

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-322-OL-3

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)
EMERGENCY PLANNING

TELEPHONE CONFERENCE

LOCATION: BETHESDA, MARYLAND

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
(Shoreham Nuclear Power Station) :
EMERGENCY PLANNING :

-----x TELEPHONE CONFERENCE

Nuclear Regulatory Commission
Office of Judge Shon
4350 East-West Highway
Bethesda, Maryland
Tuesday, February 5, 1985

The conference of counsel in the above-entitled
matter convened at 10:00 a.m.

BEFORE:

JUDGE MORTON B. MARGULIES, Chairman
Atomic Safety and Licensing Board
JUDGE JERRY R. KLINE, Member
Atomic Safety and Licensing Board
JUDGE FREDERICK J. SHON, Member
Atomic Safety and Licensing Board

1 APPEARANCES:
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9 Commission Staff:
10 BERNARD BORDENICK, ESQ.
11 Office of Executive Legal Director
12 U. S. Nuclear Regulatory Commission
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14 On behalf of Intervenor Suffolk County:
15 LAWRENCE COE LANPHER, ESQ.
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P R O C E E D I N G S

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JUDGE MARGULIES: Good morning. This is
Administrative Law Judge Morton B. Margulies.

If you have not received the order of January 31
notifying of the reconstitution of the Board, I have been
named to replace Judge Laurenson as its Chairman. Judge
Laurenson has left the employ of the Commission. He is now
in private practice.

The Board continues to have the other two members,
Judge Kline and Judge Shon, who are with me at the present
time.

A verbatim transcript is being taken of this
proceeding. We are to hear LILCO's opposition to Suffolk
County's discovery request concerning use of Nassau Coliseum
as a reception center and its motion for a protective order
and request for expedited Board rulings.

We will now take appearances.

Who appears for the Applicant?

MR. IRWIN: My name is Donald Irwin, Judge
Margulies, and I'm here for Long Island Lighting Company.

JUDGE MARGULIES: Who appear for the Intervenors?

MR. LANPHER: Larry Lanpher and Mike Miller from
the firm of Kirkpatrick & Lockhart, for Suffolk County.

Judge, my understanding was that the State of New
York wanted to be on this call also. I thought Mary Gundrum

1 from the New York Attorney General's Office was going to be
2 on, but maybe the operator was unable to reach her.

3 JUDGE MARGULIES: It is my understanding that the
4 operator has been attempting to reach her since ten o'clock
5 and her line has been busy.

6 MR. LANPHER: Okay. Fine. As long as they are
7 trying.

8 JUDGE MARGULIES: Who appears for Staff?

9 MR. BORDENICK: This is Bernard M. Bordenick, and
10 I am representing NRC Staff.

11 JUDGE MARGULIES: Is there an appearance for FEMA?

12 MR. GLASS: This is Stewart M. Glass for FEMA.

13 JUDGE MARGULIES: Are there any other appearances?

14 (No response.)

15 We have the motion of the Applicant, LILCO, dated
16 February 1, 1985, and we received the very timely response
17 of Suffolk County joined in by the State of New York, dated
18 February 4, 1985, which was received yesterday.

19 Both Staff and FEMA felt that we had to proceed
20 with this conference for hearing the motion. They were not
21 prepared to issue a written position paper yesterday.

22 In that we have the Applicant's and the two
23 intervenors' statements we don't believe that there is
24 anything that we need to go into in terms of their filings
25 at this point. We would like to hear from Staff and FEMA.

1 MR. BORDENICK: I would like to speak for the
2 Staff first.

3 Generally speaking, Judge Margulies, the Staff
4 does not take a position on discovery disputes between the
5 other parties. I think it's a question, though, as I read
6 the Applicant's motion, as to whether or not discovery is
7 timely. I would tend to agree with the Applicant on that
8 matter. It seems to me that the proceeding is more or less
9 in the posture of a motion for summary disposition, and
10 until such time as the Intervenors come forward and
11 establish that there are issues to be heard, it seems to me
12 that discovery would be premature.

13 In any event, as to the brief request made to the
14 Staff in Mr. Miller's letter to me of last week, if the
15 Board orders that discovery proceed at this time, I'm
16 prepared to promptly respond to his three questions to me.

17 It seems to me that discovery may be appropriate
18 somewhere down the road, but it's not appropriate at this
19 point in time. But I will leave it to the Board who wrote
20 the order on how we were going to proceed with LILCO's
21 motion to reopen the record on this limited relocation
22 center matter as to whether or not they think discovery is
23 appropriate at this time.

