

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'87 DEC 29 P2 05

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
) (Emergency Planning)
(Shoreham Nuclear Power Station,)
Unit 1))

**MOTION TO STRIKE UNAUTHORIZED PLEADING, OR,
IN THE ALTERNATIVE, ANSWER TO INTERVENORS'
DECEMBER 16 MOTION FOR SUMMARY REJECTION**

On October 22, 1987, LILCO filed for summary disposition of the Appeal Board's remand of Contention 25.C, on the narrow issue of "role conflict" of school bus drivers. LILCO's Motion for Summary Disposition of Contention 25.C ("Role Conflict" of School Bus Drivers) (October 22, 1987) (hereinafter "LILCO's Motion"). The Intervenor's responded to LILCO's Motion on November 13, 1987 within the time specified in the regulations.^{1/} A day earlier the Intervenor's argued for summary rejection of LILCO's Motion, in a second, separate pleading.^{2/}

Now, in a third pleading, the Intervenor's once again argue that the Board should reject LILCO's summary disposition motion on "role conflict" of school bus drivers.^{3/}

^{1/} See Answer of Suffolk County, the State of New York and the Town of Southampton to LILCO's Motion for Summary Disposition of Contention 25.C ("Role Conflict" of School Bus Drivers) (November 13, 1987) (hereinafter "November 13 Answer").

^{2/} See Suffolk County, State of New York, and Town of Southampton Motion for Summary Rejection of Summary Disposition Motion and for Expedited Consideration (November 12, 1987) (hereinafter "November 12 Motion"). The Intervenor's did not request that relief be granted pursuant to this second pleading since it was filing a separate answer to LILCO's Motion.

^{3/} See Governments' Motion for Summary Rejection of New LILCO Proposal for Implementing Evacuation of School Children (December 16, 1987) (hereinafter "December 16 Motion").

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Intervenors' Motion presents basically the same arguments advanced in its two previous pleadings and adds another argument that they failed to include in their November 12 and 13 pleadings. There is nothing new about this Motion that could not have been presented earlier in the Intervenors' November 13 Answer. As such, the Intervenors' Motion should be rejected outright as unauthorized and untimely.^{4/}

In the alternative, if the Board should entertain this additional answer to LILCO's Motion, LILCO herein offers its response to the Intervenors' new pleading on school bus drivers. For the most part, the Intervenors mischaracterize the substance of LILCO's summary disposition motion and distort the record by not fully presenting the Board's findings on schools. As the following sections show, the Intervenors' Motion should be denied.

Intervenors' Third Response to LILCO's
Motion Reargues Their Earlier Pleadings

LILCO's Motion for Summary Disposition addresses the narrow issue remanded by the Appeal Board of whether "role conflict" would prevent enough school bus drivers from being available to evacuate school children during a Shoreham emergency. LILCO argued that, based on the existing record and the excluded evidence on the firemen's survey, the Licensing Board was correct that "role conflict" would not be a problem for school bus drivers. LILCO Motion at 5-12. In that Motion, LILCO also committed to recruit additional bus drivers to support a decision by the school districts and private schools to evacuate all schools in the EPZ in a single wave. Id. at 15-17.

^{4/} LILCO was prepared to file this paper on December 22 or 23, but deferred filing in light of the Board's expectation, stated in the telephone conference of counsel on December 22, that it would issue its decision on this matter before Christmas. In view of the apparent slippage of that decision, LILCO has determined to file its response to Intervenors' unauthorized pleading.

In their November 13 Answer and their November 12 Motion, the Intervenor^s urged the Board to reject LILCO's Motion, claiming that its proposal to recruit additional school bus drivers represented a "new plan" for implementing protective actions for schools. November 12 Motion at 2; November 13 Answer at 2, 33. LILCO explained in its Answer to the Intervenor^s' November 12 Motion that the school plan had not been changed; as before, "LERO would make protective action recommendations and the school districts would then decide which protective action (sheltering, early dismissal, or evacuation) to implement." LILCO's Answer to Five Recent Pleadings on Realism and Summary Disposition (November 27, 1987) (hereinafter "November 27 Answer") at 13. As LILCO noted, its Motion "simply makes the third alternative under the plan (evacuation) surer and swifter." *Id.* Now the Intervenor^s attempt to reargue these two previous pleadings, stating that LILCO's Motion should be rejected because it represents a "new proposal for evacuating school children." December 16 Motion at 2, 10.

The Intervenor^s also claim, as they did in their first two responses, that the remand of Contention 25.C includes whether bus drivers will be available for early dismissal. December 16 Motion at 3-4 n.3, 13. For the third time, the Intervenor^s ignore the record on this issue even after LILCO traced its history in its response to the Intervenor^s' November 12 Motion. LILCO's November 27 Answer at 14. There, LILCO noted that the Appeal Board declined to review the Licensing Board's findings on the availability of bus drivers for early dismissal and thus did not remand the issue to the Licensing Board for reconsideration. *Id.* Even with these facts before them, the Intervenor^s make the same argument on early dismissal advanced in their two earlier pleadings. The Intervenor^s' attempt to reargue their Answer in yet another pleading is improper.

