

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

'86 NOV 28 P7:34

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit 1)

)
)
) Docket No. 50-322-OL-5
) (Emergency Planning) (EP Exercise)
)
)

OFFICE OF SECRETARY
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**LILCO'S MOTION FOR EXPEDITED RECONSIDERATION OF
NOVEMBER 19 ORDER COMPELLING FEMA TO ANSWER INTERROGATORIES**

On November 19, 1986, this Board granted Suffolk County's November 10 motion to compel FEMA to answer, or answer more fully, certain outstanding interrogatories propounded by Intervenors. FEMA had filed its response on November 13. LILCO filed a response on November 19, which was sent to the Board by Federal Express and thus presumably arrived on Thursday, November 20.^{1/} The deadline for responses was November 24.^{2/}

Because of the timing of its discovery Order, the Board did not consider LILCO's response. In that response, LILCO advanced arguments going, inter alia, to the following matters decided, incorrectly in LILCO's view, in the Board's November 19 Order:

^{1/} At the time of the Board's order, the NRC Staff had not yet filed any response to Intervenors' motion.

^{2/} The Suffolk County motion to compel was filed by Federal Express. Under the Rules of Practice, in the absence of order from the Board responses would have been due in 10 days plus two days for overnight mail, or the next business day thereafter. 10 C.F.R. §§ 2.710, 2.730(c). That date was Monday, November 24.

1. The status of FEMA in NRC licensing proceedings (LILCO Response at 2-4);^{3/}
2. The attendant means available for pursuit of discovery against FEMA (LILCO Response at 2-4);^{4/}
3. The appropriateness of the discovery sought by Interrogatories 9-11 in light of the Board's limitation of presentations on issues relating to Contention 19, i.e., those relating to Frank Petrone's resignation, to briefing and argument (LILCO Response at 7-9); and,
4. The appropriateness of requiring potentially prejudicial discovery relating to Contentions 15 and 16 while those contentions are under reconsideration by the Board (LILCO Response 5-7).

Not all of the arguments advanced by LILCO, or their bases, were advanced in the opposition filed by FEMA and rejected by the Board on its November 19 Order. LILCO is affected by the Board's disposition of these issues since, as the applicant in this proceeding, it has a fundamental stake in the scope and shape of issues to be litigated, and in the rights and obligations of participants in this proceeding. LILCO also has a profound interest in the avoidance of undue delay in this proceeding.

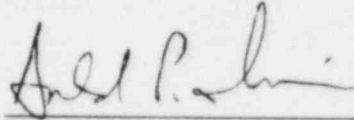
LILCO will not needlessly lengthen this paper with a restatement of the arguments in its November 19 Response. LILCO believes, however, that it has a right to have its views on substantive issues in this proceeding considered fully and fairly by the Board. LILCO therefore respectfully requests that the Board reconsider its November 19 Order, particularly those aspects referred to in this paper, in light of the arguments

^{3/} The Board appears to intimate, Order at 3 and note 3, both that it considers FEMA to be acting inconsistently with the role envisioned for it in the NRC-FEMA Memorandum of Understanding, and that the Memorandum of Understanding cannot, in any event, bind Licensing Boards. These potentially novel arguments were not raised in the pleadings of any of the parties.

^{4/} LILCO notes that the Board does not state which exact discovery provisions it considers to apply to FEMA in its status as a party, i.e., whether it considers broader discovery to be available against FEMA than against the NRC Staff. Compare 10 C.F.R. Secs. 2.720, 2.744 with Secs. 2.740-2.743.

presented in LILCO's November 19 Response, and that is inform the parties of the results there of as soon as possible.^{5/}

Respectfully submitted,



Donald P. Irwin

Counsel for Long Island
Lighting Company

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

DATED: November 25, 1986

^{5/} LILCO makes no recommendation as to whether the Board should exercise its discretion to permit yet a further round of comment on these issues. See 10 C.F.R. Sec. 2.730(c).

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CERTIFICATE OF SERVICE

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I hereby certify that copies of LILCO'S MOTION FOR EXPEDITED RECONSIDERATION OF NOVEMBER 19 ORDER COMPELLING FEMA TO ANSWER INTERROGATORIES were served this date upon the following by Federal Express as indicated by one asterisk (*) or by first-class mail, postage prepaid.

John H. Frye, III, Chairman *
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Oscar H. Paris *
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon *
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

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

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

Bernard M. Bordenick, Esq. *
Oreste Russ Pirfo, Esq.
Edwin J. Reis, Esq.
U.S. Nuclear Regulatory Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Herbert H. Brown, Esq. *
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick & Lockhart
Eighth Floor
1900 M Street, N.W.
Washington, D.C. 20036

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

Mary Gundrum, Esq.
Assistant Attorney General
120 Broadway
Third Floor, Room 3-116
New York, New York 10271

Spence W. Perry, 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

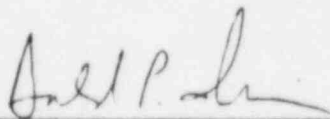
Jonathan D. Feinberg, Esq.
New York State Department of
Public Service, Staff Counsel
Three Rockefeller Plaza
Albany, New York 12223

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

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Martin Bradley Ashare, Esq.
Eugene R. Kelly, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11787

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



Donald P. Irwin

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

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