

5909

LILCO, March 17, 1988

DOCKETED
USNRC

'88 MAR 21 P6:08

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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,)	(Hospital Evacuation Issue,
Unit 1))	

LILCO'S REPLY TO INTERVENORS' MOTION FOR RECONSIDERATION
OF THE BOARD'S RULING ON THE HOSPITAL EVACUATION ISSUE

Intervenors, by motion dated March 7, 1988, have asked the Board to reconsider its Memorandum and Order (Ruling on LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue), dated February 24, 1988 (hereinafter "Order"). Intervenors' motion is without merit and should be rejected in its entirety.

In their Motion for Reconsideration of the Board's Ruling on LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (March 7, 1988) (hereinafter "Motion"), Intervenors assert that the Order, which granted LILCO's motion for summary disposition except as to the narrow issue of the bases and accuracy of the hospital evacuation time estimates, "fails to give adequate consideration to the issues identified by the Government [sic] and errs in its conclusions." As a consequence, Intervenors submit, "the Order should be vacated" in certain respects. Motion at 1.

As shown below, none of the three arguments which Intervenors advance in support of their position is sufficient, either separately or in the aggregate, to justify Board reconsideration. The Motion simply repeats the same arguments which Intervenors have raised previously, and the Board need not consider them again. See, e.g., Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Unit 1), LBP-84-23, 19 NRC

8803230049 880317
PDR ADOCK 05000322
G PDR

DS-3

1412, 1414 (1984) (Reconsideration not warranted in the absence of new arguments, new issues, or new information); see also Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-844, 24 NRC 216, 217 (1986).

I. The Board Considered and Properly Rejected
Intervenors' Allegations Regarding Staff Objectivity

Intervenors first assert that the Board erred in ruling that the Staff could properly be left with the ministerial task of verifying the availability and capability of the reception hospitals identified by LILCO in Rev. 9. Motion at 2. In so ruling, Intervenors argue, the Board failed to take into account certain alleged "facts" raised by Intervenors concerning the Staff's "loss of objectivity." Id.^{1/} Intervenors' argument requires but brief comment, as it wholly fails to come to grips with the explicit guidance given in regard to this matter in the Board's Order.

Intervenors are simply incorrect that the Board was obligated to treat their allegations of the Staff's "loss of objectivity" as "facts" to be considered in the present proceeding. The Board properly rejected that idea when it noted:

If a party has genuine reason to question the behavior of the Commission's Staff, forthrightness and professionalism demand that the party enter formal charges before the Commission itself and not engage in diversionary attacks in the course of dealing with a motion for summary disposition.

Order at 5.

^{1/} As LILCO has noted, Intervenors' allegations are not true, and they constitute a presumptuous and unseemly attack on the Staff's integrity. See LILCO's Motion to Strike Intervenors' Unauthorized Reply to NRC Staff's Response to LILCO's Hospital Summary Disposition Motion (Feb. 8, 1988) at 5. The Board agreed, calling Intervenors' accusation an "ad hominem attack" that the Board "cannot and will not countenance." Order at 5.

The Board thus has instructed Intervenor's that if they wish to press their claim regarding the Staff's alleged partiality, they must do so in the appropriate fashion. They may not replemor this issue in substantive pleadings in the present proceeding. The Board's instruction, moreover, is particularly appropriate in this circumstance, where Intervenor's have made the extraordinary demand that the Staff be "disqualified" from undertaking the sort of confirmatory function which Commission practice expressly authorizes it to perform. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1600 (1985).

II. The Board Stated its Bases for Accepting the Assumption of 14% Space Availability

Intervenor's second reason why the Board should reconsider its Order is that it allegedly erred in accepting as a reasonable planning assumption the 14% space availability figure for the reception hospitals. Intervenor's assert that the "Board acted prematurely in making, in effect, a decision on the merits despite the existence of disputed facts." Motion at 4.

Intervenor's dispute the 14% figure and argue that the Board should have allowed inquiry into (1) whether the use of local rather than national data would have resulted in a different figure, and (2) the potential sensitivity of LILCO's hospital evacuation time estimates to changes in available capacity. Id. at 4-5. Intervenor's conclude that they "and any reviewing body are at a loss to know the bases for the Board's action." Id. at 5.

