

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'88 SEP -1 P1:59

Before the Atomic Safety and Licensing Appeal Board

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

LILCO'S ANSWER TO SUFFOLK
COUNTY'S LETTER MOTION OF AUGUST 25

By letter of August 25, 1988, Intervenor Suffolk County forwarded to the Appeal Board (as did LILCO) the recent state court decision Town of Hempstead v. LILCO. On page three of the County's letter the County asks the Appeal Board to vacate the decision below:

In light of this ruling [Town of Hempstead v. LILCO], the Licensing Board's decision should be vacated and any further proceedings on the reception center issue should be held in abeyance until LILCO comes forward with a new reception center plan.

Letter from David T. Case, counsel for Suffolk County, to the Appeal Board, August 25, 1988, at 3. Since Suffolk County's letter amounts to a motion, LILCO answers as follows.

There is no reason to vacate the Licensing Board's decision or to suspend the reception centers proceeding, as Suffolk County requests. The issues raised by the Interveners on appeal are still live ones no matter how the state court litigation over the Bellmore facility turns out. The issues raised on appeal are

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1. The acceptability of the federal guidance prescribing a 20 percent planning basis,
2. The absence of FEMA "findings,"
3. The "LULU" (local unwanted land use) issue, and
4. New York State's stricken testimony on registering uncontaminated persons.

None of these issues is mooted by the Town of Hempstead decision; all of them will have to be decided no matter how Town of Hempstead turns out. In short, Town of Hempstead provides no excuse either for delaying oral argument September 14 or for delaying decision on the issues raised on appeal.

In addition, four other factors argue against delay of the case:

1. Even without the Bellmore reception center (assuming it were unavailable in a real emergency), LILCO's other two reception centers could accommodate over 20 percent of the EPZ population.^{1/} Therefore, LILCO would comply with federal guidance, as expressed in the Krimm Memorandum and the Licensing Board's decision, even if Bellmore did not exist.
2. Both as a matter of common sense and as a matter of law under the Commission's regulation, 40 C.F.R. § 50.47(c)(1) (1988), the Appeal Board must recognize that state and local officials would use their "best efforts" to care for evacuees in a real emergency. Also, under New York State law the governor has the authority to suspend specific provisions of any statute,

^{1/} As can be seen from LILCO's testimony, the Hicksville facility alone has the personnel and equipment to monitor almost 24 percent of the EPZ population. See LILCO Ex. 1 (Crocker et al. prefiled testimony) at 32, 42 and Att. J.

local law, or ordinance if compliance with such provisions would prevent, hinder, or delay action necessary to cope with a disaster. N.Y. Executive Law § 29-a.1 (McKinney 1982). One cannot conclude, therefore, that Town of Hempstead v. LILCO would prevent or hinder emergency response in a real emergency.

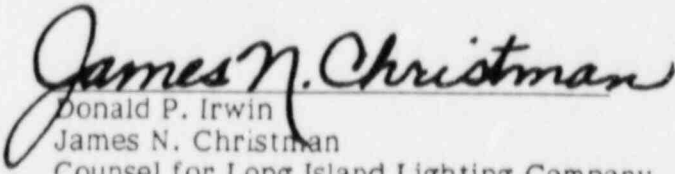
3. The Town of Hempstead v. LILCO litigation is not over. While it is true that the plaintiffs have asked for very broad relief, the court's order has not been entered. The plaintiffs have proposed a form of order, but LILCO will offer a proposed counter-order, because in LILCO's view some of the plaintiffs' requests for relief are outside the scope of the state court litigation and some raise significant constitutional questions.^{2/} Moreover, any judgment entered by the state court will be subject to appeal.
4. Town of Hempstead does not foreclose all possibility of using the Bellmore facility in LILCO's plan, because LILCO may apply for an amendment to its special use permit to allow the use of the facility as a reception center in an emergency.

LILCO is willing to brief this issue, as the County suggests, so long as briefing does not delay oral argument on September 14. But if briefing is to occur, it should await the state court's judgment, which has not yet been entered. Suffolk County can then, if it sees fit, move for whatever relief it deems appropriate.

^{2/} Plaintiff's requests include removal of utility connections, a prohibition against drills and exercises at the Bellmore site, and removal of all reference to the Bellmore site as a reception center from emergency planning documents submitted to federal agencies. LILCO believes that these matters are outside the scope of the litigation pending before the court and that the latter two raise serious First Amendment and other constitutional issues.

For these reasons, LILCO opposes Suffolk County's letter motion to vacate the Licensing Board decision and to hold this proceeding in abeyance. Oral argument should take place September 14 as scheduled.

Respectfully submitted,


Donald P. Irwin
James N. Christman
Counsel for Long Island Lighting Company

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

DATED: August 30, 1988

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CERTIFICATE OF SERVICE

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(Shoreham Nuclear Power Station, Unit 1)
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I hereby certify that copies of LILCO'S ANSWER TO SUFFOLK COUNTY'S LETTER MOTION OF AUGUST 25 were served this date upon the following by Federal Express as indicated by one asterisk, or by first-class mail, postage prepaid.

Thomas S. Moore, Chairman *
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
East-West Towers
4350 East-West Highway
Bethesda, MD 20814

Alan S. Rosenthal, Esq. *
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
East-West Towers
4350 East-West Highway
Bethesda, MD 20814

Mr. Howard A. Wilber *
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
East-West Towers
4350 East-West Highway
Bethesda, MD 20814

James P. Gleason, Chairman
Atomic Safety and Licensing Board
513 Gilmoure Drive
Silver Spring, Maryland 20901

Dr. Jerry R. Kline
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Secretary of the Commission
Attention Docketing and Service
Section
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adjudicatory File
Atomic Safety and Licensing
Board Panel Docket
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard G. Bachmann, Esq. *
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Herbert H. Brown, Esq. *
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick & Lockhart
South Lobby - 9th Floor
1800 M Street, N.W.
Washington, D.C. 20036-5891

Fabian G. Palomino, Esq. *
Richard J. Zahnleuter, Esq.
Special Counsel to the Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Alfred L. Nardelli, Esq.
Assistant Attorney General
120 Broadway
Room 3-118
New York, New York 10271

George W. Watson, Esq. *
William R. Cumming, Esq.
Federal Emergency Management
Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stephen B. Latham, Esq. *
Twomey, Latham & Shea
33 West Second Street
P.O. Box 298
Riverhead, New York 11901

Mr. Philip McIntire
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Jonathan D. Feinberg, Esq.
New York State Department of
Public Service, Staff Counsel
Three Rockefeller Plaza
Albany, New York 12223

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

Evan A. Davis, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

E. Thomas Boyle, Esq.
Suffolk County Attorney
Building 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, NY 11792

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

DATED: August 30, 1988


James N. Christman