

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,))
Unit 1))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-322 (O.L.)
(Emergency Planning)

SHOREHAM OPPONENTS COALITION RESPONSE TO BOARD
PROPOSAL OF NOVEMBER 2, 1982 TO CONDUCT
EVIDENTIARY DEPOSITIONS ON EMERGENCY PLANNING

Introduction

It is the Shoreham Opponents Coalition's ("SOC's") understanding (based upon the relevant transcript pages of the hearing conducted on November 2, 1982 and a subsequent Board Order, dated November 9, 1982) that the Licensing Board intends to litigate on-site emergency planning issues through a device characterized as "evidentiary depositions". According to the November 2, 1982 transcript and the Board's November 9, 1982 Order, parties to the on-site emergency planning issues are being told to conduct their cross-examination of the emergency planning witnesses through the use of depositions, outside the presence of the Board. SOC further understands that the parties will then submit the depositions to the Board for the Board's review after indicating on the depositions which portions the respective parties intend to move into evidence. After the Board has reviewed the depositions, the

Board may decide to call one or more witnesses to respond to Board questions and at the Board's discretion, parties may be permitted to ask a limited number of "well-focused and primarily follow-up questions" within reasonably set time limitations. While no party can firmly predict the length of time that would ordinarily be required to litigate the on-site emergency planning issues through a formal hearing process, it is fair to say that the Board's proposal would restrict the actual hearings on on-site emergency planning issues to a day or two at most. For the reasons set forth below, SOC strongly opposes the Board's evidentiary deposition proposal and will decline to participate in any such departure from the hearing process.

Statement of Position

As set forth at page 12,563 of the transcript in this proceeding, the Board has characterized its evidentiary depositions proposal as an "efficiency device":

" . . . It is for efficiency. There is no need for us to sit here while each and every question and answer is asked. We can read the deposition and then bring the witnesses in to follow-up with our questions."

We are, quite frankly, astounded at the Board's cavalier and self-interested view of what we have always thought were formal, public adjudicatory hearings. The Board apparently believes that it would be a waste of the Board's time to sit through several days of "live" testimony on emergency planning issues when the

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Board apparently has more important things to which it could devote its attention. SOC has always believed and 10 CFR §2.751 expressly provides that the litigation of contentions in the Shoreham proceeding would be in a public adjudicatory forum, in the presence of the triers of fact, rather than through the use of depositions with perhaps some formal public hearings if it suits the Board's interest. We have assumed that this long-standing practice of administrative law would be followed in this proceeding unless otherwise ordered by the Commission, which has clearly not happened in this case.

It is undoubtedly true that the Board has opted for evidentiary depositions in lieu of formal adjudicatory hearings in the interests of "efficiency", but we believe that the "efficiency" in this instance is designed to serve the convenience and interests of the Board and the applicant rather than serving the interests of justice and a fair hearing process.

It has been clear to SOC and undoubtedly to other parties, at least since the oral argument on emergency planning issues before the Board on July 20, 1982, that the Board has structured the litigation of emergency planning issues and now intends to conduct the litigation of those issues in a fashion that will ensure a partial initial decision in time to issue a low power license to the applicant in March of 1983. Our fears have been confirmed by a communication from NRC Chairman Palladino to Congress on September

30, 1982 which affirms the March, 1983 decision date.

In view of the extended time necessary for the litigation of the numerous Shoreham safety issues, the Board now realizes that it cannot afford to take the time for formal public adjudicatory hearings on on-site emergency planning issues and still expect to meet its March, 1983 deadline. Instead of adhering to its role as an impartial trier of fact and taking whatever time is necessary to fairly litigate all of the safety issues in the Shoreham proceeding, the Board has instead opted to shortcut that process while at the same time retaining control over all of the issues necessary to support a low power license according to the schedule announced by Chairman Palladino.

Contrary to the Board's apparent disinterest in adjudicating the on-site emergency planning issues and its apparent belief that these issues are of less importance than those safety issues which have been subject to formal adjudicatory proceedings, each of the intervenors in the Shoreham case (as well as the public at large) believes that emergency planning issues are among the most critical, if not the most critical issues in this proceeding. The issues are too important to be subject to arbitrary time limitations or other procedural gimmicks in order to meet LILCO's latest (and undoubtedly still inaccurate) fuel-load date.

We need not speculate here on the possibility that the Board's attempt to shortcut formal evidentiary hearings will

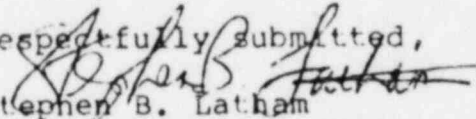
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create more problems, confusion and public skepticism about the licensing process than the Board will save in time through the use of evidentiary depositions. It does occur to us and we do not understand how the Board intends to take note of demeanor in evaluating the credibility of the parties' witnesses, but perhaps the Board has plans to amend that aspect of the fact-finding process as well. LILCO's suggestion (as page 8 of its November 11, 1982 Memorandum on this subject), to the effect that the parties can restage certain portions of the deposition testimony to capture witness demeanor is patently absurd. Perhaps one of the parties will suggest that all of the depositions be video-taped so that the parties can subsequently mark portions of the video-tape where it feels the Board should have a flavor of the demeanor during depositions.

For the above reasons and the reasons set forth by the County in its filing, dated November 8, 1982, SOC will not participate in the Board's proposed evidentiary depositions or in any other ad hoc procedural device which the Board may concoct and which infringes on the public's right to a formal, public adjudicatory proceeding.

SOC similarly declines to travel to Bethesda, Maryland, on November 22, 1982 to argue further on this point in view of SOC's firm belief that all of the public hearings in the Shoreham case should be held on Long Island. The Board can hardly pretend that

the Shoreham hearings are truly "public" as intended by the NRC's regulations when those hearings have been so far removed from the site of the project so as to preclude all but the major institutional parties from attending; so as to preclude members of the public from attending; and so as to preclude members of the press from attending and reporting on events which may interest those who will have to live with the Shoreham project long after the Board has moved onto other matters.

SOC formally requests that any further argument or proceedings in the Shoreham case, particularly those pertaining to the issues of on-site and off-site emergency planning be returned to Long Island. Should the Board wish to reschedule its proposed November 22, 1982 hearing on emergency planning to a site on Long Island, SOC will attend.

Respectfully submitted,

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Dated: Riverhead, New York
November 17, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of SHOREHAM OPPONENTS COALITION RESPONSE TO BOARD PROPOSAL OF NOVEMBER 2, 1982 TO CONDUCT EVIDENTIARY DEPOSITIONS ON EMERGENCY PLANNING, dated November 17, 1982, submitted by the Shoreham Opponents Coalition, in the above captioned proceeding, have been served on the following parties: by Federal Express on Lawrence Coe Lanpher; by hand on those parties whose names are preceded by an asterisk; and on the remainder of the parties by deposit in the United States mail, first class, this 17th day of November, 1982.

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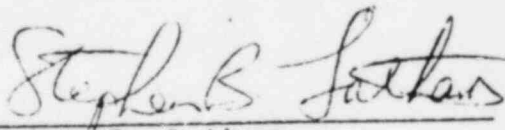
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