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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'86 DEC 19 P12:37

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station, Unit 1))
_____)

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

FEMA MOTION TO BIFURCATE PROCEEDING
AND REQUEST EARLY CONSIDERATION OF CONTENTION EX 19

BACKGROUND

The Licensing Board (hereinafter "Board") in its December 11, 1986 Order Docket No. 50-322-OL-5(EP Exercise) determined to admit Intervenor Contentions Ex 15, 16 and 19. In its Order the Board at page 8 stated that

"In our Prehearing Conference Order, we held that contentions which allege that the February 13 exercise failed to meet the requirements of 10 CFR Part 50, Appendix E, IV.F.1 are acceptable. Under this holding, we admitted contentions EX 15 and 16. These contentions allege that the exercise did not include demonstrations or evaluations of major portions of the plan or or the capabilities of many persons and entities relied upon for implementation."

FEMA, supported by LILCO and Staff sought reversal of this holding.

Essentially, FEMA argued that CLI-86-11 23 NRC 577 (1986) precluded the Board's admission of those contentions. Staff argued that even if proved true, Contentions Ex 15 and 16 do not demonstrate a fundamental flaw in the plan.

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The Board conceded that the Commission directed this proceeding to be limited to the exploration of alleged fundamental flaws in the plan demonstrated by the exercise. The Board, at page 11 of the Order also conceded that

"[I]t is also true that the results of the exercise are facially distinguishable from the scope of the exercise." (Emphasis in original).

The Board then recited that 10 CFR Part 50, Appendix E, IV.F.1 set out the requirement for "full participation" exercises under NRC regulations, and indicated that that regulation provides guidance with regard to the scope of the exercise. The Board then concluded, among other legal conclusions, that

"If it [the exercise] is found not to comply with the Commission's regulations concerning the scope of a full participation exercise, it may constitute ' . . . [a deficiency] which preclude[s] a finding of reasonable assurance that protective measures can and will be taken, i.e., [a fundamental flaw] in the plan.' CLI-86-11, 23 NRC 577, 581 (1986)."

The Board also concluded at page 14 of the Order that the

"issues litigable under contentions Ex 15 and 16 are limited to whether the scope of the exercise meets the Commission's regulatory requirements for full participation exercises. FEMA properly takes no position on that issue" (Emphasis supplied).

The Board also ruled that although Contention Ex 19 (the contention asserts that because FEMA could not make a finding, NRC cannot make a finding) was admitted for the purpose of legal argument only, the disposition of that contention should wait close of the hearing.

The Board then concluded that Contentions EX 15, 16, and 19 should be admitted as it did in its Prehearing Conference Order of October 3, 1986.

ARGUMENT WITH RESPECT TO BIFURCATION OF THE PROCEEDING
AND GIVING EARLY CONSIDERATION TO CONTENTION EX 19

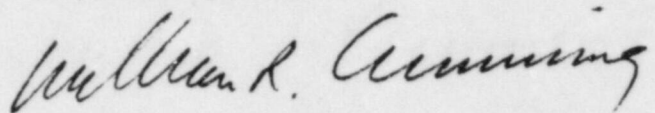
FEMA believes that Contentions EX 15, 16, and 19 may be outcome determinative with respect to the issue of NRC's finding of reasonable

assurance with respect to offsite safety at this point in time. Since FEMA has been precluded by the Board's Order from being an expert witness with respect to NRC regulations, a conclusion with which FEMA agrees, FEMA is in essence a fact witness with respect to these contentions to the extent that they address the scope of the exercise. Accordingly, FEMA's preparation and designation of witnesses is far different than when a finding of reasonable assurance is being litigated, or even issues concerning the specific day of the exercise. Since many of the same FEMA officials, employees, and contractors, are involved with issues of offsite safety in FEMA Region II on a day-to-day basis with presently licensed plants, FEMA would be less adversely affected if these out-come determinative issues, namely Contentions EX 15, 16, and 19 could be heard first. Thus, what promises to be a lengthy and expensive hearing for FEMA, could possibly be made shorter and less expensive. Thus, for a combination of legal and fiscal reasons, FEMA respectfully requests that consideration be given by the Board to bifurcation, or other scheduling changes that may lessen the burden of FEMA. FEMA also believes that such bifurcation is likely to have the additional beneficial impact of lessening the likelihood that future exercise litigation by potential intervenors will raise similar questions.

CONCLUSION

For the above-stated reasons, FEMA respectfully requests the Board to consider bifurcation of Contentions EX 15 and 16 to the extent they concern the scope of the exercise, and requests prompt consideration of disposition of Contention Ex 19 instead of waiting until the close of the exercise hearing.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William R. Cumming".

William R. Cumming
Counsel for FEMA

Dated this 17th day of December, 1986
Washington, D.C.

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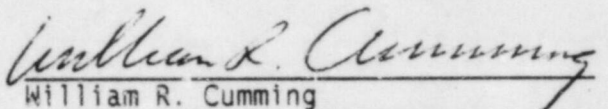
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