency planning proceeding, and will continue to do so in the reopened proceeding. The Governments will assist the Board in developing the necessary record to rule on the issues raised in the new contentions by filing summary disposition motions, and affidavits or testimony, if required, to support findings that there exist substantial new voids in the LILCO Plan which preclude findings of compliance with 10 CFR § 50.47. Without a reopening on the issues raised in the proposed new contentions, as urged by the Governments, this Board would have no avenue by which to take account of current reality, and new factual

developments, to correct what have become clearly erroneous prior findings. Indeed, by filing this reopening motion, the Governments have already assisted in the development of a sound and complete record in this proceeding.

D. The Governments' Interests Would Not Be Adequately Represented by Other Parties

As noted in section III.B above, no other party in this proceeding has attempted -- or could be expected -- to raise the issues which are the subject of this reopening and the new contentions.

E. The Issues Raised Do Not Unduly Broaden the Scope of the Issues Before the Board, and Would Not Cause Undue Delay

Reopening the record on the issues raised in the new contentions would not broaden the scope of the issues before the Board, since they are ones already considered -- and ruled upon -- by the Board. It is essential, however, that such issues be considered again so that the facts as they actually exist -- rather than as LILCO represented them two years ago -- can be taken into account. The Governments submit that the withdrawal of two central "support" organizations -- WALK Radio and the Red Cross -- from LILCO's Plan has serious ramifications upon LILCO's ability to implement its Plan. It makes implementation impossible.

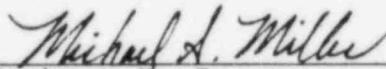
Furthermore, the requested reopening would likely result in little, if any, actual hearing time, since they are likely to be resolved in the Governments' favor on summary disposition motions. Even if some factual disputes were to arise, however, the time necessary to deal with them would not be great, and would pale in comparison to the time already spent in hearings, and likely to be spent in the exercise litigation and remand litigation which are yet to begin.

IV. Conclusion

For the reasons set forth above, the Governments submit that they have satisfied the Section 2.734 criteria for reopening on the three issues identified herein, and that, accordingly, the record should be reopened on the two proposed contentions attached hereto, and on EP Contention 24.P.

Respectfully submitted,

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