

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 (OL)
)
(Shoreham Nuclear Power Station,)
Unit 1))

MOTION OF LONG ISLAND LIGHTING COMPANY
FOR LEAVE TO FILE MOTION FOR SUMMARY
DISPOSITION OF SOC CONTENTION 9(c), AND FOR
LEAVE TO FILE PARTIAL MOTION TO STRIKE
TESTIMONY CONCERNING SOC CONTENTION 9 OUT OF TIME

Long Island Lighting Company (LILCO) respectfully moves for leave to file the attached Motion for Summary Disposition of SOC Contention 9(c) and Motion to Strike Portion of SOC Testimony on Contention 9 (Motion) out of time, to the extent that such Motion is being filed out of time.

The Motion is being filed two days after the filing of cross-examination plans on SOC Contention 9, and with respect to that portion consisting of a motion to strike, it is two days out of time under the Board's pertinent bench order. However, LILCO believes that no substantial prejudice will result from its filing since SOC Contention 9 will not be heard for some time yet, namely, until SC Contention 7B and four subsequent contentions have been heard. Thus, there will likely arise some mutually convenient opportunity to hear

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the motion well before the start of testimony on SOC Contention 9.*

With respect to the portion of the Motion relating to summary disposition, there is no specific Board ruling on the subject, although LILCO agrees with the Board's general observation from the bench this morning that such motions should be filed as early as possible. As is shown in the Motion, it could not have been known until SOC filed its testimony on SOC Contention 9 that SOC would submit testimony limited to subpart (c) of its contention, or that that testimony would rely totally on Regulatory Guide 1.47 as its basis.

In this context, LILCO believes that the appropriate test of timeliness for the motion for summary disposition is stated in the Commission's Rules of Practice at 10 CFR § 2.749(a):

The Board may dismiss summarily motions filed shortly before the hearing commences or during the hearing if the parties or the Board would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

10 CFR § 2.749(a) (1982).** (Emphasis supplied.)

The material facts asserted in the Motion are few and straightforward, as are the propositions of law which LILCO believes entitle it to judgment. No further papers, evidentiary

* In order to minimize inconvenience to SOC, and recognizing the part-time nature of their participation, these papers are being delivered by hand to Mr. Latham's office today.

** A 1981 amendment to § 2.749 removed the former requirement that motions for summary disposition be filed at least 45 days prior to the start of hearing. Compare 10 CFR § 2.749(a) (1981).

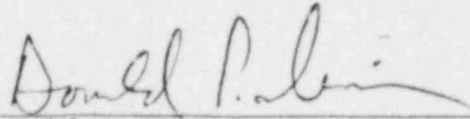
or otherwise, are necessary for SOC to prepare to answer the Motion satisfactorily. Further, SOC is not required to be at the hearing on a daily basis. There is then no need for the Board or any party to "divert substantial resources from the hearing" in order to respond adequately to the Motion. The Motion should thus be heard and decided on the merits.

There is an additional reason for resolving the issues contained in the Motion prior to hearing. At various times during this hearing, it has become apparent through the differing scopes of prefiled testimony and cross-examination that the parties' understandings of issues as stated in contentions have not necessarily been congruent. To a certain extent such confusion is probably unavoidable, and can be dealt with only after the filing of prefiled testimony. While settlement negotiations are an important means of resolving and narrowing issues, and are being systematically pursued among the parties, they can be, and often must be, supplemented by preliminary motions to clarify the scope of issues actually in dispute. Pleadings such as the attached Motion are intended to help serve the purpose of narrowing and clarifying issues, with the goals of reducing hearing time and thus conserving the Board's and the parties' resources, and of lessening potential confusion in the record.

For the above reasons, LILCO moves that the Board permit the filing of the attached Motion.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

A handwritten signature in dark ink, appearing to read "Donald P. Irwin", written over a horizontal line.

Donald P. Irwin

Hunton & Williams
Post Office Box 1535
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DATED: June 17, 1982

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

I certify that copies of "Motion of Long Island Lighting Company for Leave to File Motion for Summary Disposition of SOC Contention 9(c), and for Leave to File Partial Motion to Strike Testimony Concerning SOC Contention 9 Out of Time" were served upon the following by first-class mail, postage prepaid, on June 17, 1982, or by hand on June 17, 1982 (as indicated by an asterisk), on:

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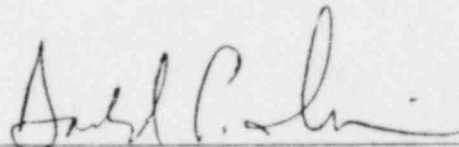
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