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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 JUN 15 P3:48

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

SERVED JUN 16 1987

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

Docket No. 50-322-0L-3
(Emergency Planning)
(ASLBP No. 86-529-02-0L)
June 12, 1987

MEMORANDUM AND ORDER
(Ruling on LILCO's Motion to Substitute Written Testimony)

Introduction:

On May 16, 1987, LILCO filed a motion requesting leave to substitute KLD TR-201A for KLD TR-201 as attachment S to LILCO's written testimony of March 30, 1987. KLD TR-201 is a capacity analysis of the approach routes to the three LILCO reception centers. It was prepared by Edward B. Lieberman and his firm KLD Associates, Inc. Applicant asserts KLD TR-201A is a revision of KLD TR-201, prepared by Mr. Lieberman that contains certain refinements and some additional data regarding background traffic and highway capacity not included in the original because of time constraints.

In addition, KLD TR-201A is said to contain a more refined capacity analysis as the result of obtaining data regarding activated traffic

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signal controllers, which was sent to Applicant by New York State only five days before Applicant's testimony was due.

Applicant represents that in most respects the two reports are identical and that the results of the two reports are also the same. LILCO claims that permitting the substitution will not prejudice Intervenor's considering its projection as to when the hearing is to take place.

Suffolk County and New York State filed a response on May 26, 1987 opposing the substitution. They state that Applicant's prefiled testimony (May 30, 1987) not only contained one traffic analysis prepared by Mr. Lieberman, TR-192, but it contained an additional one, KLD TR-201 for which Intervenor's were afforded no discovery. Underlying data was subsequently furnished to them. Intervenor's assert Applicant wants a third opportunity to perfect its case.

Governments claim that KLD TR-201A is a substantial revision of the prior analysis and that the bases and origins of the revisions are unexplained. They say that under the guise of substitution, Applicant is supplementing its direct testimony without demonstrating good cause. Further, it is alleged Intervenor's will be prejudiced by the proposed substitution because they will once again be required to devote substantial time and resources to analyze a study that LILCO filed late. Intervenor's state that they have other matters to attend to in preparation for the hearing.

The Staff filed a response on May 21, 1987 in support of LILCO. It considers the refinements to the original analysis, as well as the additional data contained in KLD TR-201A, to be information useful to

the Board in compiling a complete record in this proceeding. The Staff also agrees with LILCO that, given the anticipated schedule of the OL-3 proceeding, the Intervenors will not be prejudiced by the proposed substitution.

Discussion:

If this were a wholly adversary proceeding, Intervenors might very well prevail on the motion. But this is not the case. The Board is charged with considering the public interest as concerns the matter of public health and safety. In so doing, it is important that the Board have available to it the most complete information possible. We would not want to render a decision knowing that there may be more definitive information available, of which we had not availed ourselves. To the end of having a complete record in this proceeding, we shall allow the addition of KLD TR-201A to Applicant's testimony.

A limited review of KLD TR-201 and KLD TR-201A by the Board does not show them to be as materially different from one another as Intervenors' claim. Intervenors will not be prejudiced by permitting Applicant to supplement its testimony with KLD TR-201A report, if they are provided with the opportunity to conduct discovery and to submit rebuttal. The hearing schedule has not been fixed so that this is possible to accomplish. Concededly, this development is an inconvenience. Should this result in any delay, it is Applicant's responsibility for not acting in a more timely manner.

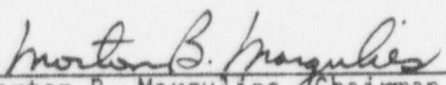
To assure the development of a full and comprehensive record KLD TR-201A should be added to the existing record rather than being substituted for KLD TR-201. The Board has previously authorized the filing of rebuttal testimony to KLD TR-201. KLD TR-201 may continue to remain important to the development of Intervenors' case. KLD TR-201A shall be designated as attachment T to the LILCO testimony.

ORDER

Based upon all of the foregoing, it is hereby ordered:

1. That Applicant is permitted to supplement its prefiled testimony by the addition of the KLD TR-201A report, as attachment T.
2. That Intervenors shall submit to the Board by June 17, 1987 a proposed schedule for discovery and the filing of rebuttal testimony in regard to KLD TR-201A.
3. That responses to the proposed schedule shall be submitted to the Board by June 19, 1987.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE

Dated at Bethesda, Maryland
this 12th day of June, 1987.