

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

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SECRETARY
OFFICE & SERVICE
BRANCH

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In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322-OL
(Emergency Planning)

March 10, 1983

MEMORANDUM AND ORDER RULING ON TOWN OF
SOUTHAMPTON'S NOTICE OF INTENT TO PARTICIPATE
AS AN INTERESTED MUNICIPALITY PURSUANT TO
10 C.F.R. § 2.715(c)

On February 23, 1983, the Town of Southampton, New York (Southampton) filed a notice of intent to participate in this proceeding as an interested municipality pursuant to 10 C.F.R. § 2.715(c). This notice states, at 1, that Southampton's interest in this proceeding

pertains specifically to matters involving off-site emergency planning for the Shoreham Nuclear Power Plant as well as matters pertaining to any low-power, interim or full-power license which may be sought by the Long Island Lighting Company for the Shoreham facility.

As clarified on the record by Southampton's Counsel, the reference in Southampton's notice to "matters pertaining to any low-power, interim or full-power license" relates solely to the effects of the current

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status of off-site emergency planning on such matters; it was not intended to raise any new matters with respect to these subjects. Tr. 20,239-40. At the request of Counsel for the Long Island Lighting Company (LILCO) and the NRC Staff (Staff), the parties were given the opportunity to respond in writing to Southampton's filing by March 4, 1983.

The Staff response, dated March 2, 1983, does not oppose the participation of Southampton in this proceeding as an interested municipality. While it acknowledges that Southampton's decision to participate is late, the Staff states that it would not object to Southampton's participation in matters concerning off-site emergency planning. The Staff asserts that Southampton's participation, even though under section 2.715(c), must be limited by the principle that a late petitioner must take the proceeding as he finds it. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2, ALAB-600, 12 NRC 3, 8 (1980)).

LILCO's March 4, 1983 response does not expressly state whether LILCO supports or opposes Southampton's admission to this proceeding as an interested municipality. LILCO notes that section 2.715(c) "[abrogates] some of the technical requirements applicable to other types of intervention," and "has been construed to avoid limiting a municipality's access to a proceeding". However, it argues that Southampton's petition "is grossly out of time", that the Town "should have evinced its interest in participating in the proceeding some time

ago" and that "the Suffolk County Legislature's decision to reject its draft emergency plan does not appear in and of itself to create 'unique considerations' sufficient" to explain the alleged untimeliness of Southampton's petition for admission. As the relief sought by LILCO's response seeks only limitations on Southampton's participation in this proceeding, we presume LILCO to concede that its arguments about the timeliness of Southampton's petition do not warrant denying admission of Southampton as an interested municipality.

As is discussed in Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Station), LBP-80-6, 11 NRC 148, 149 (1980), a case cited in LILCO's response, "there is no explicit time requirement regarding a filing to participate pursuant to 10 C.F.R. § 2.715(c)". We do not speculate whether an intervenor required to meet the five-factor balancing test for late intervention under 10 C.F.R. § 2.714(a)(1) could gain admittance at the present stage of this proceeding. However, we rule that the timing of Southampton's petition, in the present circumstances of the consideration of off-site emergency planning issues does not bar its admittance at this time. Southampton is therefore admitted to this proceeding as an interested municipality.

As we ruled on the record, however, Tr. 20,239-40, Southampton will be required to "take the proceeding as it finds it". See Pacific Gas and Electric Co., supra. Its participation will therefore be limited to off-site emergency planning matters.

LILCO has also asked that we:

- (1) Require Southampton to articulate precisely the off-site issues on which it desires to participate within ten days of any Board decision allowing the parties to begin litigating off-site emergency planning; and
- (2) limit Southampton's participation in any future discovery to receipt of those documents that have been generated since the close of the previous discovery period, given the massive document production that has already occurred.

An important part of "taking the proceeding as it finds it" for Southampton will be its compliance with procedures of long standing in this hearing requiring close coordination among private and governmental parties as a prerequisite for participation in prehearing, hearing and post-hearing matters. This includes discovery, the filing of contentions, presentation of testimony, cross-examination, and the filing of proposed findings.

The Board does not believe it to be appropriate at this time, prior to our ruling on Suffolk County's motion to terminate this proceeding, to establish a schedule for Southampton to file its off-site emergency planning contentions. Any schedule for the filing of off-site emergency planning contentions will require that the intervenors and participants pursuant to § 2.715(c) jointly submit one filing listing all of their contentions. As was the case for Intervenors' Consolidated Phase I (on-site) Emergency Planning Contentions, this filing will specify which

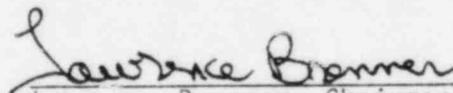
parties are sponsoring or otherwise wish to participate on particular contentions.

Consistent with the concept of Southampton taking the proceeding as it finds it, and with the required close coordination among intervenors and § 2.715(c) participants, Southampton's participation in any future discovery is limited to those documents which have been generated since the previous discovery period on emergency planning issues. As the Appeal Board observed in allowing belated participation of a state pursuant to section 2.715(c) in Pacific Gas and Electric, supra, 12 NRC at 8:

[A]llowance of a late intervention need not disrupt established discovery schedules and other preparations for hearing. A tardy petitioner with no good excuse may be required to take the proceeding as it finds it. For... "any disadvantage which it might suffer in terms of the opportunity for trial preparation would be entirely of its own making." [Quoting] Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975) [late intervention of a County pursuant to 10 C.F.R. § 2.714(a)(1)].

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
March 10, 1983