RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

COUNTY OF SUFFOLK'S MOTION IN OPPOSITION TO "APPLICANT'S REQUEST FOR SUMMARY DISPOSITION OF SUFFOLK COUNTY CONTENTIONS 4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a(viii); 14" AND FOR A PROTECTIVE ORDER

Background

By pleading dated December 18, 1978, Applicant, pursuant to 10 CFR §2.749, moved for summary disposition of various of the County's contentions. The contentions which Applicant seeks to eliminate through its motions (and supporting affidavits and documentations) raise factual issues regarding: (1) the adequacy of the Shoreham plant's remote shutdown capability and whether the Shoreham system design meets the requirements of 10 CFR, Pt. 50, App. A, GDC 19, (see, County Contentions, 4a(vii), 7a(ii)); (2) the safety implications of the automatic resetting of reactor trip system trip bistable relays, 10 CFR, Pt. 50, App. A,

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GDC 13 & 20) (See, County Contention, 4a(x)); (3) the failure of Applicant to demonstrate compliance with 10 CFR, Pt. 50, App. A, GDC 10 which requires that the reactor core control systems be designed to assure that an appropriate margin of the fuel cladding be maintained as one of the multiple barriers (see, County Contention 7a(iii)); (4) the failure of Applicant to demonstrate compliance with 10 CFR, Pt. 50, App. A, GDC 61 which requires that fuel storage systems be designed with a capability to permit appropriate periodic inspection and testing of components important to safety (see, County Contention, 7a(vi)); (5) the failure of Applicant to demonstrate compliance with 10 CFR, Pt. 50, App. A, GDC 62 which requires that criticality of fuel in the storage and handling system be prevented by physical systems or processes (see, County Contention, 7a(vii)); (6) the ability of Shoreham's condenser tubes and condensate demineralizer to protect against injection of sea water into the primary system (see, County Contention, 12a(viii)); and (7) the failure of Applicant to demonstrate compliance with 10 CFR, Pt. 50, App. GDC 4, which requires that "...structures, systems and components important to safety shall be designed to accommodate the effects of...postulated accidents...". Such accidents have been interpreted to include gross vessel failure of the turbine generator which could generate a missile that might

damage reactor containment pressure boundary or other safety-related equipment (see, County Contention, 14a). Applicant's only stated reason for turning, at this stage of the proceedings, to the extreme remedy of summary disposition is its unease with the "slow pace" of the proceedings to date. Thus, Applicant seeks to employ summary disposition motions as a means to "make progress" in the case and to ameliorate and/or resolve its perceived concerns over "scheduling difficulties" (Applicant's Request for Summary Disposition...", 1-9 (12/18/78)).

Staff responded to Applicant's motion by a pleading entitled: "NRC Staff Answer to Applicant's Request for Summary Disposition of Certain Contentions" (1/12/79). In its responsive motion Staff takes the position that, with respect to those contentions admitted for discovery purposes only, Applicant's motions are premature, are wasteful of the parties time, would undermine the efficient progress of this proceeding and the requirements of 10 CFR, §2.714(a) which requires that issues to be litigated be framed with specificity and precision (Staff's Motion, 3). With respect to those of the County's contentions which have been fully admitted, and for which Applicant seeks summary disposition (ie., Contentions 7a(vi) & (vii)), Staff proposes that its time for substantive response be held in abeyance pending completion and issuance of the SER (Staff's Motion, 4).

Applicant's motions for summary disposition constitute a misuse of that remedy, are grossly premature, and, in any event, are without substantive merit since they fail to demonstrate that there are no genuine issues of fact raised by the contentions here at issue. The motions should therefore be denied. In addition, to the extent Applicant continues to attempt to convert the summary disposition remedy into a tool by which it can prod this case along to achieve a pace more to its liking, the County seeks a protective order relieving it from any obligation to further respond to such motions. This protective order should be effective until a firm hearing date has been set for these proceedings, or, at a minimum, until the formal discovery period has been completed.

1. Applicant's Motions for Summary Disposition Constitute a Misuse of the Remedy, and, In Addition, Are Grossly Premature.

