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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

'88 MAR -4 P2:42

Before Administrative Judges:

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

James P. Gleason, Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon

SERVED MAR - 4 1988

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

Docket No. 50-322-0L-3  
(Emergency Planning)  
(ASLBP No. 86-529-02-OLR)  
March 4, 1988

MEMORANDUM AND ORDER  
(Ruling on Motion of State of New York to Compel  
Discovery Responses of LILCO and NRC Staff)

The State of New York (Intervenor) on February 12, 1988, pursuant to 10 C.F.R. 2.740(f), 2.720(h) and 2.744, filed a motion to compel the Applicant (LILCO) and the NRC Staff to respond to certain interrogatories and requests for documents.

In a response to the motion dated February 29, 1988, LILCO, although not abandoning objections it raises concerning relevancy, states it has responded or is in the process of responding to Intervenor's interrogatories and therefore nothing is left to compel. The Board concludes on the basis of the information LILCO submitted, that Intervenor's request has been satisfied and accordingly its motion with respect to LILCO is moot.

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The case is different in regard to the Staff, however, since Staff alleges in its response that Intervenor's interrogatories have failed to comply with NRC regulations applicable to discovery of the Staff. We consider below each of Intervenor's particular requests for information and documents along with the parties contentions and transmit herein our decision on the matter:

#### Interrogatory 1

When bus drivers for nuclear plants other than Shoreham are trained to drive buses during radiological emergencies, what, if anything, are they told, on a plant by plant basis, about caring for their families in emergencies?

#### NRC Staff Objection

Communication to bus drivers at nuclear facilities other than Shoreham is not relevant to, or necessary for, this Licensing Board's decision.

The Staff alleges that the information sought by Intervenor is neither necessary to a proper decision in the proceeding nor has the Intervenor established that the information solicited cannot be obtained from other sources. The applicable regulation is 10 C.F.R. 2.720(h)(2)(ii). The Board, at this juncture, is unable to determine whether the information sought will ultimately prove relevant and necessary to the case, but we can conclude that since role conflict must be considered in the proceeding, the information requested has a potential relevance which for our judgment here must be assumed. We must note, however, that there is no requirement under the regulation requiring the Staff to make an exhaustive search for this information

among the records of all nuclear operating facilities. If the information requested can be readily obtained and the Staff can point to other sources where it is available, that response will satisfy compliance with the apposite regulation. Intervenor's motion to compel on this interrogatory is granted pursuant to the directions presented herein.

#### Interrogatory 2

Do any radiological emergency response plans for nuclear plants other than Shoreham rely either fully or partially on utility employees to drive buses for school children? If the answer is affirmative, please identify the particular nuclear plants and the relevant pages of the corresponding radiological emergency response plans.

#### NRC Staff Objection

The provision(s) of emergency plans for facilities other than Shoreham are not relevant to the issue before the Board, and are not necessary for the Board's decision. Further, the emergency plans are public documents available in the Commission's Public Document Room and readily available to the State of New York. See 10 CFR § 2.720(h)(ii).

Both the Intervenor and Staff rely on similar responses submitted in connection with the motion to compel on the preceding interrogatory as an applicable justification for either compelling responses here or opposing them, respectively. The Board concludes that since the Staff has pointed out the Commission's Public Document Room as a place where all emergency plans are readily available, this is adequate for a finding that the motion to compel fails to satisfy the requirements of 10 C.F.R. 2.720(2)(ii). There is no obligation on the part of Staff to carry out research which the Intervenor can do independently and, accordingly, the motion to compel in responding to this interrogatory is

denied. However, if the Staff has access to compilations of data or comparison survey on issues of role conflict of bus drivers or use of utility employees as school bus drivers, such information should be made available to Intervenor.

### Interrogatory 3

Has the NRC or FEMA ever met (on or about January 14, 1988 or at any other time), or engaged in telephone conversations or discussions, with LILCO regarding in any way LILCO's schools evacuation proposal?

