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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

Morton B. Margulies, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

OFFICE OF GENERAL COUNSEL
DOCKETING & SERVICE
BRANCH

SERVED NOV 14 1986

In the Matter of
LONC ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322-0L-3

(ASLBP No. 86-533-01-0L)

November 13, 1986

MEMORANDUM AND ORDER
(Requested Briefing on Motion to Reopen Record)

The Licensing Board requests further briefing by the parties in connection with LILCO's motion of September 30, 1986 to reopen the record.

By motion dated September 30, 1986, LILCO moved to reopen the evidentiary record on Contention 24.0 in the subject proceeding for the purpose of reflecting the replacement of the Nassau Veterans Memorial Coliseum as a reception center with three LILCO facilities. In an answer dated October 10, 1986, Staff asserted that the motion should be granted. Intervenors, in a response of October 14, 1986, urged rejection of LILCO's motion.

The first area in which the Licensing Board wants to be briefed pertains to its jurisdiction to hear the matter. Most recently, on

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November 5, 1986, the Licensing Board in "Memorandum and Order (Intervenors' Motion to Reopen Record)" ruled that it was without jurisdiction to rule on a motion to reopen the evidentiary record in the proceeding for the purpose of considering alleged new evidence relating to three emergency planning issues because jurisdiction had passed to the Commission. The circumstances involving the subject motion do differ from those of the previously dismissed motion. The Appeal Board, in ALAB-832, 23 NRC 135, 157-162 (1986), remanded to the Licensing Board for hearing, under Contention 24.0, the issue of the adequacy of the Coliseum as a reception center, a matter that is yet to be heard.¹ Does this confer jurisdiction on the Licensing Board to reopen the evidentiary proceeding on Contention 24.0 to permit the introduction of evidence dealing with the replacement of the Coliseum as a reception center with three other facilities? Are there other grounds for establishing or denying the Licensing Board's jurisdiction? The original submittals on the motion were silent on the question of jurisdiction. The Licensing Board does not know whether jurisdiction was a matter that was agreed to and not discussed, or overlooked.

The next area for inquiry by the Licensing Board relates to the scope of any reopened hearing should the motion be granted. Intervenors, in their October 14 response at 19-22, stated that should

¹ The Commission, by order dated September 19, 1986, decided it was not an issue that merited its further review.

the reopening be permitted, its scope must be far greater than suggested by LILCO. Intervenors believe reopening should encompass the subjects that were remanded in ALAB-832, 23 NRC at 161-62, and should also include LILCO's new monitoring procedures as well as those in seven additionally specified areas. Applicant and Staff have not had an opportunity to respond to these matters first raised by Intervenors. It would be helpful to the Licensing Board to hear from all parties on these issues before making its determination on the motion.

The Board wants to know more particularly from Intervenors how each additional element they wish included in the reopened proceeding specifically relates to the reopening issue and is material to its disposition. (There is no need to do this in connection with the remanded areas ordered in ALAB-832.) The positions of Applicant and Staff on these elements are also sought.

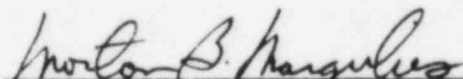
We want to alert the parties that the Licensing Board may want to be briefed at a future time on the parties' views as to whether the scope of any reopened proceeding on reception centers would include permitting the establishment of the number of evacuees that are to be monitored there. At this point the inquiry is academic because the Appeal Board is yet to decide whether the issue of monitoring of evacuees was properly raised for litigation by Contention 24.0 and whether the obligation imposed by the Licensing Board grows from a regulatory requirement. For the most current status of that matter see the Appeal Board's Memorandum and Order of November 4, 1986. Should the

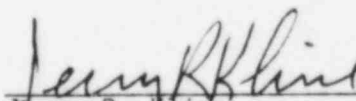
Appeal Board answer either question in the negative, it would render the matter moot and make any further briefing on the matter unnecessary.

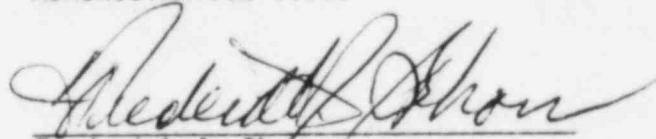
The parties are required to serve their briefings on the Licensing Board and the other parties by no later than December 1, 1986. Any party may file a response to any of the initial submissions with service on the Licensing Board and the other parties by no later than December 8, 1986.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE


Jerry R. Kline
ADMINISTRATIVE JUDGE


Frederick J. Shan
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland

this 13th day of November, 1986.