

DOCKETED
USNRC

'82 AUG 20 13:51

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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 (OL)
(Shoreham Nuclear Power Station,)	(Emergency Planning
Unit 1))	Proceedings)
_____)	

MOTION TO RESCHEDULE THE DATE
FOR FILING EMERGENCY PLANNING PHASE I
TESTIMONY TO NOVEMBER 1, 1982 OR
30 DAYS AFTER RECEIPT OF THE NRC STAFF'S
FINAL APPRAISAL REPORT, WHICHEVER IS LATER

On August 3, 1982, counsel for the NRC Staff informed the Board that the NRC Staff had rescheduled its appraisal of LILCO's emergency preparedness plan, originally scheduled for July 19, 1982, to begin on August 23, 1982. NRC counsel further advised that the Staff expects to issue an interim report at the conclusion of the two-week appraisal (approximately September 6, 1982) with a full report to follow on October 1, 1982 (Tr. 8697). The Board, recognizing the impact of the Staff's revised appraisal schedule on the filing date for emergency planning testimony, requested that the parties propose a new filing date (Tr. 8698).

8208240243

DS03

Suffolk County respectfully submits that the Board should establish November 1, 1982 or 30 days after receipt of the Staff's final report, whichever date is later as the new filing date for emergency planning testimony. The County's proposal is based primarily upon its need for time within which to fully evaluate the Staff's report and to incorporate pertinent findings from that report into the County's testimony.

In establishing the original emergency planning schedule, the Board fully recognized the importance of the Staff's appraisal and accompanying report. As it cogently noted, those items would serve the important functions of narrowing and focusing the emergency planning issues before the Board, and adducing facts that might otherwise be unavailable to the parties (Tr. 7208-7215). In particular, the appraisal and report were deemed vital to pre-litigation settlement of emergency planning issues. As the Board stated at Tr. 7208:

But looking at what is in controversy, I suggest both as a matter of our actual litigation, we are going to need some of the things, and also as a matter of what the intervenors rationally might like to see before they would be willing to narrow or settle some of the issues which might be otherwise admissible. If there is not settlement, that would affect that judgment.

I won't ask you the question, Mr. Reveley or Mr. Black, but I suggest that if you are representing the County or one of the intervening groups, you would want to see that appraisal before you settled some issues that were going to be affected possibly by the results of the appraisal.

Furthermore, the Board observed that the appraisal report might uncover emergency planning deficiencies that would not be apparent to the parties absent an appraisal (Tr. 7213-7214). Finally, and perhaps most importantly in the context of efficient litigation, to permit the filing of testimony and begin litigation of the issues before the intervenors could fully evaluate the appraisal report would, most likely, result in wasteful re-litigation of some issues based on new facts set forth in the report (Tr. 7215).

The Board has already recognized the importance of the appraisal report by establishing an emergency planning schedule "keyed" to its completion (Tr. 7193). In its determination of the length of time necessary for the intervenors to assimilate adequately the appraisal's findings, the Board stated (Tr. 4544):

But the question is -- I guess a lot depends on what the appraisal report says, and in addition, there is just the mechanical process, if the testimony is extensive of going back to it and updating it and filling in the results and so

on. And I don't think a week or two would be adequate for that . . .

Accordingly, the Board "keyed" the filing of testimony to approximately 30 days following receipt of the appraisal report (Tr. 4544-4550). Since the report was scheduled to appear in mid-August, the Board established September 13 and the filing deadline (Tr. 4550).

The Staff's delay of commencement of the appraisal has by no means diminished the importance of the appraisal results in narrowing issues, adducing facts not otherwise available and encouraging resolution of certain contentions. The factors that led the Board to grant the intervenors 30 days in which to evaluate the report before filing testimony are as valid and compelling now as they were at the time of the Board's prior ruling. Therefore, the County submits that the Board should adhere to its original criteria and in light of the new Staff schedule, require the filing of testimony on November 1, 1982, one month following the issuance of the final report.

The County is aware that the Staff presently intends to issue a so-called "interim" report on September 6, 1982; however, the County strongly opposes any suggestion that testimony should be filed based upon such a document. The Board noted skeptically that (Tr. 8699):

Well, I don't know whether the interim report would be sufficient, and the problem is, neither does anybody else until it is almost too late. Well, no, that's not correct. We will have the interim report early in September. We might even be able to adjust after that. It is going to have to be a darn good interim report to serve that purpose, good in the sense of thorough.

It is extremely unlikely that the Staff's "interim report" could even begin to satisfy the Board's requirements. First, the Staff simply will not have the time to produce by September 6 a thorough document, containing the detail necessary to make it of any significant value in these proceedings. The appraisal is scheduled to take two full weeks; the September 6 interim report date immediately follows the appraisal period. It is difficult to imagine that any document issued on September 6 could possibly be complete and thorough, or reflect in any meaningful way the Staff's consideration of the appraisal results. Based upon standard Staff practice, it is more likely to contain a summary description of the appraisal process (e.g., what was looked at and/or what was submitted by the Applicant), with a listing of additional information required by the Staff prior to the completion of its review. Clearly, a "report" of this nature would not provide sufficient information on which to base testimony.

