

9/11/84

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 13 P2:52

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
PLANNING & SERVICE
BRANCH

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

Docket No. 50-322-OL-3
(Emergency Planning)

NRC STAFF'S MOTION FOR EXTENSION OF TIME

Pursuant to 10 C.F.R. §§ 2.711 and 2.730, the NRC Staff ("Staff") hereby requests an extension of time until October 1, 1984 (i.e., two weeks after the other parties have filed their responses), in which to respond to "LILCO's Motion for Summary Disposition of Contentions 1-10 (The 'Legal Authority' Issues)" ("Motion"), filed on August 6, 1984. In support of this request, the Staff states as follows:

1. LILCO's Motion seeks summary disposition of Contentions 1-10, based, in part, on the assertion that the State statutes cited by those contentions are pre-empted by Federal law; LILCO also cites portions of the evidentiary record of this proceeding, and other matters, in support of its Motion.

2. In a "Conference of Counsel" held on August 8, 1984, the schedule for filing responses to LILCO's Motion was considered by the Licensing Board. In apparent recognition of the busy schedule which had been previously outlined for the month of August, the Licensing Board granted Suffolk County's request for an extension of time to respond to LILCO's Motion; the Licensing Board directed the filing of responses to the

D507

8409140125 840911
PDR ADOCK 05000322
G PDR

Motion by September 17, 1984, by both Suffolk County and the Staff, approximately 20 days after the date on which responses would normally be filed (Tr. 14,034-035). In doing so, the Licensing Board Chairman expressly recognized that "the response to the motion for summary disposition on these legal authority contentions does not impact upon the rest of the case" (Tr. 14,034).

3. Throughout the month of August and continuing at this time and for the foreseeable future, Staff counsel assigned to this proceeding have been required to devote their full time and attention to the evidentiary hearings, the preparation of proposed findings of fact, and other matters in this proceeding. Accordingly, on August 27, 1984, the undersigned attorney was assigned responsibility for preparing the Staff's response to LILCO's Motion, upon his return to the office from official travel and annual leave. Prior to that time, the undersigned had not been involved in, and had no reason to become familiar with the record of this proceeding.

4. LILCO's Motion raises novel and important questions of law, and requires a degree of familiarity with the complicated factual and procedural record of this proceeding. The importance of the issues presented by LILCO's Motion, as well as the complexity of the factual and procedural setting in which the Motion arises, compel the Staff to require additional time in which to file its response.

5. Moreover, given the importance of the legal issues raised by the Motion and the inherent familiarity possessed by Suffolk County and the State of New York with respect to the State laws cited by Contentions 1-10, it is essential that the Staff be permitted to consider the

County and State's responses to LILCO's Motion before it is required to file its response to the Motion. While this requirement was not expressed at the Conference of Counsel held on August 8, 1984, the Staff has previously presented this request to the Licensing Board; for instance, in a status report on these contentions filed with the Licensing Board late last year, the Staff urged as follows:

[B]oth the County and LILCO are in a better position than the Staff to address questions of New York law. Suffolk County is a political subdivision of New York State. LILCO is a public electric and gas utility authorized to do business by New York law. It is the Staff's view that whenever the Staff files its position it should first be allowed to review the submissions, in whatever form, of the other parties as regards New York law. In accordance with accepted practice, the Staff requests that its views on the legal authority question set forth by the other parties be submitted after those of the other parties.^{1/}

"NRC Staff Status Report on Legal Authority Contentions," filed November 14, 1983, at 1-2 (footnotes omitted; emphasis added).^{2/}

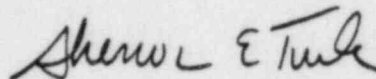
^{1/} Commission regulations normally provide an opportunity for the Staff to file its position after the views of the other parties have been filed; see, e.g., 10 C.F.R. §§ 2.730(c) (motions), 2.754(a)(2) (proposed findings of fact and conclusions of law), 2.762(c) (appellate briefs), and 2.771(b) (petitions for reconsideration). The instant Motion is quite different from the typical motion for summary disposition, in its having been filed when the hearing was nearly concluded and in its requiring primarily a discussion of legal (as opposed to factual) matters. In this respect, the instant Motion more nearly resembles a legal pleading than a motion for summary disposition and, as such, Commission regulations would ordinarily provide an opportunity for the Staff to file its views after the other parties had filed theirs.

