

July 13, 1981



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))

MOTIONS OF LONG ISLAND LIGHTING COMPANY FOR SUMMARY DISPOSITION
OF SOC CONTENTIONS 1-3, 6(a)(i) AND 12 (PART TWO): OVERVIEW

Each of the Shoreham Opponents Coalition (SOC) contentions listed above is addressed in a separate motion attached to this overview. For the reasons stated in these motions and pursuant to 10 CFR § 2.749, LILCO believes that SOC Contentions 1-3, 6(a)(i) and 12 (part two) can, and should, be resolved without hearings.

I.

COMMISSION EMPHASIS ON SUMMARY DISPOSITION IN LICENSING CASES

The NRC was one of the first agencies to make full use of summary disposition based on affidavits, other documentary evidence and written argument. The Commission has recently

reaffirmed the necessity that summary disposition be used to avoid unnecessary litigation. In a May 20, 1981 "Statement of Policy on Conduct of Licensing Proceedings," the Commission stated:

In exercising its authority to regulate the course of a hearing, the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.

46 Fed. Reg. 28535 (1981).

The NRC repeated a few weeks later that "one means to more efficient decisionmaking is to reduce the possibility that time and resources may be expended by the parties and hearing tribunals in a proceeding on issues that do not involve material factual disputes." 46 Fed. Reg. 30349 (1981). And as was indicated a year ago, "In order to focus litigation of TMI-related issues, the Commission instructs its staff to utilize, to the maximum extent practicable, the Commission's existing summary disposition procedure in responding to TMI-related contentions." 45 Fed. Reg. 41740 (1980).

To these ends, in June 1981 the NRC made summary disposition even more freely available than it had previously been. See 46 Fed. Reg. 30330-31 (1981).

II.

SPECIAL IMPORTANCE OF SUMMARY DISPOSITION IN THE SHOREHAM
PROCEEDING

It is important in all NRC adjudications that § 2.749 be used to resolve alleged controversies not actually involving material factual disputes. Otherwise, evidentiary hearings will take longer and consume more resources than is justifiable, and they will risk becoming mired in trivia, rather than focusing on issues of real significance. Effective use of § 2.749 is particularly important in the Shoreham proceeding for three reasons.

First, nuclear hearings on Long Island have historically taken longer than justifiable, and they have tended to become mired in trivia along the way. Counting state and federal proceedings, the Shoreham CP hearings ran for 91 days over a 2-1/2 year period, and the Jamesport CP hearings took 167 days over three years. Even a cursory review of their massive records shows the disquieting degree to which time was spent on matters of no genuine moment. The Shoreham OL proceeding itself has already been underway for more than five years without as yet reaching hearings. It is crucial that steps be taken during the balance of Shoreham's prehearing process to ensure that, when hearings do begin, they will focus on issues

of genuine significance and sharp disagreement, lest local history be repeated to the detriment of everyone except people interested in delay for delay's sake.

Second, according to the most recent construction schedule, Shoreham will be ready to load fuel by September of next year. The beginning of OL hearings on the plant, however, still seems to be some time away. Thus, given Long Island's hearing history, the potential exists for Shoreham to be physically ready to operate before its OL proceeding has ended. If such an eventuality can be avoided, it obviously should be, lest LILCO continue to burn foreign oil longer than necessary, at great cost to its ratepayers. Again, steps must be taken during what remains of the prehearing process to ensure that hearings, once begun, take no longer than reasonably necessary.

Third, the Shoreham Opponents Coalition entered this proceeding almost four years after the deadline for intervention had passed. SOC's admission, accordingly, was carefully circumscribed by the Board. Its March 5, 1980 Order Ruling on Petition of Shoreham Opponents Coalition stated:

. . .The parties to the proceeding seem to be in basic agreement that admitting SOC would broaden the issues and may delay the proceeding, but they differ with respect to the significance of these matters. . . . We believe that Staff accurately summarized the situation when it said, "**** it is clear that Petitioner's participation in this proceeding will broaden the issues. It

is also quite likely that this participation could delay the proceeding." . . . Staff goes on to suggest how the Board could mitigate delay by requiring Petitioner to take the proceeding as it finds it and restricting its participation to contentions which flow from fresh events. . . .

In considering SOC's contentions we have accepted the suggestions of Staff on a means for mitigating delay. As LILCO correctly points out, formal discovery was set in motion long ago and has followed a tortuous path. . . . If we were to allow SOC to retrace those steps, significant delay would almost certainly result. Therefore, assuming Petitioner successfully cures the defect in its petition and is admitted to intervene, SOC's direct participation will be limited to new issues relating to the accident at TMI or to recently discovered construction defects. Contentions which duplicate those of existing parties or otherwise replot old ground, or which relate to matters that properly could have been raised at the onset of this proceeding will be denied.

Id. at 11-12 (footnote omitted)(emphasis added). Use of the prehearing process (in particular its summary disposition procedure) is especially important to focus and sharpen the claims of an untimely party such as SOC and, whenever feasible, to resolve its claims without the need for hearings.

III.

RIPE CONTROVERSIES

The time for § 2.749 scrutiny and resolution of many of SOC's allegations has come. Discovery began in this proceeding long before SOC intervened. After its intervention, discovery has occurred among SOC, LILCO and the NRC Staff; it was conducted informally at first, and then formally through LILCO's interrogatories of May 21, 1981, to SOC^{1/} and its replies of June 9, and through SOC's interrogatories of June 9 and 24 to LILCO and its replies of June 29 and July 13.

So far as the Staff's review of Shorehan is concerned, the Safety Evaluation Report appeared in April 1981. Its first Supplement is imminent. It is not likely that this Supplement or any successor will bear materially, if at all, on the issues

^{1/} These interrogatories were accompanied by a LILCO Status Report, indicating that:

To determine what factual basis, if any, SOC has developed for its justiciable contentions (initially raised 16 months ago) . . . LILCO is today serving on SOC a set of written interrogatories Once the deadline for answers has passed, it is probable that the Company will seek summary disposition of all or some of SOC's contentions.

LILCO is today serving on SOC further interrogatories concerning several of its contentions not covered by the present summary disposition requests.

covered by the present summary disposition requests. Accordingly, the allegations in question are ripe for resolution.

IV.

RELIEF SOUGHT

A.

For the reasons set out in the attached motions, SOC contentions 1-3, 6(a)(i) and 12 (part two) should be dismissed because, as to each, "there is no genuine issue to be heard."

B.

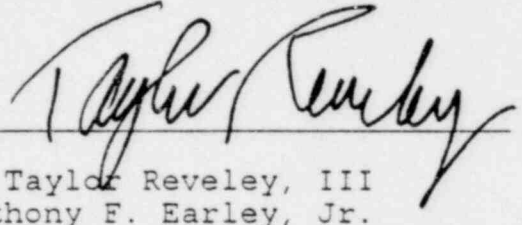
In the alternative, if the Board finds summary disposition inappropriate as to any of the affected contentions, in whole or in part, then LILCO requests that the Board:

- (1) Grant partial summary disposition of those issues about which the Board finds "there is no genuine issue to be heard;"
- (2) Define the remaining issue or issues about which the Board sees a need for further evidence, taking into account the evidence already developed in the attached affidavits and other documents, as well as in the replies of other parties to these motions; and
- (3) Set a schedule for the prompt submission of whatever additional evidence the Board finds necessary, whether by further § 2.749 affidavits and/or by evidentiary hearings.

The considerations set out in Part II above are
compelling.

Respectfully submitted,

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