

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:

LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
(SHOREHAM NUCLEAR POWER STATION,)
UNIT 1)) Remand/Emergency Planning

Pages: 20929 through 20943

Place: Bethesda, Maryland

Date: June 29, 1988

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION
 2 ATOMIC SAFETY AND LICENSING BOARD

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 5 LONG ISLAND LIGHTING COMPANY) Docket No.
 (SHOREHAM NUCLEAR POWER STATION)) 50-322-OL-3
 6 (UNIT 1)) (Remand/Emergency
 Planning)

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Thursday
 June 29, 1988

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Room 427
 East-West Towers Building
 4350 East-West Towers
 Bethesda, MD

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A conference in the above-entitled matter was
 convened, pursuant to notice, at 3:03 p.m.

14

BEFORE: JUDGE JAMES P. GLEASON, CHAIRMAN
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555

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JUDGE FREDERICK SHON, MEMBER
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555

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JUDGE JERRY KLINE, MEMBER
 Atomic Safety and Licensing Board Panel
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555

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1 APPEARANCES:

2 On behalf of the Nuclear Regulatory Commission:

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6 Nuclear Regulatory Commission
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23 On behalf of New York State:

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26 On behalf of FEMA:

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28 Federal Emergency Management Agency
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P R O C E E D I N G S

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2 JUDGE GLEASON: All right, gentlemen and ladies,
3 this is Judge Gleason here with Judges Shon and Kline. And
4 this is a conference call which is called by the Board to
5 announce its decision with respect to this hearing in
6 connection with the emergency response plan that we have
7 been discussing in the past several weeks.

8 Perhaps just to keep the record straight, you
9 ought to identify yourselves for the record again. And if
10 you will do it in the customary order with the applicant
11 followed by the staff, FEMA, the county and state, in that
12 order, why, we can proceed.

13 MR. IRWIN: Thank you, Judge Gleason. This is Mr.
14 Irwin for Long Island Lighting Company.

15 With me are Messrs. Sisk and Christman.

16 MS. YOUNG: Thank you, Judge Gleason. This is Ms.
17 Young representing the NRC staff.

18 With me are Ed Reis and Lisa Clark.

19 MR. CUMMING: William R. Cumming, counsel for
20 FEMA.

21 MS. LETSCHE: Karla Letsche, representing
22 Frederick County, and with me is Christopher M. McMurray.

23 MR. ZAHNLEUTER: This is Richard Zahnleuter,
24 representing the Governor of New York State and the State of
25 New York.

1 JUDGE GLEASON: All right. Thank you. The Board
2 has reviewed the filings of the parties have made and the
3 responses the parties have made to the request to the Board
4 to consider perspective witnesses at a proposed hearing in
5 connection with the emergency plans.

6 And it really has resolved the number of witnesses
7 to be a little bit more extensive than the Intervenors have
8 proposed and less extensive, a little bit less extensive,
9 than the Applicant has proposed.

10 And so we have decided that there will be a
11 hearing. I think it is important, once again, to set forth
12 the scope of the hearing which I outlined fairly well in our
13 telephone conference of June 24th, and that is that the
14 hearing is going to relate to the production of emergency
15 plans and whether they should have been produced earlier and
16 if they have not been produced, what the circumstances were
17 for their non production.

18 And of course, the answers to this line of inquiry
19 relates to the scope of the sanctions which we intend to
20 impose and also relate to the final disposition of the
21 realism contentions.

22 The witness list -- well, first of all, we will
23 have the hearing here in Bethesda at the Appeals Board
24 Hearing Room on the 5th floor of the East-West Tower
25 Building on East-West Highway on July 11th, starting at 9:30

1 a.m. And we do not anticipate that hearing should take more
2 than three days, hopefully less.

3 But viewing your abilities to cross-examine that I
4 have noticed in the past, we will provide three days, so it
5 will be July 11 through the 13th.

