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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Lando W. Zech, Jr., Chairman
Thomas M. Roberts
Kenneth M. Carr
Kenneth C. Rogers

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

MEMORANDUM AND ORDER

CLI-88-03

In CLI-87-05, decided June 11, 1987, the Commission granted in part and denied in part a motion, filed by intervenors New York State, Suffolk County, and the Town of Southampton, to reopen the record of this operating license proceeding. The motion was granted as to issues raised by the withdrawal of a radio station from the Shoreham emergency broadcast system, but denied as to intervenors' claims regarding the role of the American Red Cross in an emergency and the adequacy of "congregate care" facilities for sheltering evacuees in an emergency. On June 30, 1987, intervenors filed a motion for reconsideration of those parts of CLI-87-05 which denied their motion to reopen. Finding no new information in that motion for reconsideration to suggest that the result reached in CLI-87-05 was incorrect, the Commission

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denies the motion for reconsideration, which was, moreover, untimely filed, having been filed 19 days after the issuance of CLI-87-05, rather than the 10 days provided by 10 CFR 2.771(a), with no showing of good cause for its lateness.

Movants' first argument is that the Commission erred in reasoning that it made little difference whether the American Red Cross provided assistance to the public pursuant to a formal agreement with the utility or simply in accordance with its established policy of coming to the aid of the public when the need arises. On this point, the motion for reconsideration offers no facts and no argument which was not considered and rejected by the Commission at the time it issued CLI-87-05, and the Commission sees no reason to alter its earlier judgment. Contrary to the movants' claim that "there is no assurance of ARC support in an emergency," Motion for Reconsideration at 6, the August 21, 1986 letter from the Nassau County Chapter of the American Red Cross stated plainly that it was "mandated" by charter to perform the role outlined in an earlier letter from that organization, dated July 25, 1984. The gist of the August 1986 letter was merely that the July 1984 letter had erroneously been captioned an "agreement."

Movants' second argument is that it was error for the Commission to refuse to reopen the record on the issue of congregate care facilities. The Commission disagrees. To the extent that the motion to reopen was based on the letter from the American Red Cross, the same reasoning outlined above is applicable. Again, that letter by no means constituted, as the intervenors' motion to reopen boldly declared (at 2), the Red Cross's "refusal to agree, identify, designate, open, or operate such centers in a Shoreham emergency." Movants manifestly failed to carry the heavy burden which the proponent of a

motion to reopen faces, under the standards outlined by the Commission in Louisiana Power & Light Co., CLI-85-3, 21 NRC 471 (1985), aff'd, Oystershell Alliance v. Nuclear Regulatory Comm., 800 F.2d 1201 (D.C. Cir. 1986).

The motion to reopen was also based (at pages 12-13) upon certain letters from facility owners presented to the Licensing Board on September 26, 1986 by Mr. Howard M. Koenig, Superintendent of Schools of the East Meadow Union-Free School District. Although the September 1986 date cited might suggest at first glance that the information offered was new, having come to light after the Licensing Board's August 1985 decision on congregate care centers, that is not the case. Reference to Mr. Koenig's September 1986 testimony (TR 17,003) reveals that his major complaint was that the Atomic Safety and Licensing Board had declined to accept those same letters into evidence when they were presented by a subordinate of his, Mr. Leon Campo, in early 1985.

In fact, Mr. Campo's testimony, with letters attached, was proffered to the Licensing Board by the intervenors on February 19, 1985. By order of May 6, 1985, the Board rejected it as outside the scope of the proceeding. On May 17, 1985, intervenors again offered the letters to the Licensing Board as part of a Motion for Reconsideration and in the alternative, Motion to Reopen the Record. On June 10, 1985, the Licensing Board denied that motion. On June 25, 1985, intervenors moved the admission of the letters into evidence for a third time. TR 15940. The Licensing Board denied the motion. After the Licensing Board rejected the intervenors' contention on congregate care centers in LBP-85-31, issued on August 26, 1985, the exclusion of the letters was raised unsuccessfully before both the Appeal Board (as part of the intervenors' appeal of the August 26, 1985 Concluding Partial Initial Decision on Emergency Planning) and the Commission (as part of the intervenors' petition for review

of the Appeal Board's decision in ALAB-832). On the issue of the letters, therefore, the Motion to Reopen and the instant Motion for Reconsideration represent the intervenors' sixth and seventh bite at the apple, respectively.

Motions to reopen cannot be permitted to be a means for parties to pass off old, unsuccessful contentions as new and relitigate them in hopes of a better result the next time around. Nor should the opportunity to file motions for reconsideration become a game in which the resources of the Commission and the parties are wasted in endless reiteration of the same arguments. At some point the adjudicatory process must come to an end. The motion for reconsideration is denied.

It is so ORDERED.



For the Commission

A handwritten signature consisting of the initials "SJC" followed by a stylized surname.
SAMUEL J. CHILKO
Secretary of the Commission

Dated at Rockville, Maryland
this 15^B day of July, 1988.