

January 18, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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  
"LILCO'S MOTION TO REOPEN RECORD"

I. Introduction

On January 11, 1985, Applicant, Long Island Lighting Company (LILCO), moved to reopen the evidentiary record in this proceeding for the limited purpose of admitting into evidence six documents which relate to the use of the Nassau County Veterans Memorial Coliseum (Coliseum) as a reception center under the LILCO Transition Plan. The documents which LILCO is proposing to move into evidence are an "Affidavit of Elaine D. Robinson on Nassau Coliseum" (Robinson Affidavit) describing the Coliseum, and six Attachments:

1. A Letter of Agreement between LILCO and the General Manager of the Coliseum dated September 25, 1984 and approved October 8, 1984, allowing LILCO and the Red Cross to use the Coliseum as a reception center;
2. A Letter dated October 1, 1984 from the Nassau County Executive to the General Manager of the Coliseum approving use of the Coliseum as a reception center;

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3. A Letter of Agreement between LILCO and the American Red Cross dated October 23, 1984 and approved October 24;
4. A Map showing the location of the Coliseum;
5. A Diagram of the Coliseum; and
6. A Letter dated December 31, 1984, from the Nassau County Executive to the Chairman of the Long Island Lighting Company.

For the reasons discussed below, the NRC Staff supports LILCO's motion.

## II. Background

A summary of the background events leading to LILCO's recent motion to reopen the record is set out at pages 2-3 of LILCO's motion. In essence, until the Conference of Counsel held by the Licensing Board in this proceeding on January 4, 1985, both LILCO and the NRC staff viewed the October, 1984 specific identification of a reception or relocation center in Nassau County by LILCO as "confirmatory" in nature. The Board, in a verbal ruling on January 4, 1985, disagreed with this position and stated that without the identification of a proper location reception center a "void" would remain in the record. (Tr. 15,793-94). <sup>1/</sup> In the Staff's view, LILCO's motion and the supporting papers accompanying the

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<sup>1/</sup> The Board granted LILCO leave to file a motion to reopen the record by January 14, 1985. The other parties were granted seven days within which to respond to the motion. The Board has deferred setting a schedule within which to address the merits of the Coliseum as a relocation center. (Tr. 15,793-94).

motion fill that void. The Board should reopen the record to receive the Robinson Affidavit and the six above-identified documents into evidence.

### III. Discussion

The established criteria for reopening a closed record in an NRC licensing proceeding were set out in the December 27, 1984, "NRC Staff Response to Suffolk County and New York State Motion to Vacate Order Granting LILCO's Motion for Summary Disposition on Contention 24.B and to Strike Portions of LILCO's and the Staff's Proposed Findings" at 4. The criteria are also set out in a rule recently proposed by the Commission at 49 Fed.Reg. 50,189 (December 27, 1984). Three criteria must be satisfied in order to sustain a motion to reopen the record:

1. The motion must be timely, except that an exceptionally grave issue may be considered even if untimely presented.
2. The motion must address a significant safety or environmental issue.
3. It must be shown by the moving party that a different result might be or might have been reached had the newly proffered material been considered initially.

49. Fed.Reg. 50,189 (Dec. 27, 1984). A party seeking to reopen a closed record bears a "heavy burden." Pacific Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344 (1983). As discussed below, the Staff believes that under the circumstances presented by the motion in question, LILCO has satisfied the three criteria and a reopening of the record is warranted for the limited purpose of admission into the record of the documents offered by LILCO. Intervenors should be granted an opportunity to show how or why the Coliseum is inadequate for relocation center purposes.

A. Timeliness

While it is true that the documents LILCO now seeks to introduce into the record were available in October 1984, some three months before LILCO's motion, the motion is nevertheless timely. As noted above, LILCO and the Staff believed that the recently identified void in the record did not rise to a level of significance which required a reopening of the record. Rather, LILCO and Staff believed that identification of the reception center could be left as a confirmatory matter to be monitored by the Staff and FEMA. This appeared to be a reasonable position since the LILCO emergency plan is to use a central reception center to register, monitor, and decontaminate people and then to send them to "congregate care centers". This and essentially all aspects of relocation centers, except the identity of the central reception or relocation center, was fully litigated prior to the time the record closed. See for example TR. 14,779; 14,801; 14,805; 14,816-17; 14,825-30; 14,861-63, and 14,876-82. <sup>2/</sup>

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<sup>2/</sup> The activities to be conducted at a relocation center were also a focus of litigation. The list of congregate care centers was put into the record by LILCO. See Cordaro et.al. (Relocation Centers), ff. Tr. 14,707, Attach 1. These congregate care centers were the subject of litigation. For example, Contention 74 raised issues concerning the number of showers and toilets, cooking facilities, and so forth. Indeed, only Contention 24.0, which simply alleged that "there is no relocation center," is affected by the recent identification of the Coliseum as a relocation center. As noted in the Staff's Proposed Findings of Fact filed November 5, 1984, at footnote 44, the Staff viewed these agreements regarding use of the Coliseum as confirmation of commitments already reflected in the record.