Applicant has filed its summary disposition motions at a time when the following circumstances prevail: (1) a hearing date for these proceedings is, by Applicant's own reckoning, still at least five months away; (2) the Shoreham Safety Evaluation Report (SER) has not yet issued; (3) the formal discovery period set by the hearing board has not yet begun to run*; and (4) the majority of the contentions which

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* See "Order Relative to Requests for Clarification and Reconsideration of the Board Order of January 27, 1978", p. 5, (3/8/78).

Applicant seeks to have dismissed have not yet been unconditionally admitted by the hearing board. These facts, jointly considered, lead to the conclusion that substantive review by the licensing board of Applicant's motions at this stage of the proceedings would not only cause, in the words of Staff, an undermining of the efficient progress of this case, but would also deprive the County of its right to develop its contentions and to litigate issues of legitimate concern.

The most glaring deficiency with Applicant's motions was identified by Staff. That is, Applicant is seeking to have contentions dismissed which, in most instances, have yet to be admitted. Final licensing board rulings on these contentions will not occur until sometime after the close of discovery. Indeed, Applicant's own predicted schedule of events places the filing of summary disposition motions in their proper and logical sequence (Applicant's Request for Summary Disposition...", p. 5, (12/18/78)). Applicant projects that summary disposition motions will not be filed until almost three months after issuance of the SER. Significantly, Applicant ties the filing of summary

disposition motions to the deadline for intervenors particularization of contentions (id.). This is as it should be. Such motions should not, in all fairness, be entertained until intervenors have been accorded full opportunity to conduct discovery as provided for by the Board.

This argument holds true for admitted contentions as well. Although the Board already has found that certain County contentions are adequately particularized, this ruling does not necessarily mean that the County will forego any further discoery on such contentions. The County intends to develop as fully as possible, and on an ongoing basis, the factual circumstances which might lend support to all of its contentions. Indeed, it may be that the County, after the close of discovery, will elect not to litigate or cross-examine on certain contentions of either category (ie., presently admitted or conditionally admitted contentions), should it appear that Applicant has achieved compliance with controlling regulatory criteria or has satisfied the County's safety concerns. But Applicant's "self-help" attempt to eliminate contentions of this point in the proceedings is clearly premature.

It is certainly true that Appeal Board's have indicated that motions for summary disposition, where applicable, should be viewed favorably as a means to exclude from consideration at hearings contentions which do not raise genuine issues of

fact. See, eg., Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424-25 (1973). But the primary purpose of such motions is to avoid unnecessary litigation and expedite the decision-making process. Boston Edison Company (Pilgrim Nuclear Power Station, Unit 1), ALAB-191, 7 AEC 417, 418 (1974). Here, as shown above, Applicant's motions work at cross-purposes with those goals. This is due primarily to the fact that they were filed at the wrong time for the wrong reason. * If the Applicant wishes to speed the pace of these proceedings, it should pursue a course of action which does not stretch a remedy beyond its intended use and which does not, in the process, prejudice the rights of the intervenors to litigate their cases in a manner consistent with long-established motions of fairness and due process.

2. Assuming Arguendo That Applicant's Summary Disposition Motions are Ripe for Consideration, Applicant Has Failed to Demonstrate that the Contentions At Issue Do Not Raise a Genuine Issue As to Any Material Fact.

The rules governing motions for summary disposition brought pursuant to 10 CFR, Sec. 2.749 are analogous to the standards applicable to such motions brought in the federal courts under the Federal Rules of Civil Procedure. Alabama

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* As Applicant well knows, one of the primary reasons the Shoreham SER has not yet issued (which event will in turn trigger the timetable in this proceeding) is the continuing large number of "open" items or otherwise unresolved issues which require further response and/or documentation by the Applicant. See eg., Letter of Varga, Chief, LWR Branch No. 4, Div. of Project Management, to Wofford, Vice-President of LILCO (dated 1/26/79). The delay which Applicant seeks to ascribe to the County should more properly be laid at its own doorstep.

Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974); Cleveland Electric Illuminating Company, et al (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 754, 756, n. 46 (1977). Thus, the proponent of a summary judgment motion is entitled to a decision on the pleadings (supported by affidavits, depositions, answers to interrogatories, admissions) only if he can demonstrate that there is no genuine issue as to any material fact and that the movant is thereby entitled to a decision as a matter of law. Moreover, the moving party has the burden of showing the absence of a genuine issue of material fact and, for this purpose, the material lodged with the tribunal must be viewed in the light most favorable to the opposing party. Adickes v. Kress & Co., 398 U.S. 144, 157 (1970); Cleveland Electric Illumination Co., et al., supra, at 753. Finally, a summary judgment motion is a limited inquiry to examine whether a genuine issue exists. In pursuing this inquiry, the party opposing the motion is entitled to all favorable inferences deductible from the factual record. Summary judgment is warranted only when a genuine issue of material fact is shown to be absent and when that showing is made with such clarity as to leave no room for controversy. This remedy should lie only when the truth is quite clear. Bouchard v. Washington, 514 F2d 824, 827 (D.C. Cir. 1975); Weiss v. Kay Jewelry Stores, Inc., 470 F.2d 1259, 1261-62 (D.C. Cir. 1972).

It can thus be seen that the movant bears a heavy burden in order to justify the extreme relief of the summary disposition of contentions. A glance at Applicant's moving papers quickly reveals why this is true. The motions and affidavits are themselves fact intensive, contain judgments about safety issues, and make various assumptions the bases for which (ie., data relied on, back-up worksheets, analytical methods, calculations, etc), may or may not justify the conclusions reached.

Thus the County believes that the Applicant has demonstrably failed to make the strong showing required by 10 CFR, Sec. 2.749 to gain summary disposition of the contentions here at issue. The pleadings often raise as many questions as they answer as indicated by the following analysis of various of the motions*.

Applicant's Motion for Summary Disposition of Contentions 4a(vii) and 7a(ii)

The FSAR (Sec. 7.5.1.4.2.2) contains an inadequate description of the design base with respect to loss of control

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* As noted, the County takes the position that Applicant's motions are premature and should not be entertained. Additionally, it believes they are insufficient on their face. The above analysis, however, is provided as a statement pursuant to 10 CFR Sec. 2.749(a) for the purpose of demonstrating that the contentions raise genuine issues of fact which issues are by no means laid to rest by Applicant's motions. Although two of Applicant's motions are not specifically addressed herein, (ie., motions relating to Contentions 4a(x), 14a), they also fail to demonstrate that the contentions do not raise genuine issues of fact. See, County's Particularized Contentions, pp. 4-8, 14-1 - 14-4 (11/30/78); County's Response to Applicant's Second Interrogatories, pp. 5, 32-33 (1/31/78).

board during evacuation or at some other point in time (as, for example, in a Browns Ferry situation). FSAR Sec. 7.5.1.5 is incomplete. There is no discussion of safety/relief valve controls, power supply monitoring, radiation detection or release controls. The FSAR does not reveal whether the remote shutdown panel is isolated (no short circuit) in the event of relay or control from fire, nor does it reference the communications capability of types of equipment.

Moreover, the detail of the remote shutdown system, procedure and start-up tests to be performed are inadequately described in the FSAR.

Applicants' Motion for Summary
Disposition of Contention 7a(iii)

Applicant's moving papers fail to respond to the following questions: (1) Has the use of fine motion control reduced the fatigue failures and end of rod effects on cladding surrounding rods?; (2) Can repeated movement of the control rod to the same withdrawal point cause damage to the cladding surrounding the withdrawal location causing failure?; (3) Where have the failures occurred on fuel cladding in the current 7 x 7 and 8 x 8 bundles in use?; (4) Do the 7 x 7 bundles failure locations correlate with end of control rods or control rods withdrawal locations?; and (5) Do they correlate with 7 x 7 test results for failure locations?

Applicant's Motion for Summary
Disposition of Contention 7a(vi)

The change in spent fuel rack design (which now incorporates the flux trap type honeycomb stainless steel structure) requires new load bearing plates and tie downs to the spent fuel pool at specific embeddments which act as specific constraints on the load distribution. The bearing plate and liner floor embeddments to which all of the loads would be transferred do not appear to have any inspection or test for the corrosion, weakening or cracking of those plates under normal or abnormal stresses during the lifetime of the plant. Considering that corrosion is one of the worst enemies of nuclear fuel materials, these particular load bearing bodies should be periodically inspected for cracking or corrosion so as to assure that the load bearing strength remains constant during the full life of the plant. Moreover, since this design represents an add-on modification to meet both an existing spent fuel liner and spent fuel pool embeddments, and because these are critical to maintaining the geometry of the spent fuel racks, it is important to have assurance of their integrity. The situation may be aggravated by the fact that there are no side wall tie downs; therefore the bearing plates and mechanical attachments must withstand all of the loads horizontally as well as vertically. Thus, while the hold down embeddment mechanisms can easily withstand the down loading, there is no assurance that they will be able to withstand the up loading resulting

from the refueling cranes on a regular (ie., fatigue) basis. Thus, in view of the fact that there is at least 1-12 unit storage rack and several 32 unit storage racks which would be 1/6th to 1/3rd the weight of a 96 unit rack, and if the uplift is based on the 96 unit rack, the uplift load may well be more important a consideration.