24 I really would not have very much to add to what
25 the Applicant's motion indicated. In summary, it just seems

1 to me that discovery may be appropriate in this proceeding,
2 but at least at this point in time it's premature.

3 JUDGE MARGULIES: May we hear from you, Mr. Glass?

4 MR. GLASS: We have spoken to the Intervenor and
5 we did get some clarification and modification of the
6 request, so it is not an onerous burden at this point.

7 As to the requested depositions, we are a little
8 unclear as to the scope of this particular issue at this
9 point, and therefore I agree with Mr. Bordenick that, at
10 least as far as the depositions, it would be premature at
11 this point to proceed because we would not really know what
12 area we are limited to, and that's my concern, to have a
13 deposition and not know what areas we are getting into.

14 FEMA is pretty much ready with it's affidavit
15 evidence. Speaking to our witnesses, our affidavit area is
16 going to be a rather limited area, and my feeling is that
17 maybe after the affidavits would be an appropriate time to
18 have a deposition at least dealing with only those areas
19 that we have raised.

20 JUDGE MARGULIES: Has counsel from New York State
21 gotten on the line?

22 (No response.)

23 Is there anything the other parties wish to offer
24 at this time before we rule on the motion?

25 MR. IRWIN: Judge Margulies, this is Mr. Irwin for

1 LILCO.

2 I think Mr. Bordenick is correct in saying that we
3 view this basically as a situation analogous to a summary
4 disposition or special determination as to whether or not
5 there is in fact any kind of litigable issue here. The
6 facts that are involved here are ones which I think are
7 equally available to any party in Suffolk. The Nassau
8 County Coliseum is a big readily accessible building and
9 known to everybody. There is really nothing of an
10 intrinsically discoverable nature that isn't available
11 otherwise.

12 There are a couple of points in Suffolk County's
13 paper that are worth a very quick response at this point,
14 and I will touch on them quickly.

15 There is a reference to my characterization or our
16 characterization of Mr. Glass' understanding of what Suffolk
17 County was asking for. Our paper relays what we understood
18 over the telephone, so it may or may not have been accurate
19 as of the time, but I think it is not really terribly
20 important with respect to the basic question, which is
21 really what the Board contemplated in its order of
22 January.

23 Secondly, on page 7 of Suffolk County's response
24 there is a reference to LILCO's description of Suffolk
25 County's response to our initial motion to reopen the

1 record wherein we had said that Suffolk County never
2 requested discovery. I think that that basically speaks for
3 itself. There was some discussion in Suffolk County's
4 response as to what procedures we thought were necessary and
5 there was no mention of discovery.

6 Further down on that page there is a discussion of
7 the Brenner Board remand ruling, the remand ruling from the
8 Appeal Board. The documents which were at issue at that
9 point were documents which were already available in the
10 record and there was simply some question, as I recall it,
11 as to whether or not Suffolk County was able to lay its
12 hands on those documents. We offered, as a matter of
13 convenience, to make those documents available to Suffolk
14 County. There was no additional discovery ordered by the
15 Brenner Board in connection with that remand decision.

16 I view our request to the Board as largely a
17 request for clarification because we thought we pretty well
18 understood what the Board intended in the January 4 letter
19 and its order subsequent to January 4, and we wanted to
20 bring it to this Board's attention as quickly as possible to
21 avoid any kind of confusion or delay in resolution of the
22 issue.

23 JUDGE MARGULIES: Do you wish to make a statement,
24 Mr. Lanpher.

25 MR. LANPHER: Mr. Miller would.

1 MR. MILLER: Judge Margulies, just briefly.
2 Despite what has been said by counsel for LILCO and FEMA and
3 the Staff, LILCO has not made a motion for summary
4 disposition here; they have moved to reopen the record.
5 LILCO made that motion to the Board, and it was that motion
6 that was considered by the Board.

7 In light of the fact that the record has been
8 reopened, at least for the limited purposes set forth in the
9 Board's January 28 order, we believe, the County and the
10 State believe, that discovery is appropriate at this time.

11 The discovery request, as you can see from our
12 filing, is limited discovery; it's closely tied to the
13 single issue of LILCO's proposed use of the Nassau Coliseum.
14 It's a matter which has not before been litigated in any way
15 by the Licensing Board; it's a matter to which there has
16 been no discovery in any way by the parties.

17 To make a short statement, Judge Margulies, we
18 feel that discovery is appropriate and necessary if we are
19 to make a meaningful statement to the Board on February 18
20 when we have to file positions regarding LILCO's proffered
21 evidence.

22 JUDGE MARGULIES: Thank you.

23 The Board will now take several minutes and will
24 come up with its ruling on the motion.

25 (Board confers off the record.)