The Intervenor^s' New Argument Should
Have Been Made in Their November 13 Answer

In addition to revisiting arguments made in their November 12 and 13 pleadings,

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the Intervenor have advanced a new argument (that the record on Contentions 70 and 71 must be reopened by LILCO) that could have been raised in their November 13 Answer. The Intervenor try to cover up this impropriety by arguing that this new pleading focuses "on the scope of the substance of LILCO's new proposal, particularly when viewed in light of this Board's prior rulings on Contentions 70 and 71." December 16 Motion at 2. Their November 13 Answer, however, should have focused on the substance of LILCO's proposal. The Intervenor should have considered the existing record and prior decisions then and should not be permitted now to refashion old pleadings into new in order to include an argument they failed to make earlier.^{5/}

LILCO's Motion for Summary Disposition
Does Not Require That The Record
Be Reopened On Contentions 70 and 71

As noted above, LILCO's Motion does two things: first, it demonstrates that the firemen's survey does not change the Board's conclusion on the school bus driver "role conflict" issue; and second, it presents LILCO's commitment to recruit additional LERO bus drivers to eliminate any further concern about school bus drivers and "role conflict." The issue is a narrow one and does not involve any other contentions no matter how hard the Intervenor try to broaden its scope.^{6/}

^{5/} For example, the Intervenor included a chart in their December 16 Motion that compares their interpretation of LILCO's proposal to recruit additional bus drivers to LILCO's prior testimony on school evacuation. December 16 Motion at 11. The Intervenor should have included this chart in their December 13 Answer and not in a supplemental brief.

^{6/} Not only do the Intervenor argue that LILCO's proposal to recruit additional bus drivers requires that the issue be reopened as to Contentions 70 and 71, but they claim that if the record is reopened, it would not be limited to these two contentions but would raise new contentions that would have to be identified and litigated. Intervenor's December 16 Motion at 14-15 n.14. As LILCO discusses below, there is no basis for this conclusion.

The Intervenor's argue that LILCO must reopen the record on Contentions 70 and 71 because LILCO's proposal provides the school districts with the resources needed to implement a single-wave evacuation rather than a multiple-wave evacuation. December 16 Motion at 1, 8, 10, 11. The Intervenor's claim that the Board contemplated only a multiple-wave evacuation when it ruled that LILCO's plan for school evacuation was workable. Intervenor's December 16 Motion at 8. Therefore, according to the Intervenor's, any proposal for a single-wave evacuation would require that LILCO reopen the record. A thorough review of the Board's ruling on Contention 71.B, however, shows that the Intervenor's interpretation of the record is incorrect.

In ruling on Contention 71.B, the Board found that there was no reasonable assurance that there would be enough buses to evacuate school children in approximately the same time as the general population would be evacuated. PID, 21 NRC 644, 874 (1985). The Board was not assured by LILCO's testimony that extra buses would be made available during an emergency since LILCO did not have prior commitments for those buses. Id. The Board concluded that this deficiency, however, could be corrected "by a showing" that multiple bus runs would be adequate or that LILCO had obtained enough buses to effect a single-wave evacuation. The Board said:

This deficiency could be corrected by a showing that multiple bus runs will accomplish evacuation of schoolchildren in approximately the same time as a general population evacuation or that LILCO has received commitments for release of buses from schools outside the EPZ, thus eliminating the need for multiple bus runs.

Id. at 874.

Contrary to the Intervenor's assertions, the Board did contemplate that a single-wave evacuation might be used to evacuate school children. In fact, the Board knew that LILCO was considering a single-wave evacuation when it noted that LILCO had suggested in its testimony "supplying additional buses to replace some or all of the multiple bus runs." Id. at 872. Since the Board contemplated that additional buses might be

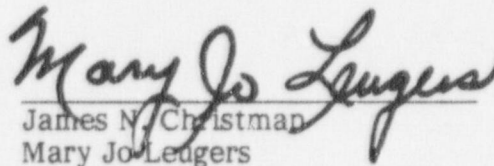
used for the evacuation of schools, it follows that the Board must have realized that additional bus drivers would be needed.

It is also clear from the Board's ruling on Contentions 71.B that LILCO's proposal to use extra drivers for a single-wave evacuation does not require that the record be reopened. The Board said that all that was necessary to resolve the deficiency surrounding the availability of buses was a "showing" that LILCO has enough bus commitments to eliminate multiple runs. *Id.* at 874. Since additional buses require additional drivers, a "showing" that additional qualified drivers are available would also be satisfactory. The Intervenor's argument that the Board has no jurisdiction to consider LILCO's proposal and that LILCO must seek to reopen the record, therefore, is without foundation.

Conclusion

For the foregoing reasons, the Intervenor's Motion for Summary Rejection should be stricken as an unauthorized pleading or, in the alternative, the Intervenor's Motion should be denied on its merits.

Respectfully submitted,


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CERTIFICATE OF SERVICE

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Docket No. 50-322-OL-3

I hereby certify that copies of MOTION TO STRIKE UNAUTHORIZED PLEADING, OR, IN THE ALTERNATIVE, ANSWER TO INTERVENORS' DECEMBER 16 MOTION FOR SUMMARY REJECTION were served this date upon the following by hand as indicated by one asterisk, by Federal Express as indicated by two asterisks, or by first-class mail, postage prepaid.

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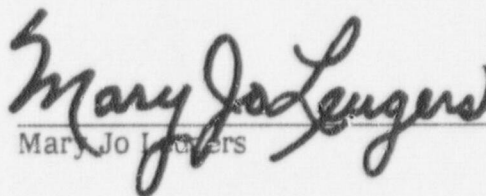
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