Applicant's Motion for Summary Disposition of Contention 7a(vii)

The entire FSAR (Sec. 9.1.1.3) discussion of the criticality of fuel in Shoreham's new fuel storage system is found in a single sentence: "In an abnormal condition if the new fuel array were flooded with low equivalent water density material (optimum moderation), K-EFF would not exceed 9.98". The first sentence of the same paragraph of FSAR, Sec. 9.1.1.3 states that the calculations of K-EFF were based upon "generic" arrangements of the fuel array. (What probably was meant here was a geometric arrangement of the fuel array racks). No spacing information is provided here or in FSAR Figure 9.11, clearly indicating the distance between racks which, in turn, would provide assurance on the fuel element spacing. Moreover, there is no reference to the computer codes used for the calculation of the new fuel array spacing as is provided for the spent fuel arrays. Thus, neither Applicant's affidavit nor the FSAR demonstrates that the calculation was done commensurate with the standards.

(The calculations for new and spent fuel racks were probably done by different vendors, therefore the calculational methods may differ). Additionally, the spectrum of an analysis of optimum moderation that was used is unclear. For example, was it a discrete level of water density going from 0.0 grams per cc to 0.1 grams per cc, etc., through a complete density up to 1 gram per cc, or some other method?

Applicant's Motion for Summary
Disposition of Contention 12a(viii)

Applicant's motion and supporting affidavit requesting summary disposition of this contention do not reveal whether the changes to titanium and muntz metal are in fact the best combination for reducing tube to tube sheet leakage. Nowhere in the FSAR nor in the affidavit is this discussed in a manner that provides assurances that that area has been adequately considered. Considering the past experience of Millstone and other BWR's, it is pertinent to evaluate in some detail the ability of the condensor to protect the primary system from the corrosive effects of sea water. While the Applicant claims to have designed the condensate system so as to provide this protection, it is neither apparent from the FSAR nor from the affidavit, that this is in fact the case. The County also notes a discrepancy between the FSAR (Sec. 10.4.12) and the Karsak affidavit (p.3) regarding the operation of the full

flow condensate demineralizers. It appears from Karcsak's affidavit that only 1 of 8 demineralizers is used in normal operation while the FSAR indicated 7 out of 8 ion exchange condensate demineralizers will be used at one time.

3. The Board Should Issue A Protective Order Relieving the County from Any Obligation to Further Respond to Summary Disposition Motions.

Applicant is, by its own admission, employing the remedy of summary disposition as a means to quicken the pace of these licensing proceedings. But it is not the County who is foot-dragging. Rather, it is Applicant's failure to timely provide needed information to Staff, which, in turn, apparently has contributed to delays in the issuance of the SER. In any event, as demonstrated above, the motions are grossly premature even under the Applicant's own postulated timetable. These motions can only be viewed as an harrassment of the County, unduly burdening it and causing it unnecessary expense. The County respectfully requests that a protective order issue, pursuant to 10 CFR, Sec. 2.740(c), relieving it from any further obligation to respond to motions for summary disposition. This protective order should be effective until a firm hearing date has been set for these proceedings (see, 10 CFR, Sec. 2.749a referring to motions brought before the time fixed for a hearing), or, at a minimum, until the formal discovery period has been completed.

Respectfully Submitted,

Irving Like (ecs)

Irving Like
Special Counsel for the
County of Suffolk

Dated: February 7, 1979

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322
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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 1979, copies of COUNTY OF SUFFOLK'S MOTION IN OPPOSITION TO "APPLICANT'S REQUEST FOR SUMMARY DISPOSITION OF SUFFOLK COUNTY CONTENTIONS 4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a(viii); 14" AND FOR A PROTECTIVE ORDER were sent to the following by first-class, postage pre-paid mail:

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