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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Morton B. Margulies, Chairman
Dr. George A. Ferguson
Dr. Jerry R. Kline

DOCKETED
USNRC

'91 JUN -7 P3:43

OFFICE OF SECRETARY
JULY 10 1991

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

) Docket No. 50-322-OLA

) ASLB. No. 91-621-01-OLA

) (Confirmatory Order Modifica-
) tion, Security Plan Amendment
) and Emergency Preparedness
) Amendment)

MOVANT-INTERVENORS' MOTION FOR CHANGE OF VENUE
OF THE PREHEARING CONFERENCE

The Movant-Intervenors Shoreham-Wading River Central School District ("School District") and Scientists and Engineers for Secure Energy, Inc. ("SE₂"), by counsel, hereby move the Atomic Safety and Licensing Board ("ASLB") to change the venue^{1/} for the prehearing conference currently scheduled for July 23, 1991 in the above-captioned matter from Haupauge, New York, to the Washington, D.C. area for the convenience and economy of the participants and the ASLB itself since Nuclear Regulatory Commission ("NRC") policy does not indicate that such hearings must, or even should, be held in the vicinity of the licensed activity. Undersigned counsel for

^{1/} The ASLB has wide discretion in establishing the venue of the hearing pursuant to 10 C.F.R. § 2.718(e) (1991). The Commission will only reverse the ASLB's choice of venue for the hearing if it believes "that the board has abused its discretion in" the choice of the venue for a hearing. Consolidated Edison Company of New York (Indian Point, Unit 2) et al., CLI-82-15, 16 NRC 27, 37-38 (1982).

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the School District and SE₂ is informed (1) by NRC counsel Mitzi A. Young, Esq., that the NRC Staff takes no position on this motion and (2) by the licensee's counsel Donald P. Irwin, Esq. and amicus curiae Long Island Power Authority's ("LIPA") lead counsel Carl R. Schenker, Jr., Esq., that they will inform the ASLB of their positions after reviewing the motion in writing.^{2/}

The School District and SE₂ recognize that "[i]t is the Commission's policy and practice to begin the evidentiary hearing in the vicinity of the site of the proposed facility." 10 C.F.R. Part 2, App. A.I.(a) (1991) (emphasis added). That statement suggests that this NRC "policy and practice" does not apply to any hearings except the (a) initial ("begin"), (b) "evidentiary" hearing on a (c) "proposed facility." The prehearing conference is not an evidentiary hearing, much less an initial evidentiary hearing, and, in this case, it does not address issues related to a "proposed facility," but a fully licensed facility. Thus, the policy does not indicate that the prehearing conference should be held in the vicinity of the Shoreham facility.

The prehearing conference is not an "evidentiary" hearing, but will consist of merely legal argument. In denying a petition for rulemaking to require, among other things, that "all hearings and NRC-licensee/applicant meetings be held at a site and at times which will maximize attendance by a majority of the

^{2/} Others identified on the service list were not contacted because they have not participated in proceedings before the ASLB in these matters.

persons potentially affected," the Commission noted that "[a]ppellate oral arguments in adjudicatory proceedings are, however, generally heard in Washington, D.C. area." Citizens Advisory Board of the Metropolitan Area Planning Council for Omaha, Nebraska, and Council Bluffs, Iowa, DPRM-81-1, 13 NRC 429, 441 (1981). Since the prehearing conference will be devoted solely to legal argument, it is much more akin to appellate oral argument than an evidentiary hearing. Thus, the site of the prehearing conference^{3/} is more appropriate to the Washington, D.C. area than to Hauppauge, New York.

And there is ample precedent for conducting prehearing conferences in the Washington, D.C. area rather than near the reactor site even in the case of "proposed" facilities. E.g., Houston Lighting and Power Company, et al., ALAB-86-15, 23 NRC 595, 609 (Phase II), 610 (Phase III) & 680 (Phase II) (1986); Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-488, 8 NRC 187, 1889-89 & n.4 (1978).

Further, since there is no compelling reason to hold the hearing near the facility in question, "the governing consideration in determining the place of this hearing both can and should be the convenience of those who will play a direct role in it" Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 1 and 2) et al., ALAB-556, 10 NRC 527, 531 (1979)

^{3/} Prehearing conferences can even be conducted by telephone. E.g., Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3) et al., ALAB-562, 10 NRC 437, 448 (1979).

(where another consideration was the fact that the hearing involved four different plants).

Given that the service addresses for two members of the ASLB are Washington, D.C., and the third member's address is Columbia Beach, Maryland, it appears that the Washington, D.C. area would be significantly more convenient for all ASLB members than Haupauge, New York. In addition, counsel for the NRC Staff, lead counsel for amicus curiae LIPA, and counsel for the School District and SE₂ also maintain their offices in the Washington, D.C. area; and lead counsel for the licensee, Long Island Lighting Company ("LILCO") is located in Richmond, Virginia and has offices in Washington, D.C. Thus, it would appear that the convenience of all persons concerned with the prehearing conference would be much better served by holding that prehearing conference in the Washington, D.C. area than in Haupauge, New York.

And holding that prehearing conference in the Washington, D.C. area would accomplish a significant economic savings for the licensee, the United States Government, the state political subdivision intervenor School District, and the non-profit organization intervenor SE₂ as well as amicus curiae LIPA (which has had its State funding totally eliminated) by eliminating costly travel, housing and related expenses, as well as allowing the more efficient utilization of time by all concerned, including both the elimination of travel days that would otherwise be spent in useful Government service and a reduction in legal fees that would

otherwise be incurred during travel time for the non-federal government participants.

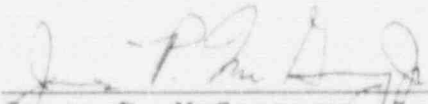
Although the School District and SE₂ recognize that such expenditures may^{4/} be necessary if the ASLB decides to hold evidentiary hearings on Long Island, New York, in the future, travel and related expenses for a prehearing conference in Hauppauge would constitute an economic hardship for the School District and SE₂ without serving a substantial public interest.

4/ The School District and SE₂ emphasize "may" because even evidentiary hearings on "proposed" nuclear power plants may be held in the Washington, D.C. area rather than near the site of a proposed plant. E.g., Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), LBP-78-34, 8 NRC 470, 482 (1978); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), LBP-78-16, 7 NRC 811, 814 (1978); Consolidated Edison Company of New York, Inc., et al. (Indian Point, Units 1, 2, and 3), ALAB-436, 6 NRC 547, 550 (1970) (six days of hearings); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 & 5), LBP-77-49, 6 NRC 257, 260 (1977); Commonwealth Edison Company (Byron Station, Units 1 and 2 and Braidwood Station, Units 1 and 2), LBP-75-74, 2 NRC 972, 974 (1975). Thus, the School District and SE₂ hope that the ASLB will also give serious consideration to holding future hearings in the Washington, D.C. area.

WHEREFORE, the School District and SE₂ urge the ASLB to change the venue of the scheduled prehearing conference to the Washington, D.C. area.

Respectfully submitted,

June 4, 1991



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD⁹¹ JUN -7 P3:43

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Modification, Security Plan
Amendment and Emergency
Preparedness Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Movant-Intervenor's Motion for Change of Venue of the Prehearing Conference in the above-captioned proceeding have been served on the following by first-class mail, postage prepaid on this 4th day of June, 1991:

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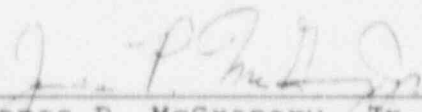
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