

6/17/80

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANT'S RESPONSE TO THE  
SOC/STAFF STIPULATION OF JUNE 6

The question is whether the following SOC contentions have been adequately particularized: 2(vii), 7(a)(ii), 8, 10, 11 and 12. We comment on each in turn.

SOC CONTENTION 2(vii)

The Applicant supports the division of this claim into SOC Contentions 1 and 2.

SOC Contention 1

We agree that this claim is adequately particularized, with one notable exception. The words "such as" in both parts of the contention should be struck. Words of this sort -- "such as," "not limited to," "for example," "for instance," "etc." -- are open-ended. Their use invites subsequent disagreement about the scope of the contention and, more important, makes difficult the preparation of sufficiently comprehensive testimony. Thus,

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it is reasonable to require SOC to specify all of the "local conditions" that it now has in mind, subject to later amendment if good cause can be shown for the change. Indicatively, the Board in this proceeding has previously struck such open-ended language from proposed contentions. See Transcript at 63-64 (Oct. 11, 1977 prehearing conference) (concerning the words "not limited to" and "etc.").

SOC Contention 2

It appears to be adequately particularized.

SOC CONTENTION 7(a)(ii)

This multipart claim has a long preamble followed by four allegations of "failure," numbered (1) to (4). Adequate particularization is missing for the following reasons.

1. At the outset, it is not clear whether the only operative parts of the claim -- that is, the parts that must ultimately be addressed by testimony -- are the four numbered allegations.

2. If that is not the case and the preamble is meant to be operative, it is not clear what precise issue(s) the preamble poses.

3. Allegations numbered (1) to (4) totally fail to identify the "issues" or "items" as to which "failure" has allegedly occurred, other than to relate them generally to "the accident at TMI" or to "the TMI Action Plan." Literally hundreds of "issues" and "items" can be so related. If the claim is to be

understood, it is essential that SOC indicate which of these hundreds of questions it has in mind. Until SOC has actually reviewed NUREG-0660 and decided which "issues" and "items" are really in question, contention 7(a)(ii) will not be particularized at all, much less adequately particularized. In addition to this fundamental difficulty, there remain several other problems with the numbered allegations.

4. To come within the ambit of the Shoreham proceeding, the first of SOC's numbered allegations needs a phrase such as "and relevant to Shoreham" added after its existing phrase "technical issues raised by the accident at TMI." As presently drafted, the allegation covers all TMI issues, including those that bear only on PWR's of B&W design, for instance. The fourth of SOC's numbered contentions has a similar deficiency, which requires a similar remedy.

5. It is not clear how the second and third numbered allegations differ from one another. What is the difference between "to resolve" and "to implement in a timely fashion"? Is it simply the word "timely"? Is it an attempt to assign one meaning to "resolve" and another to "implement"? If so, what are the different meanings? Absent answers to these questions, it would be very difficult to prepare responsive testimony.

#### SOC CONTENTION 8

Although this claim appears to be adequately particularized, SOC has tied it to TMI by only a terse, general reference. It

does not seem that this reference adequately meets the Board's directive in its March 5, 1980 Order:

It appears to us that SOC is here contending that the Shoreham reactor will not be equipped to permit direct measurement of the temperature of fuel rods in the core and that this fact poses a threat to the public health and safety. Staff believes that this contention plows old ground, inasmuch as General Design Criteria 13 and IEEE 279 § 4.8 have existed for many years. (Staff Answer at 21). We believe, however, that the contention might be litigable if properly related to the TMI-2 accident and adequately particularized.

Id. at 16.

In our judgment SOC continues "to plow old ground" in contention 8. Issues concerning the measurement of fuel cladding temperatures during accident conditions were afoot long before TMI. Thus, SOC contention 8 is unjustifiably out of time.

#### SOC CONTENTIONS 10 AND 11

1. Consolidation of these claims into one contention seems useful. The consolidated claim, however, has not been adequately particularized for the reasons below.

2. As with SOC contention 7(a)(ii), this contention is multipart, with a long preamble. Again as with 7(a)(ii), it is not clear whether the preamble is meant to raise any issue(s) for litigation, or whether allegations (a) to (c) are the only operative parts of the contention.

3. If the preamble is meant to be operative, it is not clear what at Shoreham, as opposed to TMI, is being challenged and, thus, what issue(s) would require responsive testimony if the preamble were admitted for litigation.

4. Allegation (a) attacks the "completeness" of a list that will be part of an extensive submission to the NRC Staff not yet made by the Applicant. The allegation, thus, is premature. Moreover, it gives no indication of the areas in which SOC thinks "completeness" to be lacking.

5. The Board's Order of March 5, 1980, stated in pertinent part:

Petitioner has failed to adequately specify the equipment and systems of concern or to indicate how the TMI accident indicated that equipment and systems are improperly classified.

Id. at 17. SOC allegation (b) fails to meet these criteria. It simply challenges "[t]he adequacy of the Applicant's qualification program, including the assessment of the effects of aging." Thus, this allegation does not either "specify the equipment and systems of concern or . . . indicate how the TMI accident indicated that equipment and systems are improperly classified." Further, by use of the term "including," allegation (b) suggests that SOC means for the contention to cover more than the "aging" issue actually referenced in it. As noted on pages 1-2 above, such an open-ended approach is not appropriate.

6. Allegation (c) also totally fails to respond to the Board's particularization criteria just quoted. Moreover, the allegation relies on "the requirements of IEEE 323-1974 and IEE 344-1975," standards that are six and five years old respectively. Claims concerning qualification in accordance with

these requirements could have been raised long before TMI. They are not new. An attempt to raise them now is unjustifiably out of time.

SOC CONTENTION 12

This claim appears to be adequately particularized, with two exceptions.

1. It is not wholly clear whether the contention's phrases "further Mark II tests" and "this design feature" refer simply to "downcomer bracing." If so, the contention is adequately particularized.

2. If not, it is essential that SOC spell out what aspects of Mark II, other than downcomer bracing, to which it is referring.

To summarize, for the reasons stated, the Applicant believes that SOC contentions 2<sup>\*</sup>/ and 8 have been adequately particularized, although the latter does not seem to have met the Board's requirement of a TMI link. Absent that link, the contention is untimely.

SOC contentions 1<sup>\*</sup>/ and 12 have particularization problems that could be easily remedied by the Board.

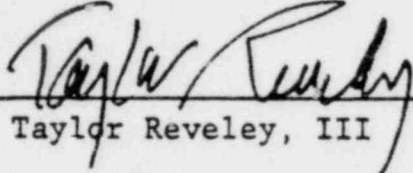
SOC contentions 7(a)(ii) and 10-11, on the other hand, are severely inadequate. They provide no real information about the precise claims at issue.

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<sup>\*</sup>/ Formerly, SOC contention 2(vii).

The Applicant does not object to SOC's receiving until August 6, 1980 to work further on particularizing its claims. We are concerned, however, that none of SOC's contentions be admitted for prosecution until its scope and meaning are reasonably clear.

Respectfully submitted,  
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Dated: June 17, 1980

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LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station, Unit 1)  
Docket No. 50-322

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response To The SOC/Staff Stipulation of June 6 were served upon the following by first-class mail, postage prepaid, on June 17, 1980.

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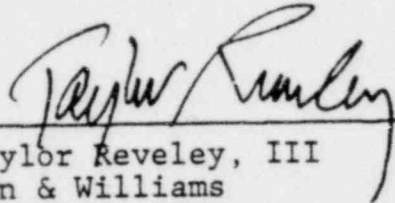
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