

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

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

Docket No. 50-322-OL-3
(Emergency Planning Proceeding)
August 8, 1984

MOTION OF GOVERNOR MARIO M. CUOMO, REPRESENTING
THE STATE OF NEW YORK AND ON BEHALF OF
FRANK A. CIPRIANI, Ph.D., AND JAMES HINES,
TO QUASH SUBPOENAS

Pursuant to 10 C.F.R. §2.720(f), the State of New York hereby
moves to quash subpoenas requiring Frank A. Cipriani, Ph.D.
and James Hines to testify before this Board at 9 a.m. on
August 22, 1984. The subpoenas require Dr. Cipriani and
Mr. Hines to testify regarding letters sent by both individuals
to the American Red Cross disavowing the availability of the
facilities under their control as relocation centers within
the context of the LILCO Plan.

Upon information and belief, LILCO submitted an
application for such subpoenas on July 27, 1984, and the

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Board issued such subpoenas on July 30, 1984.¹ On August 6, 1984, LILCO served a subpoena on Dr. Cipriani in his official capacity as President of the State University of New York at Farmingdale ("SUNY"-Farmingdale). As of August 6, 1984, no subpoena had been served on Mr. Hines, but the Board apparently had issued a subpoena to Mr. Hines in his official capacity as District Superintendent and Executive Officer of the Board of Educational Services on the Second Supervisory District of Suffolk County ("BOCES II").

¹As a preliminary matter, LILCO's application for issuance of the subpoenas is erroneous in at least two respects. First, LILCO states in footnote 1 of its application that LILCO would have agreed not to seek to compel Dr. Cipriani and Mr. Hines to testify at the hearings had the County and State agreed to make Dr. Cipriani and Mr. Hines available for depositions. To the contrary, counsel for LILCO expressly refused to guarantee that LILCO would not seek to compel Dr. Cipriani and Mr. Hines to testify at the hearing even if the County and State were to make them available for depositions. In addition, LILCO's "attempt to reach an agreement" (p. 1, line 10 of the first paragraph) merely consisted of a request for free rights to discovery, which request was inappropriate and clearly contrary to the Board's ruling in this matter. Tr. 12,829 - 12,834. Second, LILCO's application for issuance of the subpoenas refers on page 2, line 7, to letters from Dr. Cipriani and Mr. Hines dated July 21, 1984. The letters disavowing the availability of SUNY-Farmingdale and BOCES II's Occupational Center in Islip as relocation centers under the LILCO plan are dated June 21, 1984, not July 21, 1984.

Pursuant to 10 C.F.R. §2.720(f), a person to whom a subpoena is directed may move to quash to modify the subpoena if it is unreasonable or requires "evidence not relevant to any matter in issue". A comparison of LILCO's application for issuance of subpoenas and LILCO's July 30, 1984 revision of its relocation center testimony reveals that the standard of 10 C.F.R. §2.720(f) has been met; that is, the subpoenas in question are unreasonable and require evidence not relevant to any matter in issue at this time.

In the LILCO Plan and in LILCO's first two versions of relocation center testimony, LILCO relied to varying degrees upon SUNY-Farmingdale and BOCES II's Occupational Center in Islip as relocation centers. On June 21, 1984, both Dr. Cipriani and Mr. Hines wrote letters to the American Red Cross disavowing the availability of the facilities under their control as relocation centers within the context of the LILCO Plan. LILCO's purported basis for seeking the issuance of the subpoenas was the following: "[I]t is necessary that Messrs. Cipriani and Hines appear as witnesses to allow LILCO to adequately explore the contents of the letters." See p. 2, lines 13-15, of LILCO's application for issuance of the subpoenas. LILCO also stated that the purpose of the subpoenas was to require Dr. Cipriani and Mr. Hines "to discuss the use of their facilities as relocation centers" in connection with the LILCO Plan. See p. 2, lines 19, 20, of LILCO's application for issuance of the subpoenas. Thus, the rationale underlying LILCO's application for the subpoenas was to explore the unavailability of facilities upon which the LILCO Plan explicitly relied. That rationale no longer exists, however, because LILCO no longer relies upon SUNY-Farmingdale and BOCES II's Occupational Center in Islip as relocation centers.

This is evident from LILCO's recently submitted third version of testimony on the relocation center issues.

LILCO's most recent version of its testimony concerning relocation centers (see the July 30, 1984 version) actually concedes the unavailability of SUNY-Farmingdale and BOCES II's Occupational Center in Islip. For example, LILCO's latest relocation center testimony analyzes the current state of affairs and concludes that SUNY-Farmingdale and BOCES II's Occupational Center in Islip "cannot be relied upon in the LILCO Plan". See p. 15, lines 4-8, of the July 30, 1984 version of LILCO's relocation center testimony. The same testimony never even mentions, cites in support, or refers to, any agreements supposedly existing between BOCES II and LILCO or the Red Cross concerning the Occupational Center in Islip. Further, LILCO states in its pleading concerning legal authority issues: "All relocation centers used for the LILCO Plan will be in Nassau County". (Emphasis added). See p. 74, lines 18, 19 of LILCO's motion for summary disposition of the legal authority issues, dated August 6, 1984. BOCES II's Occupational Center in Islip is well within the confines of Suffolk County. Moreover, the same testimony states on

page 15, lines 16-23, that LILCO will work with the Red Cross to designate sometime in the future phantom facilities which the Red Cross "might" use as relocation centers. The fair implication of such a statement is not only that SUNY-Farmingdale and BOCES II's Occupational Center in Islip are not relied upon by LILCO, but that, currently, no specific relocation centers at all are relied upon by LILCO. This implication is supported by LILCO's statements on page 16, lines 1-4. LILCO states therein that LILCO will, in the future, obtain agreements allowing LILCO access to such unspecified relocation centers to provide monitoring and decontamination services. Consequently, the issue of whether the two facilities are available for LILCO's use in implementing the LILCO Plan is no longer an issue in this proceeding.

These statements in LILCO's testimony and pleadings provide that LILCO no longer relies upon the availability of SUNY-Farmingdale and BOCES II's Occupational Center in Islip as relocation centers in the event of a radiological emergency at Shoreham. Therefore, any questioning of

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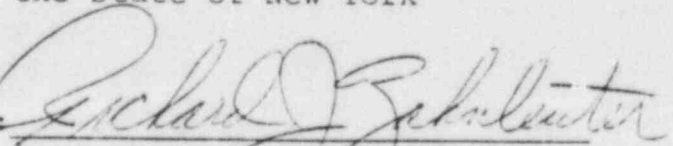
Dr. Cipriani or Mr. Hines on this issue would be irrelevant and would be of no consequence or significance to any contested issue. Therefore, the subpoenas directed to Dr. Cipriani and Mr. Hines should be quashed.

Respectfully submitted,

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GOVERNOR OF THE STATE OF NEW YORK

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the MOTION OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE STATE OF NEW YORK AND ON BEHALF OF FRANK A. CIPRIANI, Ph.D., AND JAMES HINES, TO QUASH SUBPOENAS

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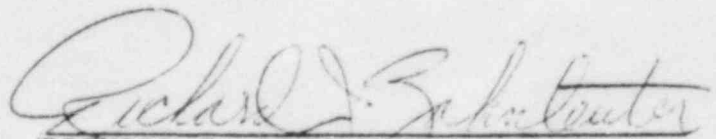
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