(a) identify the dates and locations of the meetings or the dates of the telephone conversations or discussions, (b) identify all attendees or participants; (c) specifically describe all statements that were made about LILCO's schools evacuation proposal, (d) attribute all such statements to particular individuals, and (e) provide any documents that concern LILCO's schools evacuation proposal that were produced in preparation for, during, or as a result of the meetings, telephone conversations or discussions.

### NRC Staff Objection

Discussions, if any have occurred, among the NRC, FEMA and/or LILCO regarding the schools evacuation proposals contained in Revision 9 of the LILCO emergency plan are not relevant to whether there will be an adequate supply of bus drivers for school buses in the event of an emergency at Shoreham (the remanded issue in this proceeding), not (nor) is the disclosure of any such discussions, if they occurred, necessary to a decision by this Licensing Board. See 10 CFR § 2.720(h).

The objections submitted by the Staff herein are essentially the same as those submitted to the motion for compelling answers to the preceding interrogatories: namely, that the information is not relevant and necessary to a Board decision as is required by 10 C.F.R. 2.720(h)(2)(ii) and also, as required, that the information is not obtainable from another source. The Board denies the motion herein on the grounds that the information is readily available elsewhere, i.e.

LILCO, and, in fact, has been responded to by the Applicant. See LILCO response at 5.

#### Interrogatory 4

Provide a copy of all documents used in preparing the answers to these interrogatories.

#### NRC Staff Objection

Not applicable.

The Board concludes from the Staff's laconic response that it has no documents that it relied on in its responses to Intervenor's interrogatories. Accordingly, there is nothing that exists on which to compel production and the motion here is moot.

#### Interrogatory 5

List, on a numerical interrogatory by interrogatory basis and on a lettered (lettered) subpart by subpart basis, all people who were asked to provide information or documents in response to: (a) this pleading; (b) the pleading submitted by Suffolk County entitled, "Suffolk County's First Set of Interrogatories and Request for Production of Documents to the NRC Staff and FEMA" dated January 4, 1988.

#### NRC Staff Response

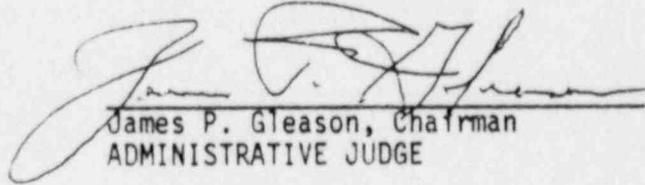
This interrogatory seeks disclosure of the scope of a Staff search for information to regard to interrogatories. First, this is not relevant to the issue before the Board. Secondly, such information is not necessary to a proper decision in this proceeding upon the issue of availability of school bus drivers.

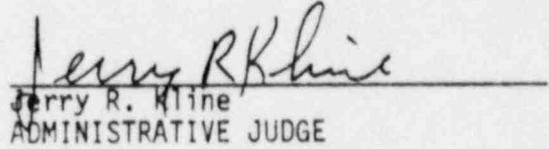
The Staff's response to the motion to compel indicates that no persons were requested to provide information or documents to the Staff since they not only did not respond to the requests but filed objections to both the motion to compel and the original interrogatories. The

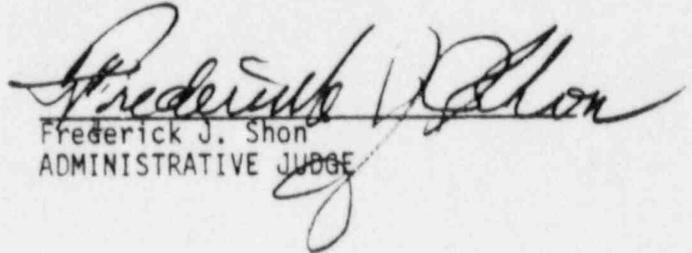
Board concludes, therefore, that, since no persons were, in fact, requested to provide information or documents, the motion to compel must be and is denied in connection with this interrogatory. In light of this finding it's unnecessary for us to wrestle with the issue of the Staff's objections that the interrogatory failed to meet regulatory standards on discovery of the Staff.

ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James P. Gleason, Chairman  
ADMINISTRATIVE JUDGE

  
Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
Frederick J. Shon  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 4th day of March, 1988.