

SECRET ROOM
DEPENDENT

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322

COUNTY OF SUFFOLK'S RESPONSE TO
"NRC STAFF MOTION TO COMPEL
RESPONSIVE ANSWERS" &
MOTION FOR A PROTECTIVE ORDER



Staff filed its "First Set of NRC Staff Interrogatories to the County of Suffolk" on May 15, 1978. Staff and the County subsequently agreed to defer specific response to these interrogatories. Informal discovery efforts were then underway between the parties and their technical consultants, which, it was hoped, would cut through the formal discovery process and produce further particularized contentions.

On November 30, 1978, the County submitted a pleading entitled "County of Suffolk's Particularized Contentions" and therein detailed the factual basis, as far as it was presently ascertainable, for each contention raised. The contention status was reviewed under the following subpart headings: Statement of Contention; Contention Chronology; Basis for Contention; References; and Summary and Conclusion.

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Staff now files the instant motion to compel more responsive answers. In this motion Staff reviews each of its interrogatories and sets forth its analysis of the adequacy of the County response thereto. Staff breaks down the County's responses to interrogatories into three broad categories - adequate, inadequate but no particularization required until issuance of SER, and inadequate. It is with respect to this latter category of responses that Staff seeks to compel more responsive answers. At issue is the adequacy of County response to the following Staff interrogatories: 1; 2 (Contention 3a(iii)); 4 (Contention 5a); 5 (Contention 5b); 6 (Contention 5c(iii)(iv)); 7 (Contention 6a(i)(iii)(iv)); 9 (Contention 8a(ii)); 15 (Contention 12a(i-iii), (v-viii)); 16 (Contention 13a(ii-vi)); 18 (Contention 13c).

The County believes that its responses to interrogatories are generally adequate, especially in view of the present posture of these proceedings. That is, the formal discovery period for these proceedings does not begin to run until the Shoreham SER issues, and the County is not obliged to further particularize its contentions until seventy days thereafter. But Staff, through its interrogatories and motion to compel, seeks to force the County to fully particularize its contentions prematurely. Given the thoroughness of the County's previous responses to interrogatories posed by both Staff and Applicant, the instant motion to compel represents an abuse of the discovery process.

The County is mindful of its obligations to supplement its responses to interrogatories with information subsequently acquired. (10 CFR, Sec. 2.740(e)). This rule has particular significance here. As Staff (and this Board) is aware, there has been for the past year considerable uncertainty at the political level concerning the scope of the County's participation in these proceedings. This situation has limited counsel's ability to affirmatively develop the County's case. However, the County will shortly formalize its retention of a new technical consultant, Energy Research Group, Inc., which, in turn, will permit the County to frame discovery requests on technical issues, the responses to which will add further basis for the County's contentions.*

In sum, the County contends that its responses to Staff's interrogatories are generally adequate. This is particularly apparent when one considers the procedural stage at which this proceeding sits. Moreover, to the extent that certain interrogatories have not been fully responded to, the County recognizes its obligation to supplement responses on the basis of information subsequently obtained during the discovery phase of these proceedings. On the basis of all the foregoing, Staff's motion to compel is premature and unwarranted. Accordingly, the County seeks a

* For example, with respect to Staff's motion to compel responses to interrogatories directed to Contention 3a(iii), the County already has taken steps to gain access to the Reed Report (See, Letter of Irving Like dated 2/6/79, attached as Ex. A). Additionally, as soon as ERG has had an opportunity to familiarize itself with the County's contentions and to assign work tasks, response to Staff's interrogatory #1 will be possible.

protective order, pursuant to 10 CFR, Sec. 2.740(c) relieving it of any responsibility to further respond to Staff's interrogatories.

Respectfully Submitted,

Irving Like (RM)
Irving Like
Special Counsel to the
County of Suffolk

Dated: February 7, 1979

Exhibit "A"
REILLY, LIKE AND SCHNEIDER
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BABYLON, N. Y. 11702

IRVING LIKE
BERNARD J. REILLY
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WERNER J. ZUMBRUNN
RICHARD C. HAND
ENRICO J. CONSTANTINO
PATRICIA A. DEMPSEY

MOHAWK 9-3000

CABLE ADDRESS
RELIK

February 6, 1979

Case Whittemore, Esq.
Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212

Re: In the Matter of Long Island Lighting Company
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322

Dear Mr. Whittemore:

Forwarded as an attachment to your letter of October 4, 1978, was a modified "Agreement Regarding Disclosure of Confidential Commercial Information". This disclosure agreement, when executed, would permit County inspection of the following G.E. documents:

1. List of Items from the Nuclear Reactor Study (Reed Report) identified in 1975 by Safety and Licensing for Consideration as "Reportable Deficiencies" under Section 206 of the Energy Reorganization Act of 1974 (dated March 22, 1978).
2. Summary of Status of Items from the Nuclear Reactor Study (Reed Report) identified in 1975 by Safety and Licensing (prepared May, 1978).
3. Topical Report NED-21021-P: "Test Program for Collet Retainer Tube".

With regard to Items 1 and 2 relative to the Reed Report, we note that a protective order recently was entered in another NRC licensing proceeding (In the Matter of Public Service Company of Oklahoma, et al (Black Fox Station, Units 1 and 2), Docket Nos. 50-556 & 557) providing the intervenors access to verbatim extractions of the Reed Report, plus the sub-task reports which were prepared under Dr. Reed's auspices, insofar as these

Case Whittemore, Esq.
February 6, 1979
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documents relate to the Intervenor's contentions. A procedure was also provided for in the Board's order which allowed counsel for the intervenors to verify the accuracy of these extractions. A copy of the Black Fox protective order appears as an attachment to NRC staff's January 12, 1979 "Motion to Compel Responsive Answers" directed to the County.

The County will shortly formalize the retention of its new technical consultants for the Shoreham case, Energy Research Group, Inc., which action will then enable it to execute the disclosure agreement referred to above. However, in view of the scope of discovery afforded intervenors in the Black Fox proceedings on the Reed Report, it seems appropriate to first determine whether the Applicant and the General Electric Company are willing to grant the County, without necessity of a formal application to the Licensing Board, a similar range of discovery in this case. If there is a willingness to proceed in similar fashion here, then we would, of course, once again have to modify the proposed disclosure agreement.

Please let me have your thoughts on this at your earliest opportunity.

Sincerely,

Irving Like (ALS)

Irving Like
Special Counsel for
the County of Suffolk

IL/jg
CC: To all Parties

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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

CERTIFICATE OF SERVICE

Thereby certify that on February 7, 1979, copies of COUNTY OF SUFFOLK'S RESPONSE TO "NRC STAFF MOTION TO COMPEL RESPONSIVE ANSWERS" were sent by postage pre-paid, first-class mail, to the following:

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Washington, D.C. 20555

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Irving Like (copy)
Irving Like