

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

'84 OCT 22 P1:14

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning
(Shoreham Nuclear Power Station,)	Proceeding)
Unit 1))	

LILCO'S MOTION TO STRIKE UNAUTHORIZED PLEADING

On October 15, counsel for Suffolk County and New York State filed an ostensible "Response"^{1/} to the NRC's opposition to LILCO's August 6 Motion for Summary Disposition of Contentions 1-10 (the "Legal Authority" Issues). That "Response" is an unauthorized pleading in violation of Commission regulations and previous rulings of this Board, and should be struck and given no consideration by the Board. If the Board does not strike it, LILCO requests leave to file a reply to it within five working days of the Board's decision.

1. The Commission's pertinent regulation, 10 C.F.R. § 2.749(a), contemplates the filing of a motion for summary disposition and of answers supporting or opposing it. It also provides that an opposing party may file a further response if, but only if, two conditions are met: he may "respond in writing to new

^{1/} None of the signators of the "Response" has entered an appearance in this proceeding. However, LILCO does not rely on this fact to establish that the "Response" is unauthorized.

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facts and arguments presented in any statement filed in support of the motion." (Emphasis supplied). The unauthorized SC/NYS "Response" does not meet either of these tests. The subject-matter of the SC/NYS Response -- the preemption-by-frustration-of-federal-purpose argument -- is not new; it was briefed in LILCO's original motion at pages 39-42. Thus Suffolk County and New York State were on notice of it (and, in fact, touched on it in their September 24 Opposition at 33). Second, the Staff's October 4 Response in Opposition to LILCO's motion, as its title plainly indicates, was not filed in support of LILCO's motion. Thus the current SC/NYS "Response" does not fulfill either of the preconditions for responsive filings under § 2.749(a), and is not otherwise authorized by that provision.

2. The SC/NYS Response violates the filing schedule agreed upon by the parties and approved by the Board in a September 13, 1984 telephone conference call. Letter, Sherwin M. Turk to Board and Parties, dated September 13, 1984. In that agreement, LILCO consented to giving the Staff and Suffolk County each an extension of their filing deadlines in return for LILCO's obtaining a right of reply. No further filings were discussed or were contemplated by that agreement; none would have been acquiesced in by LILCO.

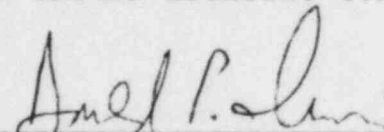
3. The NRC's normal pleading rules, 10 C.F.R. § 2.730, contemplate a motion and response thereto, and reply (by the movant) only with leave of the Board. They do not contemplate third-party comments on the responses of other parties. The summary-disposition pleading rules are even more stringent. 10 C.F.R. § 2.749(a). The SC/NYS "Response" makes no attempt whatever to justify this filing of an extraordinary and unauthorized pleading.

4. This Board has previously struck unauthorized pleadings. Memorandum and Order Denying Suffolk County's Motion to Change Schedule, February 28, 1984, at 7. Submission of this unauthorized pleading without even an attempt to show good cause why this Board's previous orders should not be adhered to here should not be tolerated.

For the foregoing reasons, LILCO moves that the Board strike the SC/NYS "Response" and give it no consideration in its disposition of LILCO's pending summary disposition motion. In the event this motion to strike is denied, LILCO respectfully requests five working days from receipt of the Board's denial to reply to the SC/NYS "Response."2/

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



Donald P. Irwin
James N. Christman

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

DATED: October 19, 1984

2/ The SC/NYS "Response" seriously misuses the Perez line of cases, as can be seen generally from LILCO's October 15 Reply at 34-46, especially 42-45; however, had SC/NYS briefed these cases in their authorized, i.e., September 24, Opposition, LILCO could and would have already addressed them specifically with reference to the current SC/NYS arguments. However, LILCO believes that the Board already had quite enough paper before it prior to the latest unauthorized SC/NYS pleading.

CERTIFICATE OF SERVICE

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(Shoreham Nuclear Power Station, Unit 1)
(Emergency Planning Proceeding)
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I certify that copies of LILCO's MOTION TO STRIKE ⁸⁴ UNAUTHORIZED PLEADING were served this date upon the following by first-class mail, postage prepaid, or (as indicated by an asterisk) by hand.

OCT 22 P1:14
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

James A. Laurenson,
Chairman*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

Secretary of the Commission
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

Dr. Jerry R. Kline*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

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

Mr. Frederick J. Shon*
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Bernard M. Bordenick, Esq.*
Oreste Russ Pirfo, Esq.
Edwin J. Reis, Esq.
U. S. Nuclear Regulatory
Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Donna Duer, Esq.*
Law Clerk
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
East-West Tower, North Tower
4350 East-West Highway
Bethesda, MD 20814

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

Stephen B. Latham, Esq.
John F. Shea, Esq.
Twomey, Latham & Shea
33 West Second Street
P.O. Box 398
Riverhead, NY 11901

Fabian G. Palomino, Esq.
Special Counsel to the
Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

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

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

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

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

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


James B. Dougherty, Esq.
3045 Porter Street
Washington, D.C. 20008

Jonathan D. Feinberg, Esq.
New York State Public Service
Commission, Staff Counsel
3 Rockefeller Plaza
Albany, New York 12223

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W., Rm. 840
Washington, D.C. 20472

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

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


Donald P. Irwin

Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, Virginia 23212

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