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

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Before Administrative Judges:

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

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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)
February 23, 1988

MEMORANDUM AND ORDER

(Ruling on LILCO Motion In Limine and Motion to Set Schedule)

The Board herein confirms our ruling made and communicated to the parties on February 12, 1988 on LILCO's motions of January 25 and February 5. The motions request, in part, a Board ruling that availability of buses, reception centers for school children and evacuation time estimates are not within the scope of an issue remanded by the Appeal Board. The motions also request establishment of a hearing schedule and a prohibition against designation of additional witnesses. Both of these latter requests are moot in light of subsequent orders of the Board. We also see no need to provide further clarification herein, as requested by Intervenors on pending discovery matters.

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The Board of Appeals, in reversing the Licensing Board on a "role conflict" issue, stated:

On the record now before us, we similarly cannot make a finding that a sufficient number of school bus drivers can be relied upon to perform their duties if an accident occurred at Shoreham. Therefore, we are remanding this matter to the Licensing Board for further exploration. All parties will be free to adduce additional evidence on the issue; at minimum, the Licensing Board is to accept the testimony related to the survey of volunteer firemen. Upon review of the evidence presented at the reopened hearing, the Licensing Board should reconsider its prior findings and conclusions regarding the potential for role conflict among school bus drivers.

See ALAB-832, 23 NRC 135, 154.

In denying LILCO's motion for summary disposition of this remanded issue, we said

The basic issue to be explored by the Board is whether, in light of the potential for role conflict, a sufficient number of school bus drivers can be relied upon to perform emergency evacuation duties. To assure an adequate number of drivers, LILCO has developed its new proposal for auxiliary drivers. It will suffice for our purposes that an opportunity to confront this plan be provided and a period for discovery on the plan's dimensions be authorized.

Memorandum and Order, December 30, 1987 at 5.

It appears clear that the Appeal Board was disturbed by a perceived deficiency in the record of an adequate number of school bus drivers to be available during an emergency. We were directed to reconsider the matter at a hearing and to include previously excluded testimony regarding a survey of volunteer firemen. Simply stated, the Board of Appeal believed that the possibility of role conflict diminishing the number of such drivers responding, raised a significant question that could only be addressed within a renewed litigative session.

The Applicant subsequently attempted to remedy possible deficiencies in the number of bus drivers by a volunteer corps of auxiliary LERO workers. It is the dimensions of that new plan that should properly be the focus of discovery as it relates to the basic issue before us on remand: that is, the availability of an adequate number of bus drivers to evacuate school children during a radiological emergency. The areas referred to in LILCO's motion have been subjects of prior litigation and were placed by the Board in the category of deficiencies of a lesser magnitude that could be remedied: See CPID, 22 NRC 410 at 429-430. Although, in our ruling on LILCO's summary disposition motion of the bus driver issue we authorized discovery on the (new) plan's dimensions, we did not intend--nor could we--to include matters previously resolved as remedial or detail areas, which were left to be completed prior to full plant operation. Georgia Power Co., et al. (Vogtle Electric Generating Plants, Units 1 and 2), ALAB-859, 25 NRC 23, 27 (1987).¹

Although the Board invited LILCO to present, at a forthcoming hearing, evidence on availability of school buses for which it had concluded arrangements, it was intended only as a method of minimizing any areas of future conflict on school evacuation issues. LILCO attests that Revision 9 has provided for this deficiency and Staff's action on

¹ Also see Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 495 (1986).

that matter will either conclude this controversy or afford Intervenors an opportunity to reopen the issue by a proper showing.

The Intervenors allege that since the Board, in its PID did not specifically refer these school issue defects (school buses, reception centers, time estimates) to the Staff for confirmation purposes but specifically referred six other deficiencies, this indicates an intention that the deficiencies on school issues were not to be left for Staff review. In Intervenors' view, these defects were to be considered, if at all, within the context of a litigated proceeding. We believe the Intervenors' position erroneous, but will leave that for consideration at some future proceeding. For now, it suffices for us to state that, whatever the explanation, the subjects referred to have no place within the boundary of the school issue matters--availability of bus drivers--that was remanded by the Appeal Board. In light of these considerations, we conclude this remand does not cover the issues raised by LILCO's motion and accordingly, LILCO's motion is granted herein.

ORDERED

1. Questions concerning availability of buses, reception centers for school children, and evacuation time estimates are not within scope of remanded bus driver issue.

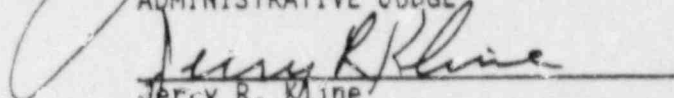
2. Requests for establishment of schedule and prohibiting a further designation of witnesses are moot.

3. Requests for clarification on pending discovery matters is unnecessary in light of this Order.

THE ATOMIC SAFETY AND
LICENSING BOARD



James P. Gleason, Chairman
ADMINISTRATIVE JUDGE



Jerry R. Mine
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 23th day of February, 1988.