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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

AUG 31 1988

DOCKETED  
USNRC

'88 SEP 12 P2:28

Thomas S. Moore, Chairman  
Administrative Judge  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Howard A. Wilber  
Administrative Judge  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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BRANCH

Alan S. Rosenthal  
Administrative Judge  
Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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

Dear Members of the Board:

The Staff has received the August 25, 1988 letter from counsel for intervenors to this Board, which contained a copy of an August 22, 1988 decision by the Supreme Court of the State of New York. The decision apparently finds that LILCO's proposed use of its Bellmore facility as a reception center is in violation of local zoning laws. Based on this decision intervenors ask that the Licensing Board's partial initial decision currently before this Board on appeal should be vacated, or that the issue of the zoning decision be addressed during the oral argument scheduled for September 14, 1988. Neither of these courses of action would be appropriate.

Since intervenors seek to use the adjudicatory process and relitigate that portion of the reception center issue which addresses the use of the Bellmore facility, they should be required to follow the Commission's Rules of Practice and to file a motion to reopen the record pursuant to 10 CFR § 2.734. While it is true, as intervenors state in their letter, that the Licensing Board recognized a possible impact on the reception center issue by a New York State Court decision, the Licensing Board also declared that such a decision "can be brought to the Board's attention by any party with the filing of proper motions under the Commission's Rules of Practice." LBP-88-13, 27 NRC 509, 567. Intervenors' letter does not constitute a "proper motion". Intervenors have not shown a significant safety or environmental issue (§ 2.734(a)(?) ), nor have they demonstrated that a materially different result would have been likely had the Licensing Board considered the zoning decision (§ 2.734(a)(2)). Other parties have not had an opportunity to respond to such a motion.

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The fact that the Bellmore facility might not be available to serve as a reception center does not automatically invalidate the findings of the Licensing Board. The Licensing Board made specific findings as to the respective capacities of the three reception centers. LBP-88-13, 27 NRC 509, 531-32. Based on the figures accepted by the Licensing Board, removal of the Bellmore facility would not necessarily prevent the remaining centers from processing 20% of the EPZ population within 12 hours. See id. Therefore, intervenors also need to comply with 10 CFR § 2.734(b) and provide affidavits to buttress their claim that the zoning decision satisfies the criteria of § 2.734(a). Only if intervenors are able to carry their burden of reopening the record, then this Board, or the Licensing Board on remand, after hearing from all parties, could determine the effect of the loss of the Bellmore facility on LILCO's ability to process evacuees. The zoning decision goes no further than that narrow issue, and does not affect the current appeal.

In sum, intervenors' August 25, 1988 letter does not comport with the Commission's Rules of Practice and intervenors should not be permitted to invoke the adjudicatory process without complying with the provisions of 10 CFR § 2.734 for reopening the record.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard G. Bachmann', with a long horizontal flourish extending to the right.

Richard G. Bachmann  
Counsel for NRC Staff

cc: Service List