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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF THE  
SECRETARY  
BRANCH

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

MOTION FOR PARTIAL SUMMARY DISPOSITION  
OF SC CONTENTION 8/SOC CONTENTION 19(h) --  
ENVIRONMENTAL QUALIFICATION

Long Island Lighting Company (LILCO) hereby moves, pursuant to 10 CFR § 2.749, for summary disposition of subpart (d) of Suffolk County Contention 8 and of the corresponding subpart (4) of SOC Contention 19(h) -- Environmental Qualification, on the ground that there are no genuine issues of material fact to be heard on this issue.1/

BACKGROUND

1. This motion is being filed late in the prelitigation process -- later than LILCO would have preferred. Not until the filing of direct testimony, however, on January 18 did it become clear that no material issues of fact within

1/ LILCO has ben informed this morning that Suffolk County is prepared to execute this agreement tendered to it by LILCO resolving subparts (a) and (b) of the contention.

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the scope of subpart (d) of the Environmental Qualification (EQ) contentions had been raised in any direct testimony filed by either of their proponents.

2. SC Contention 8 and SOC Contention 19(h), which are substantially identical, raise the following five specific issues:

- (a) The limited test conditions posed in the Shoreham environmental qualification program are not sufficiently conservative;
- (b) Equipment has been qualified by grandfathering to older, less stringent standards;
- (c) The list of emergency equipment to be qualified is inadequate;
- (d) There has been an inadequate demonstration that all safety-related equipment has been properly qualified to meet aging and other life requirements; and
- (e) There is insufficient information to evaluate the overall adequacy of Shoreham's satisfaction of environmental qualification requirements for safety-related equipment.

3. The filing of testimony on EQ issues follows a long and ultimately unsuccessful attempt at settlement. It is not LILCO's intent here to rehash the substance of the settlement proposals, but an understanding of this process is important in understanding both the timing of this motion and the posture of

the issues it addresses. Pursuant to the Board's direction, settlement negotiations were undertaken beginning in October among LILCO, Suffolk County and the Staff to resolve the EQ contentions. SOC did not participate actively in those discussions. Meetings were held on October 21, December 8 and December 17, 1982. LILCO sent at least three, and on occasion as many as five, technical experts to each meeting. LILCO also prepared and sent to Suffolk County a special submittal, dated December 10, in response to various information requests made by Suffolk County at the December 8 meeting. LILCO requested Suffolk County, at this meeting, to specify its concerns. Suffolk County took the position at the October 21 meeting that it could not specify its contentions until it had been provided with further factual information beyond that already in its possession.

4. At the end of the December 17 meeting, Suffolk County tendered to LILCO a proposal for settlement of the entire contention, which it put into writing by letter dated December 23, 1982. That proposal was discussed in a series of letters and telephone calls between December 23, 1982 and January 10, 1983. On or about January 10, the parties concluded that a comprehensive settlement could not be reached and that no portions of the proposal would partially resolve the EQ contentions.

5. SOC at no time participated actively, or stated any interest in participating actively, in the settlement negotiations. Counsel for SOC discussed the status of settlement negotiations once with counsel for LILCO by telephone and indicated that SOC was permitting SC to take the lead in the negotiation process.

SUBPART(d): AGING

1. The topic of aging as a component of environmental qualification is raised by subpart (d) of the EQ contention.

2. Information was provided by LILCO on the topic of aging in its Environmental Qualification Report for Class IE Equipment (EQ Report). An updated copy of this report has been provided to SC. In the settlement discussions between LILCO and SC, the question of aging was discussed, but Suffolk County never detailed any objection to LILCO's program for determining qualified lives of equipment within the EQ program. In the settlement proposal filed after the December 17 meeting, Suffolk County proposed to resolve its unspecified concern by series of audits which would include reviewing LILCO procedures for controlling the use of parts qualified for lives shorter than 40 years, and for procurement of replacement or spare parts.

3. LILCO has submitted to the Staff in its Environmental Qualification Report for Class IE Components (EQR) a technical justification for control of aging of Class IE components. The NRC Staff has reviewed that program and found that it complies with all applicable requirements. SER Report, November 23, 1982, Attachment 3. LILCO further addressed the question of aging in its prefiled direct testimony on this issue (Q&A 14-21, pp. 11-16), as did the NRC Staff in its prefiled direct testimony (p. 5). LILCO's testimony did not contain any material not already substantially set forth in its Environmental Program. SC did not address the question of aging, directly or by reference, in its prefiled testimony.