1 JUDGE MARGULIES: This is Judge Margulies again.
2 The Board is ready to rule on the issues presented by the
3 motion.

4 This is the Board's ruling:

5 By its order of January 25, 1985, the Board
6 permitted the reopening of the record for the very narrow
7 purpose of allowing the introduction of evidence identifying
8 the Nassau Veterans Memorial Coliseum as a relocation center
9 in the event of an emergency at Shoreham and the agreements
10 covering the availability and use of the relocation center.

11 The subject matter is not new nor complex. The
12 details of LILCO's evidence have been made known. The fact
13 that the coliseum was the designated center was announced by
14 LILCO in October of 1984.

15 A special expedited procedure was invoked setting
16 forth in very specific terms the steps that are to be
17 followed by the parties. The procedure does not provide for
18 a full-blown adjudicatory hearing on the narrow issue to be
19 developed with all attendant trappings. An abridged
20 procedure is to be followed.

21 In this expedited proceeding responses are to be
22 made promptly on the basis of information parties have
23 available to them. The proceeding does not provide for
24 discovery.

25 The procedure provides that before the Board rules

1 on the admissibility of LILCO's proffered evidence the other
2 parties will have the opportunity to state their positions
3 regarding the evidence as to (a) authenticity and (b)
4 whether they have a basis to question the coliseum's being
5 named as the reception center.

6 At this stage a determination has not been made as
7 to whether an oral hearing is warranted. The parties have
8 to make known if they believe cross-examination is necessary
9 and to also make known what they expect to prove through
10 cross-examination.

11 If the parties expect to present affirmative
12 evidence, a narrative statement or affidavit summarizing the
13 evidence must be attached to the filing.

14 The procedure provided for is in keeping with the
15 purposes of the administrative process of deciding issues
16 timely and fairly.

17 We grant LILCO's motion for a protective order.

18 Applicant need not respond to Intervenors'
19 discovery requests made in response to the Board's reopening
20 the subject record.

21 That is our ruling in this proceeding.

22 MR. BORDENICK: Judge Margulies, slightly changing
23 the subject, unless someone has anything further to add on
24 the matters which were just ruled on, in the Board's order
25 of January 28 the time within which the parties shall

1 respond to the LILCO motion on the matter set forth in the
2 Board's order is set at February 18. I don't know whether
3 the Board was aware at the time they wrote this order, but
4 the 18th is a federal holiday, which may or may not cause a
5 problem. I only raise it now to alert everyone that in fact
6 it is a federal holiday and to make a suggestion that
7 perhaps the Board would want to amend that date to the 19th.

8 JUDGE MARGULIES: Is there any objection by any of
9 the parties?

10 MR. IRWIN: No objection from LILCO as long as
11 LILCO's corresponding reply date is also slipped one day.

12 MR. GLASS: No objection by FEMA.

13 JUDGE MARGULIES: Does anyone else join in the
14 proposal of moving the date up?

15 MR. LANPHER: It seems to make sense.

16 JUDGE MARGULIES: We will permit a one-day
17 slippage in the two dates.

18 MR. IRWIN: Let me just clarify something. I
19 assume, since this is obviously in LILCO's self-interest,
20 that the service of documents on the 18th and now the 19th
21 is a received service date. In other words, we will receive
22 documents on that day.

23 JUDGE MARGULIES: That is correct.

24 MR. IRWIN: Thank you.

25 MR. LANPHER: I just want to get clarification on

1 your basic ruling. That is, is Suffolk County and/or is the
2 State of New York expected to proffer evidence without the
3 opportunity for any discovery on this issue? Is that the
4 gist of your ruling?

5 JUDGE MARGULIES: That is correct.

6 MR. LANPHER: With all respect, since you are
7 making a transcript, we believe the Board has committed
8 clear error here.

9 JUDGE MARGULIES: You may take exception to the
10 Board's ruling, but that is the Board's ruling.

11 MR. LANPHER: I understand your ruling. Thank
12 you.

13 JUDGE MARGULIES: Is there anything further?

14 MR. IRWIN: No, sir.

15 MR. BORDENICK: Nothing further from Staff.

16 MR. GLASS: Nothing further from FEMA.

17 JUDGE MARGULIES: The hearing on the motion is now
18 closed.

19 Thank you very much.

20 (Whereupon at 10:30 a.m. the hearing was
21 adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station)
EMERGENCY PLANNING

DOCKET NO.: 50-322-OL-3

PLACE: BETHESDA, MARYLAND

DATE: TUESDAY, FEBRUARY 5, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Michael G. Paulus

(TYPED)

MICHAEL G. PAULUS

Official Reporter
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