

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
MAR 9 1983

Before the Atomic Safety and Licensing Board

'83 MAR -9 P2:11

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

SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF THE NRC
STAFF'S PROPOSED OPINION AND FINDINGS OF FACT, LILCO'S
PROPOSED OPINION AND FINDINGS OF FACT, AND LILCO'S
REPLY TO THE PROPOSED OPINIONS AND FINDINGS OF SUFFOLK
COUNTY AND THE STAFF

Suffolk County moves to strike the portions listed below,
of the NRC Staff's Proposed Opinion, Findings of Fact and Con-
clusions of Law, LILCO's Proposed Opinion, Findings of Fact
and Conclusions of Law in the Form of a Partial Initial De-
cision, and LILCO's Reply to the Proposed Opinions, Findings
and Conclusions of Suffolk County and the Staff.

Each item to be stricken is separately identified and
discussed briefly below. The grounds of this motion are
the same for all the items, however; each one refers to, and
has the Board draw conclusions based upon data that are not
in evidence on the record of this proceeding. 10 CFR § 2.754
(c) provides:

Proposed findings of fact shall be clearly and con-
cisely set forth in numbered paragraphs and shall
be confined to the material issues of fact presented
on the record, with exact citations to the transcript
of record and exhibits in support of each proposed
finding. Proposed conclusions of law shall be set
forth in numbered paragraphs as to all material issues
of law or discretion presented on the record.

(emphasis added). The portions of the Staff's and LILCO's proposed findings listed below are all based upon either extra-record correspondence between LILCO and the Staff, or actions allegedly taken by LILCO subsequent to the close of the record on the pertinent contention. Accordingly, such findings fail to comply with § 2.754(c), are improper, and should be stricken.*/

Staff Opinion and Findings

1. Findings 22/28:20 and 22/28:22, and Opinion at Volume 1, page 29.

The last sentence of each of the referenced findings, both relating to Suffolk County Contention 22, makes reference to a LILCO submittal to the Staff contained in a letter from J. L. Smith to H. R. Denton (SNRC-812, December 15, 1982). Similarly, in the carry-over paragraph at the top of page 29 of the Staff's proposed Opinion, the following statement is made with a citation to proposed finding 22/28:20:

*/ In the introductory portion of its Reply to the proposed Findings of Suffolk County and Staff, LILCO makes reference to the official notice provision of 10 CFR § 2.743 to support its assertion that "[t]he Board sua sponte may, for instance, take notice of the existence of a document that has been served on all parties, or of which the parties are legally on notice (or of other facts of which parties are on actual or legal notice), without relying on the document's substantive content or taking the procedural steps necessary for formally supplementing the evidentiary record." LILCO Reply, Volume I, page 11 and fn. 6. Neither that provision nor LILCO's assertion, justifies the statements that are the subject of this motion because the information relied upon is not "technical or scientific fact within the knowledge of the Commission as an expert body," (§ 2.743 (i)) nor have LILCO or the Staff invoked the official notice provision in connection with those statements. Furthermore, the findings objected to do rely on the substantive content of the extra-record materials.

The Applicant submitted the stress analysis results on December 15, 1982, and concluded that the loads at Shoreham from liquid discharge events would be lower than for the design basis steam condition.

The referenced LILCO submittal is not in evidence in this proceeding. It was submitted long after the completion of litigation on SC Contention 22. As a result, neither the proposed finding nor the proposed Board opinion may properly be based upon it or its contents.

2. Finding 22/28:38, and Opinion at Volume 1, page 30.

The referenced finding, which deals with Suffolk County Contention 28, makes reference to a January 7, 1983 letter from J. L. Smith to H. R. Denton (SNRC-816). Similarly, at the bottom of page 30, the NRC Staff's proposed opinion states "on January 7, 1983, the Applicant submitted a commitment to make this change at Shoreham. Findings 22/28:37, 22/28:38." The referenced LILCO correspondence is not in evidence. It is not in the record and therefore neither proposed findings nor proposed opinion may properly be based upon that document or its contents.

3. Opinion at Volume 2, page 26, footnote 13.

This footnote relates to ~~the~~ on 7B, and discusses "certain extra-record correspondence between Applicant and the Staff." Specifically, a December 16, 1982 letter from LILCO to the Staff and a January 10, 1983 letter from the Staff to LILCO are discussed, along with certain conclusions drawn by the Staff from such correspondence. Suffolk County recognizes that the record on Contention 7B has been reopened

and that, accordingly, it is possible that all parties' findings relating to that Contention may be amended. Nonetheless, at this stage, the discussion contained in footnote 13 is explicitly based on extra-record information and therefore is improper.

LILCO FINDINGS

1. Finding G-14

This proposed finding relates to Suffolk County Contention

21. It states:

LILCO submitted its preliminary responses on the Humphrey concerns to the Staff on August 25, 1982 and its final responses in early December. All but two of the issues were addressed in that report. The two remaining responses that relate to the RHR heat exchanger relief valve discharge lines will be submitted to the Staff in January 1983. Those responses may involve a commitment by LILCO not to use the RHR steam condensing mode during normal plant operation until it can be demonstrated that the hydrodynamic loads resulting from operation of the RHR heat exchanger in this mode are acceptable.