^{2/} In light of its decision to hold in abeyance the County and LILCO's proposal that consideration of the legal issues be deferred, the Licensing Board did not have occasion to address the Staff's request for leave to file after the other parties, at the time this request was made. See, e.g., Tr. 706-716 (Transcript of Conference of Counsel held on December 1, 1983).

6. The undersigned has contacted Counsel for LILCO, Suffolk County and the State of New York. Counsel for LILCO has authorized the Staff to state that LILCO does not object to the instant request for an extension of time, on the basis of the reasons described herein; Counsel for Suffolk County and the State of New York have indicated that they would oppose the instant request, absent the provision of an extension of time for the filing of their responses to LILCO's Motion.

WHEREFORE, for good cause shown as set forth above, the Staff hereby requests an extension of time until October 1, 1984, in which to file its response to LILCO's Motion, which response will be filed two weeks after the County and State have filed their responses to that Motion.

Respectfully submitted,



Sherwin E. Turk
Deputy Assistant Chief
Hearing Counsel

Dated at Bethesda, Maryland
this 11th day of September, 1984.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

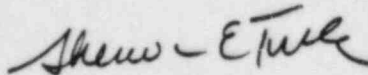
In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
(Shoreham Nuclear Power Station,) (Emergency Planning)
Unit 1))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in this proceeding. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

NAME Sherwin E. Turk
ADDRESS U.S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington, DC 20555
TELEPHONE NUMBER Area Code 301 492-7312
ADMISSIONS United States Supreme Court
United States Court of Appeals
for the District of Columbia
United States District Court
for the District of Columbia
District of Columbia Court of Appeals
New Jersey Supreme Court
NAME OF PARTY NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Respectfully submitted,



Sherwin E. Turk
Deputy Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 11th day of September, 1984.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 13 P2:52

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION FOR EXTENSION OF TIME" and "NOTICE OF APPEARANCE" for Sherwin E. Turk in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class (with additional courtesy copies provided by telecopy to Messrs. Lanpher and Reveley), or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of September, 1984:

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

Fabian G. Palomino, Esq.
Special Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

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

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, NY 11801

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

W. Taylor Reveley III, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, VA 23212

Jonathar D. Feinberg, Esq.
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223

Cherif Sedkey, Esq.
Kirkpatrick, Lockhart, Johnson
& Hutchison
1500 Oliver Building
Pittsburgh, PA 15222

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

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

Atomic Safety and Licensing
Appeal Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

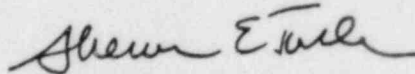
Gerald C. Crotty, Esq.
Ben Wiles, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

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

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

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

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



Sherwin E. Turk
Counsel for NRC Staff

COURTESY COPY LIST

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old County Road
Mineola, NY 11501

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

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

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veteran's Memorial Highway
Hauppauge, NY 11788

Ken Robinson, Esq.
N.Y. State Dept. of Law
2 World Trade Center
Room 4615
New York, NY 10047

Leon Friedman, Esq.
Costigan, Hyman & Hyman
120 Mineola Boulevard
Mineola, NY 11501

Chris Nolin
New York State Assembly
Energy Committee
626 Legislative Office Building
Albany, New York 12248

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

Hon. Peter Cohalan
Suffolk County Executive
County Executive/Legislative Bldg.
Veteran's Memorial Highway
Hauppauge, NY 11788

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

Ms. Nora Bredes
Shoreham Opponents Coalition
195 East Main Street
Smithtown, NY 11787

Norman L. Greene, Esq.
Guggenheimer & Untermeyer
80 Pine Street
New York, NY 10005