The documents which LILCO now seeks to have admitted into the record could not have been submitted before the record closed simply because they did not exist at that time. Once they came into existence, LILCO promptly provided them to the Board and parties. Thus, no one can claim surprise. Staff agrees, for the reasons noted by LILCO at pages 15-18 of its motion, that there does not appear to be any new issue raised by virtue of the Coliseum identification. In the circumstances surrounding this issue, and the Board's January 4, 1985 oral ruling indicating a "void" in the record, LILCO's motion to supplement the record to designate the reception center does not appear untimely.

R. Significance

In the context of a motion to reopen a record, a significant issue is one which is material to the outcome of the proceeding. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 & 2), ALAB-598, 11 NRC 876, 879(1980). By virtue of the Board's January 4, 1985 ruling that a "void" exists in the record absent the identification of a reception center in that record, it appears that the identification

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

The Red Cross proposes to set up a station to register people and direct them to congregate care centers. Additionally, LERO personnel will monitor and decontaminate people if that is necessary. See Id., ff. Tr. 14,707 at 24; Tr. 14,801(Rasbury); Tr. 14,807(Weismantle); Tr. 14,812(Rasbury); and Tr. 14,854(Rasbury). A procedure for monitoring and decontamination is presently a feature of the LILCO emergency plan. See OPIP 3.9.2. There are no contentions involving monitoring and decontamination which depend on location of the center. Contention 75 dealt, on a narrow basis, with the type of instrument to be used for monitoring at the reception center. Methods for monitoring and decontamination were extensively litigated during the hearings. See, for example, Tr. 14,826-28(Weismantle); Tr. 14,879-886(Harris); Tr. 14,888-90(Harris).

of the reception center is an issue significant to the outcome of this proceeding.

In Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163, 1169 (1984), the Appeal Board stated that it is a better procedure to hold a record open to receive additional evidence on an issue material to the outcome of the proceeding, than to dismiss a proceeding for lack of evidence on a controlling issue in the proceeding. There additional inspections and other activities with the potential to affect the Licensing Board's decision on quality assurance had been undertaken prior to issuance of a decision. The Byron Licensing Board declined to delay its decision to consider the results of these activities which it knew were underway, and instead determined that the applicant was not entitled to an operating license because of open quality assurance questions. The Appeal Board, in reversing the Licensing Board, stated that the Licensing Board should have provided for further proceedings to allow these unfolding developments to be added to the record, rather than having dismissed the proceeding. Similarly, here the record should be reopened to allow the designation of a reception center to be added to the record, rather than have the Board find a "void" in regard to the designation of such a center.

#### C. A Different Result Might Be Reached

As the Board has ruled a "void" exists in the record in regard to the identification of a reception center, the designation of the Nassau County Veterans Memorial Coliseum as a reception center fills that void and thus the third criteria for reopening a record has been satisfied.

See Carolina Power & Light Co. (Shearon Harris Nuclear Plant, Units 1, 2, 3, & 4), CL1-79-10, 10 NRC 675,677(1979). <sup>3/</sup>

D. Different Standard

LILCO at pages 8-12 of its motion argues that the "traditional" reopening standards may not apply in the circumstances of this proceeding. The staff does not believe it is necessary for the Board to consider this argument. As set out above, the Staff urges that LILCO's motion, under the circumstances presented, may be granted applying the traditional reopening standards.

Conclusion

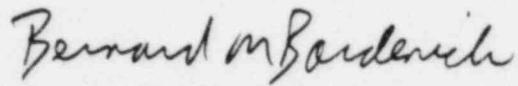
For the reasons discussed above, the Board should reopen the record for the limited purpose of receiving into evidence the Robinson Affidavit and the six documents attached thereto which were recently proffered by LILCO relating to the Coliseum as a reception center. Thereafter, Intervenors should promptly apprise the Board and parties of any specific basis upon which they challenge the conclusions of the Robinson Affidavit or the authenticity of any document attached thereto and any specific basis upon which they challenge the adequacy of the Coliseum to serve as

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<sup>3/</sup> The procedures to be followed upon reopening of the record do not necessarily involve an opportunity for further testimony or cross-examination. The Intervenors should come forward and show a basis to question the designation or the adequacy of Nassau County Veteran Memorial Coliseum as a reception center. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-335, 3 NRC 830,840-1(1976), where the Appeal Board indicated that in order to see if a hearing is needed into matters submitted in affidavit form after the close of a record, a preliminary determination might be made into whether the matters reflected in the affidavit could be summarily resolved or whether there are facts in controversy necessitating a hearing.

a reception center, so that this Board might determine if further hearings are needed on these matters.

Respectively submitted,

A handwritten signature in cursive script that reads "Bernard M. Bordenick".

Bernard M. Bordenick  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 18th day of January, 1985

UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NPC STAFF RESPONSE TO 'LILCO'S MOTION TO REOPEN THE RECORD'" 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, or hand delivery, as indicated by a double asterisk, this 18th day of January, 1985.

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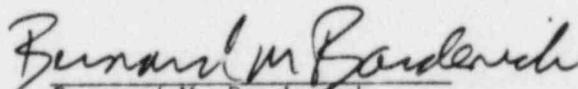
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