

520

2/8/85

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

*85 FEB 11 P12:54

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

Docket No. 50-322-1
(OL)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF RESPONSE TO LILCO'S MOTIONS TO
STRIKE SUFFOLK COUNTY'S TESTIMONY ON
EMERGENCY DIESEL GENERATOR LOAD CONTENTION
AND CYLINDER BLOCKS

On February 1, 1985 Applicant Long Island Lighting Company (LILCO) moved to strike portions of Intervenor Suffolk County's testimony on emergency diesel generator (EDG) loads and cylinder blocks in the captioned proceeding. For reasons set forth below, the Staff supports in part and opposes in part these motions.

LILCO's Motion to Strike Suffolk County's Cylinder Block Testimony
Question No. 7

The Staff supports that part of the motion which seeks to strike Mr. Bridenbaugh's answer to this question No. 7. While concurring in both points taken by LILCO in support of its motion, that Mr. Bridenbaugh is not a qualified expert witness on the matter of strain gage monitoring and that his answer is unresponsive and lacks any foundation, the Staff further believes that the brevity of the answer to this question, which contains no basis in fact, renders it devoid of any probative value within the context of this litigation. The nature of the answer, being

8502130025 850208
PDR ADOCK 05000322
PDR

7507

dependent on testimony formerly given by other witnesses in other circumstances, forecloses opportunity for full cross-examination on the technical validity of the answer.

LILCO's Motion to Strike Testimony of Dale G. Bridenbaugh and Gregory C. Minor Regarding Suffolk County's Emergency Diesel Generator Contention

I. Matters Claimed to be "Beyond the Contention"

A. Margin at Other Plants

The Staff supports that part of the Motion seeking to strike the cited references at page 2 of the Motion as identical in substance to matters excluded from this litigation by the Board's Order of January 18, 1985.

B. Vague Uncertainties

The Staff does not support so much of the Motion to Strike as is included within part B thereof at page 4. Vagueness in testimony does not necessarily support a motion to strike. The basis of the testimony may be explored upon cross-examination. To strike such testimony merely because of perceived vagueness would open up each party's testimony to wholesale "wordsmithing," or editing, by all other parties to the proceeding, and would impede, rather than assist, orderly litigation of the issues in controversy.

C. Overload Rating

The Staff does not support that part of the Motion which seeks to strike testimony on the overload rating. While the Motion itself is cursory and difficult to understand, it appears that whether an overload rating is needed may be an appropriate subject for litigation.

II. Objections Founded Upon Claimed "Unfounded Speculation"

The Staff supports that part of the Motion to Strike founded only upon speculation. By the wording of the answers they appear to be only matters of conjecture, not fact.

III. Objections Founded Upon Claimed "Unqualified Expert Witnesses"

The Staff does not support test part of the Motion to Strike founded upon the ground that the witnesses are unqualified. Voir dire examination of the proffered expert witnesses should be allowed to test their qualifications on the specific subject matter here at issue.

IV. Objection Founded Upon Claimed "Irrelevant, Unresponsive Testimony"

The Staff does not support the Motion to Strike this testimony. The referenced testimony identifies the stated concerns of the County in summary form, and provides the basis for each of these concerns as identified in documents prepared by Applicant.

V. Objection Founded Upon Claimed "Challenge to Regulation" (Single Failure Criterion)

The Staff does not join in the Motion to Strike this testimony, for reasons clearly set forth in "NRC Staff Response to LILCO Brief on the Applicability of the Single Failure Criterion to the EDG Load Contention," dated February 5, 1984 and "Testimony of Wayne Hodges," dated February 5, 1984, at 4.

For the reasons set forth above, the NRC Staff supports only so much of LILCO's Motions to Strike testimony of Suffolk County as is indicated above.

Respectfully submitted,

Richard J. Goddard
Richard J. Goddard *By AMB*
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of February, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 FEB 11 12:54

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

Docket No. 50-322-1
(OL)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LILCO'S MOTIONS TO STRIKE SUFFOLK COUNTY'S TESTIMONY ON EMERGENCY DIESEL GENERATOR LOAD CONTENTION AND CYLINDER BLOCKS" 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, by hand delivery, this 8th day of February, 1985.

Lawrence Brenner, Esq.*
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. George A. Ferguson *
Administrative Judge
School of Engineering
Howard University
2300 - 6th Street, N.W.
Washington, D.C. 20059

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

Dr. Peter A. Morris*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Jonathan 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, DC 20555

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

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

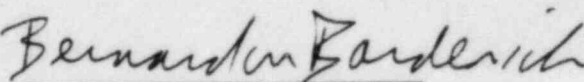
Herbert H. Brown, Esq.*
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick and Lockhart
1900 M Street, N.W.
8th Floor
Washington, DC 20036

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

James B. Dougherty, Esq.
3045 Porter Street, NW
Washington, DC 20008

Peter S. Everett, Esq.*
Hunton & Williams
2000 Pennsylvania Avenue, NW
Washington, DC 20036

Robert Abrams, Esq.
Attorney General of the State
of New York
Attn: Peter Rienstock, Esq.
Department of Law
State of New York
Two World Trade Center
Room 46-14
New York NY 10047


Bernard M. Bordenick
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

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

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

MHR 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

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