6 And we have a list of 12 witnesses that we would
7 like to hear from.

8 On the County side, we would like to hear from
9 -- we would like to have present: Frank Jones, John
10 Bilello, Richard Jones, Frank Petrone, William Regan, and
11 Dr. David Harris.

12 And we also would like to have Mr. Norman Kelly,
13 who was referred to as having something of substance perhaps
14 to say in the Intervenor's response that came in yesterday.

15 On the State's side, we would like to hear from
16 Mr. Germano, from Mr. Davidoff, from Mr. Papile, and from
17 Dr. Axelrod. And Mr. DeVito. I am sorry, I missed DeVito;
18 and Mr. DeVito, as well.

19 That should be a list of 12 people. Let me go
20 over those State witnesses again, because I may have left
21 somebody off.

22 I will start with Mr. DeVito, Mr. Germano, Mr.
23 Papile, Mr. Davidoff, and Dr. Axelrod.

24 That makes a list of 12 witnesses and we kind of
25 concluded that we should be able to do four witnesses a day,

1 two in the morning and two in the afternoon, and should be
2 able to conclude that within three days time.

3 We would like you to work out among yourselves the
4 specific time of appearances for those witnesses, with one
5 caveat. We would like the State witnesses to be separate
6 from the County witnesses so that we don't intermix the two.

7 Let me go on to a couple of other things. There
8 were some suggested procedures that have been submitted by
9 LILCO, some of which we believe are acceptable, but some are
10 not.

11 First of all, we do direct that responses to the
12 third set of interrogatories which do in fact relate to
13 these emergency plans be complied with. And we would like to
14 have those complied with by the middle of next week. So,
15 let's say, Wednesday.

16 There were some documents that were requested in
17 addition to those third set of interrogatories, and LILCO's
18 second set of interrogatories. And without trying to
19 identify specifically what those requests cover, if there
20 are any documents that relate to emergency plans or relate
21 to things that should have been produced in connection with
22 emergency plans, those documents should be furnished to
23 LILCO.

24 That also relates to the other miscellaneous
25 document production request. There should be some

1 verification or authentication by New York State of the New
2 York State Radiological Emergency Response Plan and the New
3 York State Disaster Plan.

4 There should be a submittal of Annex K of the
5 Suffolk County Emergency Operations Plan. And if there are
6 any additional updates of the Emergency Operations Plan,
7 those should be submitted. And also they should be
8 submitted by next Wednesday. The close of business by next
9 Wednesday.

10 I want to say in connection with that the purpose,
11 the use of those plans is not to deal with the best efforts
12 issue. It is only to deal with the narrow focused inquiry
13 that we are following currently as to whether a plans that
14 were existing should have been produced.

15 So I don't want to get these things mixed up.

16 There will be no written pre-filed testimony
17 required of any witnesses, but we would ask each counsel if
18 they desire to provide some foundation laying questionings,
19 some direct questioning of the witnesses that are being
20 called before being cross-examined by the Board and the
21 other parties.

22 We do agree the witnesses should appear
23 individually, not panels. We do not agree that there is a
24 necessity to sequester the witnesses.

25 And it is not necessary, in our view, for us to

1 instruct the witnesses not to discuss their proposed
2 testimony with other potential witnesses or other people
3 other than their counsel prior to the hearing.

4 The parties themselves will not be confined to the
5 scope of direct examination and this will in effect take the
6 place of the absence of any pre-trial discovery which would
7 ordinarily otherwise be allowed prior to the examination of
8 witnesses at hearings.

9 And we don't believe that the parties should
10 submit suggestions to the Board under seal in advance
11 because they will have an opportunity to do their own
12 questioning.

13 So, I guess that really covers the waterfront, so
14 to speak. Let's hold a minute and see if I have missed
15 anything.

16 (Pause)

17 JUDGE GLEASON: All right. That concludes the
18 communication of the decisions that we have reached. Is
19 there anything that is confusing about it that anyone wants
20 to raise, or some other matter that you want to bring up at
21 this time?