The proposed finding contains no citation to the record. It refers to a LILCO "report," that apparently was submitted to the Staff in December, 1982, as well as one anticipated in January 1983, and discusses the contents of the submittals. Clearly, none of the discussion contained in proposed finding G-14 is based on facts in evidence. The proposed finding is therefore improper. See also discussion below under LILCO Reply, paragraph 2.

2. Finding H-23.

The last sentence of this proposed finding states "the results of these [piping] analyses, submitted in SNRC-812 on

December 15, 1982, demonstrate that Shoreham complies with the requirements of NUREG-0737, Item II.D.1." In referring to SNRC-812, which is not in evidence in this proceeding, and drawing conclusions from the contents of that document, this proposed finding is improper.

3. Finding H-37.

The last sentence of this proposed finding states: "LILCO indicated to the Staff recently that LILCO intended to implement the lowered MSIV set point at the first refueling outage (letter, Smith (LILCO) to Denton (NRC), January 7, 1983 (SNRC-816))." In referring to correspondence between LILCO and the Staff which is not in evidence, this proposed finding is improper.

LILCO REPLY

1. Volume 1, page 193, footnote 37.

This footnote is contained in LILCO's general reply to Suffolk County's proposed opinion and findings on Suffolk County Contention 21. The footnote references certain "qualification tests" which, at the close of the record on this contention had not yet been performed. The footnote states: "These qualification tests have now been successfully completed, and the results of these tests will soon be forwarded to the Staff." Because information concerning the performance of the referenced tests or the test results is not in evidence, it is not appropriate either to cite the test completion, or draw conclusions concerning the results in the proposed findings or

opinion. Therefore this portion of LILCO's reply should be stricken.

2. Volume 1, pages 196-197, and footnote 38, page 196.

The entire discussion contained on page 196 and page 197 up to the subheading "2. Shoreham Confirmatory Analysis, " relates solely to documents submitted and actions taken subsequent to the close of the record on SC Contention 21. These portions of the LILCO Reply refer to LILCO submittals to the Staff on December 9, 1982 (SNRC-808) and January 28, 1983 (SNRC-811), and discuss the contents of those submittals. Similarly, footnote 38 on page 196, discusses the contents of SNRC-824 and also requests that LILCO's initial proposed finding G-14 (see discussion above in paragraph 1 under LILCO Findings) be replaced with a new proposed finding. The new one contains references to and conclusions drawn from the referenced extra-record correspondence from LILCO to the Staff. Furthermore, LILCO uses both its textual and footnote discussion of these extra-record materials to support its conclusion that "there is no basis in the record for SC's request for submittal of Humphrey responses." The Board cannot properly make the findings or draw the conclusions proposed by LILCO. They are based solely on data which are not in evidence. Accordingly, none of this LILCO discussion can properly be considered by the Board.

3. Volume 1, page 203, footnote 39.

This footnote is also contained in LILCO's reply to Suffolk County's proposed opinion and findings related to SC Contention

21. This footnote refers to a reevaluation allegedly undertaken by LILCO subsequent to the close of the record on SC Contention 21. The footnote states "the reevaluation, which has now been completed and will soon be forwarded to the Staff, confirms that no code allowables have been exceeded." Unlike items 1 and 2 above, this statement by LILCO does not even refer to a submission that has been made to the Staff; it refers to, and asserts the conclusions supposedly contained in, a study which has not even appeared yet. As is the case with items 1 and 2, however, LILCO's statement is based on information that is not in evidence. Accordingly, this statement must be stricken.

4. Volume 1, page 212, last portion of last sentence.

This sentence is contained in LILCO's reply to Suffolk County's proposed opinion on SC Contention 22. In stating that "[the confirmatory piping analysis] has already been submitted to the Staff in SNRC-812 dated December 15, 1982. LILCO Finding H-23," this statement improperly references a document that is not in evidence. See also discussion in paragraph 2 above under LILCO Findings. Therefore, it cannot properly be considered by the Board.

5. Volume 1, page 218.

In the full paragraph contained on this page of LILCO's response to Suffolk County's findings on SC Contention 22, LILCO references the completion of a review and a LILCO commitment,

both of which occurred subsequent to the close of the record on SC Contention 22. The second and third sentences of this paragraph cite LILCO Finding H-37 as the basis for its conclusion; that finding is discussed above in paragraph 3 under LILCO Findings. Because these statements by LILCO are based on information that is not in evidence, they must be stricken.

6. Volume 1, page 220, reply to Suffolk County Finding 22:16.

The last sentence of this reply cites LILCO Finding H-23 and a LILCO submittal, not in evidence and made subsequent to the close of the record on SC Contention 22 (SNRC-812), and draws conclusions based on the alleged contents of that document. Such statement is improper and cannot form the basis for a Board finding or opinion.

CONCLUSION

For the foregoing reasons, Suffolk County submits that the statements and findings listed herein should be stricken from the proposed findings and reply of LILCO and the Staff.

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March 8, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
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) Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Suffolk County Motion to Strike Portions of the NRC Staff's Proposed Opinion and Findings of Fact, LILCO's Proposed Opinion and Findings of Fact, and LILCO's Reply to the Proposed Opinions and Findings of Suffolk County and the Staff were served on the following on March 8, 1983, by first class mail postage prepaid.

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