Second, the "interim" report will obviously be subject to revision and further review and analysis. Clearly, it would not be a document with sufficient reliability to justify basing testimony on it. There has been much evidence of the changing status of Staff review during the course of litigation on health and safety issues. Time after time, Staff witnesses have testified as to additional open items, additional information needed from the Applicant and additional matters not yet reviewed by the Staff, which testimony could not be gleaned from preliminary or even purport to be final reports issued by the Staff. To require the submission of emergency planning testimony based on what is admittedly an "interim" report would introduce an additional and unnecessary layer of uncertainty and confusion into the litigation of emergency planning issues. The County submits that it would be far more efficient to avoid at least that element of uncertainty by awaiting the issuance of the Staff's final report, so the parties can rely with more confidence on the Staff's position.

In short, neither the parties nor the Board should be subjected to the burden of having to prepare and review testimony that is based on an incomplete and preliminary document. Having to do so would result in precisely what the Board has attempted to avoid -- i.e., wasting resources of the parties

and the Board by requiring testimony to be re-drafted and re-revised after issuance of the final report.

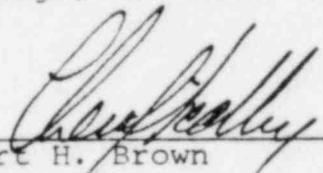
In seeking a November 1 filing date, the County is also taking a realistic view of the current overall status of this licensing proceeding. There are several pending health and safety issues that have been scheduled for litigation, but have not yet commenced. The litigation on the QA/QC contentions alone is likely to consume several weeks. It is thus quite possible that the health and safety portion of this proceeding will not conclude before the end of October. Furthermore, testimony has already been filed in the security issues involved in this proceeding. Should the health and safety litigation be completed in mid-October, it would be logical to proceed at that time to litigating the security contentions since those issues are ripe for hearing, rather than rushing into emergency planning with the Staff's review still incomplete. Accordingly, a November 1 filing date for emergency planning testimony will, as a practical matter, cause little or no delay in the overall progress of this proceeding, nor will it result in any prejudicial or non-productive delay in the commencement of hearings on the emergency planning Phase I issues.

In light of the need for the County's evaluation of a final report, which the Board has previously recognized, the

obvious inadequacies of an interim report, and the realities of the present litigation schedule, the County respectfully moves the Board to establish November 1, 1982, as the date by which the County and the other intervenors must file emergency planning testimony.

Respectfully submitted,

David J. Gilmartin
Suffolk County Attorney
Patricia A. Dempsey
Assistant Suffolk County
Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Cherif Sedky
Christopher M. McMurray
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, NW, Suite 800
Washington, DC 20036
(202) 452-7000

Attorneys for Suffolk County

Dated: August 20, 1982
Washington, D.C.

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 (O.L.)
(Shoreham Nuclear Power Station,))
Unit 1)))
_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion to Reschedule the Date for Filing Emergency Planning Phase I Testimony to November 1, 1982 or 30 Days After Receipt of the NRC Staff's Final Appraisal Report, Whichever is Later" was sent on August ____, 1982 by first class mail, except where otherwise noted to the following:

Lawrence Brenner, Esq.*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James L. Carpenter*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Peter A. Morris*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Mr. Brian McCaffrey
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Ralph Shapiro, Esq.**
Cammer and Shapiro
9 East 40th Street
New York, New York 10016

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, New York 11801

W. Taylor Reveley III, Esq.**
Hunton & Williams
P.O. Box 1535
707 East Main St.
Richmond, Virginia 23212

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stephen B. Latham, Esq.**
Twomey, Latham & Shea
Attorneys at Law
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

*By Hand

**By Federal Express

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

David H. Gilmartin, Esq.
Suffolk County Attorney
County Executive/Legislative Bldg.
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.
David A. Repka, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart Diamond
Environment/Energy Writer
NEWSDAY
Long Island, New York 11747

Cherif Sedky, Esq.
Kirkpatrick, Lockhart,
Johnson & Hutchison
1500 Oliver Building
Pittsburgh, Pennsylvania 15222

Mr. Jeff Smith
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

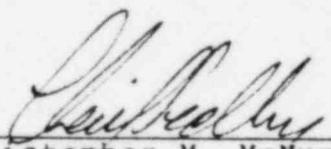
Hon. Peter Cohalan
Suffolk County Executive
County Executive/Legislative
Building
Veterans Memorial Highway
Hauppauge, New York 11788

Ezra I. Bialik, Esq.
Assistant Attorney General
Environmental Protection Bureau
New York State Department of
Law
2 World Trade Center
New York, New York 10047

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Matthew J. Kelly, Esq.
Staff Counsel, New York
State Public Service Comm.
3 Rockefeller Plaza
Albany, New York 12223

DATE: *August 20, 1982*



Christopher M. McMurray
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., 8th Floor
Washington, D.C. 20036