Intervenor's preferred inability to discern the Board's reasoning is self-imposed. The Board clearly explained the bases for its ruling, correctly noting that any assumption regarding the "number of beds which would be free at some indeterminate time in the speculative future during the occurrence of an unlikely event" would be "at best, a crude guess." Order at 11. Given these circumstances, the Board properly determined

that the nationally applicable 14% figure provides a "reasonable planning basis" and that "[p]ursuing another significant figure with the full panoply of an administrative hearing" would be a "waste of resources." *Id.* In short, the Board did not make a specific decision on the merits; it merely decided that further inquiry into the merits was unwarranted.^{2/}

Thus, while Intervenors may disagree with the Board's rationale in this matter, they cannot fairly claim that "the Board's Order is silent" as to that rationale. Motion at 5. There is no reason for the Board to reconsider the parameters which it has set on further inquiry into the hospital evacuation time estimates issue.

III. The Board Properly Ruled that Letters of Agreement are Irrelevant to Hospital Evacuation Time Estimates

Finally, Intervenors would have the Board reconsider its Order because of its alleged failure to discuss the issue of letters of agreement between LILCO and the reception hospitals. "The Board," Intervenors assert, "completely ignored this issue; indeed, nowhere in the Board's Order were the words 'letter of agreement' even mentioned." Motion at 7. This argument consists of nothing more than Intervenors' simple refusal to recognize that the Board found that letters of agreement need not be subject to hearings as part of the licensing process.

The Board, in reviewing Intervenors' list of 20 alleged "material facts" from their January 15, 1988 Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue, characterized "facts" number 9 and 10 as questioning the "availability of reception hospital resources." Order at 9. Specifically, these two "facts" read:

^{2/} Intervenors have themselves failed, despite two distinct opportunities (*i.e.*, Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Jan. 15, 1988), and the present Motion for Reconsideration) to support a figure other than 14%. Absent some basis for supporting that the 14% figure is materially in error, Intervenors' complaint takes on a ritualistic tone.

9. Whether, in the absence of letters of agreement, the Licensing Board can find reasonable assurance that there will be sufficient hospital beds at reception hospitals to accommodate hospital evacuees, as well as homebound and special facility evacuees, in the event of a radiological emergency at Shoreham.

10. Whether, in the absence of letters of agreement, the Licensing Board can find reasonable assurance that LILCO will have sufficient medical resources, including personnel and equipment at reception hospitals, to treat and provide necessary services to hospital evacuees, as well as homebound [sic] and special facility evacuees, in the event of a radiological emergency at Shoreham.

Intervenors' Statement of Material Facts as to Which There Exists a Genuine Issue to be Heard on Matters Raised by LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Jan. 15, 1988) (emphasis supplied). The Board, having considered Intervenors' Statement of Material Facts, concluded that Rev. 9 of the LILCO Plan

answers the matters of identifying the reception hospitals and their resources. It states, in fact, that only hospitals having certain capabilities will be used and it names the hospitals. Determining whether these hospitals and their resources exist are matters we believe to be clearly ministerial matters properly left to the Staff.

Order at 10 (emphasis supplied). As LILCO pointed out in its Motion for Summary Disposition of the Hospital Evacuation Issue (Dec. 18, 1987) at 12-13, letters of agreement are not necessary to confirm that certain resources and facilities are available. The Board granted LILCO's Motion for Summary Disposition except as to the narrow issue of the accuracy and bases of the evacuation time estimates. Order at 12. Thus, the existence of letters of agreement is not significant for this Board's licensing decision.

Further, even if such letters were significant, the Board has properly concluded that determining whether specifically identified hospital resources exist is a "ministerial" detail best left for the Staff to verify. This was precisely the position taken by the Staff:

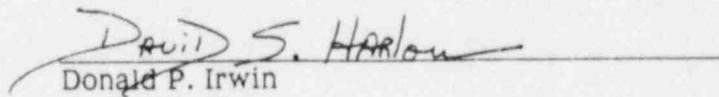
[I]f this Board deems letters of agreement from the reception hospitals to be significant, they should be treated as the nursing/adult homes are treated, and left to the Staff for confirmation.

NRC Staff Response to LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue (Jan. 15, 1988) at 10. Intervenor's request that the Board "vacate the Order to the extent that it condones the absence of letters of agreement" should be rejected.

IV. Conclusion

For the reasons stated above, Intervenor's Motion should be denied.

Respectfully submitted,



Donald P. Irwin
K. Dennis Sisk
David S. Harlow
Counsel for Long Island Lighting Company

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: March 17, 1988