22 MS. LETSCHE: Judge Gleason, this is Ms. Letsche
23 for Suffolk County.

24 JUDGE GLEASON: Ms. Letsche, go ahead.

25 MS. LETSCHE: Well, I have one clarifying question

1 and then an additional question.

2 The clarifying question is: With respect to your
3 ruling about questioning by other parties during the
4 hearing.

5 JUDGE GLEASON: Yes.

6 MS. LETSCHE: Would not be confined to the scope
7 of the direct examination. I assume that it does need to be
8 confined to the scope of the issue as defined by this Board,
9 is that correct?

10 JUDGE GLEASON: I am glad that you brought that up
11 Ms. Letsche, because I intended to say that. Although we
12 don't necessary want to confine any of the parties in the
13 area of asking questions, everybody has to keep in mind that
14 this is a scoped hearing, if you will. Or a focused
15 hearing.

16 And we want the questions to relate to the
17 specific purpose for which the hearing is being held. That
18 is correct.

19 MS. LETSCHE: My second question, Judge Gleason,
20 is: With respect to your ruling that witnesses should
21 appear individually, not in panels.

22 JUDGE GLEASON: Yes.

23 MS. LETSCHE: I request that the Board reconsider
24 that ruling, particularly with respect -- well, it would
25 only apply -- to the witnesses being provided at this point

1 by the Government. Suffolk so far has only been required to
2 put on one witness.

3 I think in the cause of consistency, it would be
4 much more efficient to put certain of the witnesses, and
5 perhaps ask the counsel to get together and decide on the
6 order of witnesses we could propose to get impaneled. And
7 the reason is that the individuals that you have identified
8 either work together or have, you know, had a relationship
9 given the involvement that they had in the matters at issue.

10 And, in terms of providing foundation questioning
11 and getting out the facts in the most efficient way, it
12 would be much better and quicker, I believe, and the Board
13 would get to the facts more directly if some of them were
14 presented in panels.

15 And I am not prepared right now to sit down and
16 say what I think those panels should be. But I would
17 request that the Board reconsider that ruling and let the
18 parties propose to you some panel presentation of the
19 governmental witnesses.

20 JUDGE GLEASON: Well, we have considered that, Ms.
21 Letsche, and I do think we would be better off by having
22 them talk individually in response to the questions.

23 So, if you can reach some agreement to the
24 contrary or a different agreement with the other parties and
25 submit that to the Board, we will reconsider that.

1 MS. LETSCHE: Okay, thank you, Judge Gleason.

2 JUDGE GLEASON: Are there any other comments?

3 MR. IRWIN: Yes, Judge Gleason, this is Mr. Irwin
4 for LILCO. I am operating under the assumption -- LILCO
5 certain has no objection to producing Mr. Kelly and I am
6 assuming from the silence of representatives from Suffolk
7 County in New York that they have no objection to the
8 production of any of the witnesses.

9 JUDGE GLEASON: Well, I assume that is correct.
10 Is that right, Ms. Letsche?

11 MS. LETSCHE: That's not correct. We do not
12 believe there is any basis to --

13 JUDGE GLEASON: Well, I didn't ask that question.
14 You are going to produce those witnesses. That is what I am
15 asking.

16 MS. LETSCHE: I do have, Judge Gleason, to check
17 with these individuals and make sure that they are available
18 and check with our client and let you know.

19 JUDGE GLEASON: Right.

20 MS. LETSCHE: But I want the record to be clear
21 that the County does object to, and disagrees with, the
22 ruling of the Board that it is appropriate -- given the
23 limited scope of this hearing -- to require the Government
24 to produce the additional people that you have made.

25 And the reasons will be fully obvious once you get

1 those people up there because they are not going to have any
2 pertinent information on the subject that you have --

3 JUDGE GLEASON: Well, that remains to be seen.
4 But if you have any problems, I want you to notify me
5 promptly in that area.

