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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUN 20 AIO:13

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

CLERK OF SUPREME COURT
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322-OL-3
(Emergency Planning
Proceeding)
June 18, 1984

RESPONSE OF GOVERNOR MARIO M. CUOMO, REPRESENTING
THE STATE OF NEW YORK, IN OPPOSITION TO "LILCO'S
MOTION TO FILE SURREBUTTAL TESTIMONY ON PHASE II
EMERGENCY PLANNING CONTENTION 67"

The State of New York hereby opposes the LILCO motion
identified above.

LILCO's motion should be denied for several reasons,
the most important of which is that LILCO's motion flagrantly
violates the Board's order of March 16, 1984.

In denying the State's motion for leave to file rebuttal
testimony concerning Contention 65, the Board stated on lines
17-19 on page 6, "[W]e do not expect to entertain written
motions to submit rebuttal testimony. Such requests will be
dealt with orally, on the record, and at the hearing."

During the hearing on March 20, 1984, the Board emphasized
the need for strict adherence to this procedural rule concerning
rebuttal testimony:

add:
J. GORN
OCA

DS03

I want to direct everyone's attention to the problem that has been presented with the request to file rebuttal testimony in the fashion that we adopted. It just hasn't worked. We have had a lot of rebuttal testimony filed. We have had extensive briefs on both sides. It is taking too much of your time, and too much of our time.

To that end, I want to direct everyone's attention to the last two sentences on Page 6 before we get to the Order provision. I will read them: To avoid these problems in the future, we do not expect to entertain written Motions to submit rebuttal testimony. Such requests will be dealt with orally, on the record, and at the hearing, unquote.

That means that from now on when we finish each contention or cluster as we are going through them, you will have to keep your witnesses here until all witnesses are finished if you expect to present rebuttal testimony. If you do so, you will have to make an oral motion at the time. We will consider arguments on that, and we will decide immediately, and the witnesses will either testify, or they will not.

This filing of these extensive briefs and arguments back and forth is just not a productive use of anyone's time. So, we are going to abandon the written testimony aspect of the Rebuttal. We will deal with it contention by contention, as we go through the rest of the case.

So that is a change that we have adopted, and we wanted to make sure that everyone is aware of that before we start into any new testimony today. (Emphasis added). Tr. 3900,3901.

LILCO had an opportunity on May 8, 1984, after the completion of Professor Herr's surrebuttal testimony on

Contention 67, to make an oral motion to submit further rebuttal testimony. However, LILCO failed to make such a motion. Tr. 8532, 8533. Likewise, LILCO remained silent on May 9, 1984 when, after the completion of all testimony on Contention 22.D., the Board stated, "That then completes the schedule on Group 2-A issues, except for the ones that are going to have to be rescheduled at a later time....(Emphasis added). Tr. 8756, lines 8-10. By filing its written motion on June 4, 1984, LILCO has reinstated the practice of filing extensive briefs and arguments concerning rebuttal testimony. LILCO's motion results in the unproductive use of everyone's time and it flagrantly violates the Board's order of March 16, 1984.

For these reasons and for the reasons stated in Suffolk County's response to LILCO's motion, LILCO's motion should be denied.

Respectfully submitted,

MARIO CUOMO
Governor of the State of New York

FABIAN PALOMINO, ESQ.
Special Counsel to the Governor
of the State of New York

BY:



RICHARD J. ZAHNLEUTER, ESQ.
Assistant to the Special Counsel
to the Governor of the State
of New York

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the RESPONSE OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE STATE OF NEW YORK, IN OPPOSITION TO "LILCO's motion to file surrebuttal testimony on Phase II Emergency Planning Contention 67" has been served to each of the following this 18th day of June, 1984 by U. S. Mail, first class, except as otherwise noted:

James A. Laurenson, Chairman***
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Jerry R. Kline***
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Frederick J. Shon***
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

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 Street
Richmond, Virginia 23212

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

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P. O. Box 618
North Country Road
Wading River, New York 11792

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 10555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
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

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

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

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

Honorable Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison 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

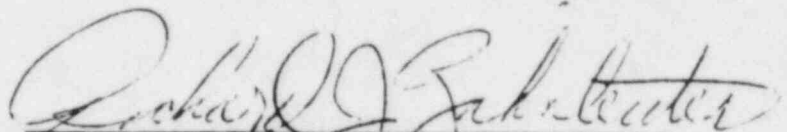
Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East East Main Street
Smithtown, New York 11787

Eleanor L. Frucci, Esq:***
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Herbert H. Brown, Esq.***
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
1900 M Street, N. W., Suite 800
Washington, D. C. 20036

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Washington, D. C. 20472



RICHARD J. ZAHNLEUTER
Assistant to the Special Counsel
to the Governor of the State
of New York
Executive Chamber
State Capitol
Albany, New York 12224

*By Hand
**By Federal Express
***By Telecopier on June 18, 1984 and by U. S. Mail, first class
on June 18, 1984
****By U.S. Express Mail

Albany, New York