There is no absolute requirement that an intervenor file direct testimony as a prerequisite to litigation of an issue in an NRC proceeding. Nor, however, is there automatic license for a party to sit on its hands on an issue, on the mere hope that at trial he will be able to discredit the testimony of a previous ~~movement~~<sup>movant</sup> for summary disposition, or on the vague supposition that something may turn up. Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), LBP-81-45 (October 20, 1981), 14 NRC 877, 883 (1981). The context of summary disposition in the Waterford case was relatively preliminary: that of pretrial discovery to which

intervenors had not provided substantive answers, followed by a motion for summary disposition which went unanswered. Here the process of information exchange has taken a procedurally more advanced, but no more informative, form. The subpart of the contention at issue is broad and nonspecific.<sup>2/</sup> In the two-month-long negotiation process on Environmental Qualification issues, despite LILCO's requests, SC never stated specific objections with respect to LILCO's program for controlling aging. While its written settlement proposal would have enabled SC to review LILCO's proposal procedures for aging, SC neither proposed different substantive standards than LILCO's for dealing with aging nor alleged any specific deficiencies with LILCO's program. Finally, SC did not address the matter of aging at all in its direct testimony.

There comes a time when the accretion of events and circumstances makes it incumbent on a party to go forward if it has any genuine issues of material fact to propose. That time has come. However, SC, by failing to file any testimony on this issue, has simply defaulted on its obligation to allege material facts in support of its bare contention, despite

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<sup>2/</sup> The contention asserts, at subpart (d), simply that "there has been an inadequate demonstration that all safety related equipment has been properly qualified to meet aging and other life requirements."

possession of the description of LILCO's EQ program in the EQ Report, the Staff's approval of that program in the SER, and three lengthy meetings with multiple LILCO and Staff experts to discuss these matters.

On the record now, consisting of LILCO's EQR and the Staff's review of it in the SER, there are no genuine issues of material fact respecting the adequacy of LILCO's program for dealing with aging of components within its EQ program. There were none at the time for filing of testimony. It was incumbent on SC, against this background of provision to it of a wealth of documentation and direct informal discovery, to have asserted the existence and posture of such issues in its direct testimony. The Atomic Safety and Licensing Board recently stated, in the context of a motion for summary disposition:

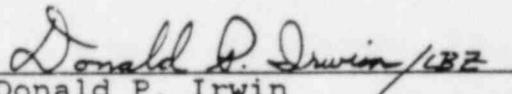
As the Appeal Board recently observed [in Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 634 (1981)], a hearing on each contention "is not inevitable," but whether one "will be necessary wholly depends on the ability of the intervenors to demonstrate the existence of a genuine issue of material fact respecting any of the issues they previously raised."

Texas Utilities Generating Company (Comanche Peak Station, Units 1 and 2), LPB-82-17 15 NRC 593, 596 (1982).

The time to have raised any such issues, in the context and circumstances of this issue and of this proceeding, was not

later than the date for filing direct testimony. SC has failed to raise them. Summary dismissal should be granted with respect to subpart (d) of the contention.

Respectfully submitted,

  
Donald P. Irwin  
Attorney for Long Island Lighting  
Company  
Hunton & Williams  
P. O. Box 1535  
Richmond, Virginia 23212

DATED: January 20, 1983

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LILCO

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CERTIFICATE OF SERVICE

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

REGISTRAR  
DOCKETING & SERVICE  
BRANCH

I hereby certify that copies of MOTION FOR PARTIAL SUMMARY DISPOSITION OF SC CONTENTION 8/SOC CONTENTION 19(h) -- ENVIRONMENTAL QUALIFICATION were served this date upon the following by hand (\*) or by first-class mail, postage prepaid.

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

Secretary of the Commission  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

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

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

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

\* Daniel F. Brown, Esq.  
Attorney  
Atomic Safety and Licensing  
Board Panel  
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

\*Herbert H. Brown, Esq.  
Lawrence Coe Lanpher, Esq.  
Karla J. Letsche, Esq.  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
8th Floor  
1900 M Street, N.W.  
Washington, D.C. 20036

Mr. Marc W. Goldsmith  
Energy Research Group  
4001 Totten Pond Road  
Waltham, Massachusetts 02154

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

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

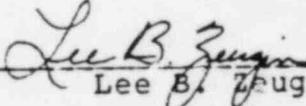
David J. Gilmartin, Esq.  
Attn: Patricia A. Dempsey, Esq.  
County Attorney  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11787

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

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

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

Matthew J. Kelly, Esq.  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

  
-----  
Lee B. Zugin

Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, Virginia 23212

DATED: January 20, 1983