6 MS. LETSCHE: We certainly will.

7 JUDGE GLEASON: All right. Mr. Irwin?

8 MR. IRWIN: Yes, sir?

9 JUDGE GLEASON: Anything else?

10 MR. IRWIN: No, sir, not from LILCO.

11 MR. ZAHNLEUTER: I have one thing, Judge Gleason.

12 JUDGE GLEASON: All right.

13 MR. ZAHNLEUTER: Richard Zahnleuter.

14 JUDGE GLEASON: Go ahead.

15 MR. ZAHNLEUTER: Earlier you stated that the State
16 witnesses were to be separate from County witnesses.

17 JUDGE GLEASON: That's right.

18 MR. ZAHNLEUTER: I am not sure what that means.
19 Could you explain what that means?

20 JUDGE GLEASON: That doesn't mean separate as far
21 as the room is concerned, but it means as far as time is
22 concerned. We would like the State witnesses all to follow
23 each other, and those to follow the County or proceed it.

24 Obviously, you have got to have some kind of
25 division, but we don't want a County witness followed by a

1 State witness followed by a County witness followed by a
2 State witness.

3 And we will leave it up to you people to work out
4 whether the State witnesses should go first or they should
5 be interspersed with the County witnesses or go last. But
6 wherever they appear, we want them to appear one after the
7 other.

8 MR. ZAHNLEUTER: I trust that if I canvas these
9 State people for availability and there is a need to vary
10 from that, we will discuss that among the parties and then
11 discuss it with you.

12 JUDGE GLEASON: Well, if you work something out
13 among the parties, it is all right. But, let us know about
14 that

15 MR. ZAHNLEUTER: One other question is that the
16 State has offered Mr. DeVito, obviously, for the Board's
17 inquiry. The other four officials were not offered and it
18 was just recently that LILCO explained the rationale for
19 having those four people be deposed and the State was not
20 given a chance to reply to LILCO's recent pleading where it
21 explained the rationale.

22 And I would like to inquire, if I may, what the
23 Board's rationale is for requiring the four State witnesses
24 and Mr. DeVito.

25 JUDGE GLEASON: Well, the rationale very simply is

1 that we believe that these people if anybody knows about our
2 line of inquiry, or these people should know.

3 And that is the kind of criteria we used in making
4 that judgment.

5 MR. ZAHNLEUTER: I cannot guarantee that these
6 witnesses will be the witnesses that are appropriate.

7 JUDGE GLEASON: Well, I know that. We have to
8 make that kind of a choice based on the submissions that
9 have been made to us. So that is the decision that we have
10 made.

11 MR. ZAHNLEUTER: Dr. Axelrod, in particular --

12 JUDGE GLEASON: I don't really want to argue the
13 point about these witnesses, Mr. Zahnleuter. Because there
14 are witnesses that we have stricken off of other lists for,
15 you know, what we believe are good and substantial reasons.
16 There are people that we put on.

17 And we have made the best choice that we can under
18 the circumstances.

19 MR. IRWIN: Judge Gleason, this is Mr. Irwin. I
20 have two observations. I suppose that Mr. Zahnleuter has
21 additional witnesses whom he thinks are appropriate. There
22 is certainly no difficulty with his proposing them. But we
23 do agree with the Board that the ones that the Board have
24 chosen are in the appropriate class of witnesses.

25 Secondly, if there are it turns out difficulties

1 in enforcing the voluntary appearance of these witnesses, I
2 assume that the Board would permit a timely application for
3 subpoenas by loco, if need be?

4 JUDGE GLEASON: We intend to do that.

5 MR. IRWIN: Thank you, sir.

6 JUDGE GLEASON: All right. Thank you all. We
7 will see you at the hearing.

8 Thank you. Goodby.

9 (Where a, at 3:25 p.m., the conference was
10 concluded.)

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CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:
Name: Long Island Lighting Co.
(Shoreham Nuclear Power Station, Unit 1)

Docket Number: 50-322-OL-3, Remand/Emergency Planning
Place: Bethesda, Maryland
Date: June 29, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

15/ Andrew M. Emerson

(Signature typed): Andrew M. Emerson

Official Reporter
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