

3/29/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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. 50-322-0L-3
(Emergency Planning)

NRC STAFF RESPONSE TO "SUFFOLK COUNTY
AND STATE OF NEW YORK MOTION FOR LEAVE TO
FILE REPLY TO LILCO'S ANSWER AND NRC STAFF'S
RESPONSE TO MOTION TO ADMIT NEW CONTENTION

I. INTRODUCTION

Intervenors Suffolk County and State of New York, by motion dated March 20, 1985, seek leave to file a reply to LILCO and NRC staff (Staff) responses to Intervenors' motion to admit a new contention which was filed pursuant to 10 C.F.R. § 2.714.

II. DISCUSSION

The LILCO and Staff responses to which Intervenors seek to reply were filed on March 11 and 12, 1985, respectively. ^{1/} As noted in the

1/ See "LILCO's Answer to Motion of Suffolk County and New York State to Admit New Contention" and "NRC Staff Response to Motion of Suffolk County and New York State to Admit New Contention." The LILCO Answer also contains a request that the issues in question be certified to the Commission and that the new issues be severed from other issues so that the Board may issue its decision on all other pending issues. With respect to LILCO's former request, as noted in the Staff's March 12, 1985, response, the issues are already before the Commission by virtue of the Court of Appeals' remand. Regarding LILCO's latter request, the Staff has no objection to such a

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Staff's reply the proposed contention advanced by Intervenors addresses issues which they maintain were recently made litigable in this proceeding as a result of a Court of Appeals' decision.^{2/} The Staff's March 12, 1985, filing requested, for reasons there detailed, that this Board defer ruling on the Intervenors' motion to admit a new contention until such time as the Commission has generically addressed the requirements of 10 C.F.R. § 50.47(b)(12) which are the subject of the Court of Appeals' decision.

While the Staff agrees, as argued by Intervenors at pages 1-2 of the motion in question, that Intervenors would be entitled to respond to a filing in opposition to a motion to add a new contention, neither the Staff nor LILCO has yet opposed admission of the contention proposed by Intervenors. The Staff continues to request that this Board defer ruling on the Intervenors' motion to add a new contention until the Commission acts. The Staff's request also extends to Intervenors' recent motion to reply. The admissibility and scope of any contention on the subject of arrangements for medical services would depend on what course the Commission chooses to follow. Deferral of action on the Intervenors'

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

request. However, the Staff notes that under present circumstances such a decision could not authorize the Staff to issue either a low power or full power license to LILCO. As the Board and parties know, issues relating to such licenses are presently pending before two other Licensing Boards.

^{2/} That decision by the Court of Appeals in GUARD v. Nuclear Regulatory Commission No. 84-1091, (D.C. Cir., February 12, 1985), is more fully discussed in the "NRC Staff Response to 'Motion of Suffolk County and New York State to Admit New Contentions'" dated March 12, 1985.

proposed contention would prevent inconsistency and the possible fruitless expenditure of time and resources by the Board and parties if the Board takes any action prior to receipt of Commission guidance.

III. CONCLUSION

The NRC Staff continues to respectfully request that this Board defer ruling on Intervenors' motion to admit a new contention. The Staff also requests that the Board defer ruling on Intervenors' March 20, 1985, motion to reply until such time as the Commission acts; further, the Staff requests that it be granted an opportunity to respond to the merits of Intervenors' motions at that time.

Respectfully submitted,

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of March, 1985

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NUCLEAR REGULATORY COMMISSION

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In the Matter of)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO 'SUFFOLK COUNTY AND STATE OF NEW YORK MOTION FOR LEAVE TO FILE REPLY TO LILCO'S ANSWER AND NRC STAFF'S RESPONSE TO MOTION TO ADMIT NEW CONTENTION'" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of March, 1985.

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