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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station,)	
Unit 1))	

NRC STAFF ANSWER IN SUPPORT OF
LILCO'S MOTION TO STRIKE INTERVENORS'
REPLY - SUMMARY DISPOSITION OF HOSPITAL EVACUATION

DISCUSSION

1. The NRC Staff supports Applicant's February 8, 1988 Motion ^{1/} to strike Intervenor's 24 page "Reply ... to the NRC Staff Response in Support of LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue" of February 1, 1988. See "NRC Staff Supplemental Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue," at 4 n.7. The Staff particularly agrees that the reply is not one permitted under the Rules of the Commission. Section 2.749(a) of those Rules, 10 C.F.R. § 2.749(a), provides in part: "No further supporting statements or responses" to motions for summary disposition

1/ LILCO's Motion to Strike Intervenor's Unauthorized Reply to NRC Staff's Response to LILCO's Hospital Summary Disposition Motion ("Motion"). The Board has indicated in an Order of February 22, 1988, that it has ruled on LILCO's underlying motion for summary disposition of hospital evacuation issues, granting it in part and denying it in regard to evacuation time estimates. It appears this pleading remains germane to matters to be discussed in the forthcoming written decision on the motion.

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are permitted other than those "respond[ing] in writing to new facts or arguments presented in any statement filed in support of the motion". The Intervenor's aver that "[t]he Staff's response offers little in the way of new facts or arguments." Intervenor's Reply at 2. By Intervenor's admission, no basis exist for Intervenor's to file this 24-page reply in this proceeding, which already suffers from a surfeit of pleadings.

2. The Intervenor's response of February 18, 1988, to LILCO's motion to strike the unauthorized response reiterates arguments that the Staff might not be delegated post-hearing verification of the formulation and implementation of LILCO's emergency plan because the Staff has supported the licensing of the Shoreham facility. The Staff has often been delegated those duties where it has supported the licensing of a facility meeting statutory and regulatory requirements. See e.g.: Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit No. 3), ALAB-732, 17 NRC 1076, 1103-04 (1983); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC 479, 494-95 (1986).

The Intervenor's apparently seek to distinguish those cases on the basis of their claim that "the Staff has shed objectivity in this proceeding and allied itself with LILCO as a matter of Staff policy and commitment." At 4. The Staff, in the past, has felt it could ignore such claims as transparent attempts to divert attention from serious matters before this Board relating to the licensing of the Shoreham Nuclear Power Plant. As the Intervenor's continue to make such claims, they now require comment to prevent their repetition from lending them credence. These and like

claims by the Intervenor¹ are belied by the very major issues in this proceeding where the Staff's position has been contrary to LILCO's and similar to that of the Intervenor¹. These include:

- The question of the preemption of Federal law.
- The qualification of diesels prior to requalification.
- The need to safety qualify "important-to-safety" as well as "safety-related" components.
- The adequacy of the demonstration of the implementability of LILCO's emergency plan in the emergency planning exercise.

Thus the talk of collegiality between the Staff and LILCO, or of LILCO and the Staff acting as one, is not the cant of those who wish to see the facts, but rather of those who wish to be influenced by preconceived notions. ^{2/}

Lastly, the point must be made that Staff attorneys have indeed met with LILCO attorneys in an attempt to move this proceeding forward. Rather than this meeting being secret, a Staff attorney telephoned an attorney for the Intervenor¹ telling him of and describing the meeting.

^{2/} This is not the first time that counsel for Intervenor¹ have spoken without examining the facts predicated their statements. See "Memorandum and Order (Ruling on Intervenor¹ Motion for Leave to Reply to LILCO's and Staff's Proposed Findings)," December 7, 1988. In Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 532, reconsideration denied, ALAB-808, 8 NRC 559 (1978), the Appeal Board stated:

Counsel appearing before this Board (as well as other NRC adjudicatory tribunals) has a manifest and iron-clad obligation of candor. This obligation is hardly fulfilled when, as here, there is a failure to call attention to facts of record which, at the very least, cast a quite different light upon the substance of arguments being advanced by counsel. [Footnote omitted]

Accord Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768, 1784-85 (1981).

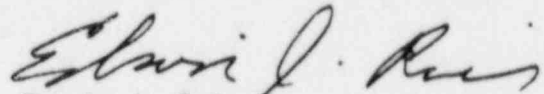
He further invited attorneys for the Intervenors to meet with Staff attorneys to discuss scheduling and any other matters they wished to raise, including Staff support of the Intervenors. The Staff is at a loss to explain why the Intervenors' attorneys have not accepted this invitation of the Staff for a meeting.

The arguments that the Staff cannot be delegated the ministerial post-hearing verification of the formulation and implementation of emergency plans, because of Staff bias, is without foundation, and must be rejected both as a matter of law and as a matter of fact.

CONCLUSION

For the reasons set out above, Intervenors' 24-page unauthorized pleading seeking to reply to the Staff's submission on the hospital evacuation issues pleadings, should be stricken.

Respectfully submitted,



Edwin J. Reis
Deputy Assistant General Counsel

Dated at Rockville, Maryland
this 24th day of February 1988

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER IN SUPPORT OF LILCO'S MOTION TO STRIKE INTERVENORS' REPLY - SUMMARY DISPOSITION OF HOSPITAL EVACUATION" 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, this 24th day of February 1988.

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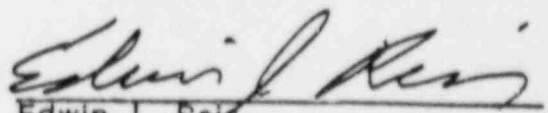
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