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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND
LICENSING APPEAL BOARD

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

UTILITY SAFETY CLASSIFICATION GROUP'S
MOTION TO FILE BRIEF AMICUS CURIAE

I. INTRODUCTION

The Utility Safety Classification Group is an ad hoc group of thirty-eight utilities formed to address the safety classification issue. The Utility Group members are:

Arkansas Power & Light Co.
(representing also Mississippi Power &
Light, and Louisiana Power & Light)
Baltimore Gas & Electric Co.
Cincinnati Gas & Electric Co.
Cleveland Electric Illuminating Co.
Commonwealth Edison Co.
Consolidated Edison Company of New York
Consumers Power Co.
Detroit Edison Co.
Florida Power Corp.
Florida Power & Light Co.
Gulf States Utility Co.
Illinois Power Co.
Long Island Lighting Co.
Nebraska Public Power District
Niagara Mohawk Power Corp.
Northeast Utilities Service Co.
Northern States Power Co.

Omaha Public Power District
Pacific Gas & Electric Co.
Pennsylvania Power & Light Co.
Public Service Company of Indiana
Public Service Company of New Hampshire
 (representing also the Yankee Atomic Electric
 Power Company, Maine Yankee Atomic Power Co.,
 and Vermont Yankee Nuclear Power Co.)
Public Service Electric & Gas Co.
Rochester Gas & Electric Corp.
Southern California Edison Co.
Sacramento Municipal Utility District
SNUPPS
 (representing Union Electric Co., Kansas Gas &
 Electric Co., Kansas City Power & Light Co.,
 and Kansas Electric Power Coop., Inc.)
Toledo Edison Co.
Wisconsin Electric Power Co.
Wisconsin Public Service Corp.

Pursuant to 10 CFR § 2.715(d), the Utility Safety Classification Group ("Utility Group") asks permission to file a brief amicus curiae supporting the position of Long Island Lighting Company ("LILCO") in this proceeding. The Utility Group's amicus brief will address the proper interpretation and application of the regulatory terms "important to safety" and "safety related." As demonstrated below, the Atomic Safety and Licensing Appeal Board's (Appeal Board) ruling on this issue will have a substantial effect on the Utility Group's licensing and operation of nuclear reactors. Moreover, the Utility Group's amicus brief will aid the Appeal Board's resolution of this issue in a number of important respects. First, the amicus brief will provide a broader view than would otherwise be

available of the historical interpretation and application of these terms. Second, the amicus brief will provide an analysis of the adverse effects on the entire industry which would result if the NRC were now to abandon the long-standing interpretation of these terms.

II. THE UTILITY GROUP'S INTEREST IN THESE PROCEEDINGS

The Utility Group's thirty-eight members have over seventy nuclear reactors currently in operation or under construction. These plants have all been designed and built in accordance with the NRC's regulations. Those plants now operating also are governed by NRC regulations. In applying the appropriate NRC regulations to the design, construction and operation of their plants, the utilities in this Group interpreted the terms "important to safety" and "safety related" as synonymous.^{1/} This interpretation has been repeatedly recognized and sanctioned in NRC licensing actions, and the NRC has used this interpretation in its own regulations and regulatory guidance.

^{1/} Wherever the non-regulatory term "safety grade" was used in design, construction and operation of nuclear plants, it, too, was and is considered equivalent to "safety related."

The Utility Group's interest in the outcome of this proceeding is acute because the Shoreham Licensing Board imposed upon LILCO as a license condition a definition of "important to safety." A number of Utility Group members own plants that are currently awaiting operating licenses. Given the generic applicability of the reasons stated by the Licensing Board for imposing a license condition on Shoreham, it is possible that other plants may receive licenses with similar conditions. As the Group's brief will show, it is likely that will result in imposing new requirements on Group members without any effective means to be heard on the issue. Moreover, the vagueness and lack of guidance in the condition imposed by the Licensing Board makes it impossible for Group members to know what will be required of them. These problems raise significant due process questions.

Notwithstanding the license condition, the importance to Utility Group members of the interpretation of important to safety is obvious. Throughout the NRC's regulations, certain requirements and standards are imposed on structures, systems and components that are "safety related" or "important to safety." Expansion of the term "important to safety" beyond "safety related" to include some undefined set of structures, systems and components would expand in unexamined ways the

requirements to which the Utility Group's nuclear plants are subject.^{2/} Given the extensive use of the term "important to safety" in the NRC's regulations, this impact might be substantial and far reaching.

III. THE UTILITY GROUP'S AMICUS BRIEF IS
ESSENTIAL TO A RATIONAL DECISION
IN THESE PROCEEDINGS

The Utility Group's amicus brief will provide the information that should be considered in making a decision that will affect the entire nuclear power industry. For example, the manner in which these terms have been historically interpreted and applied by NRC and the industry is a crucial issue in these proceedings. The amicus brief will provide important information concerning the long-standing industry licensing and operating experience that is necessary to make this determination. In particular, the Utility Group will confirm that the industry's and the NRC's interpretation that "important to safety" and "safety related" are synonymous has been clear and unambiguous. Only recently has the NRC Staff suggested that

^{2/} The Utility Group recognizes that the NRC has regulated certain aspects of non-safety related structures, systems and components in the past. The change in the definition of important to safety, however, would expand the scope of many regulations to the non-safety related area without appropriate procedures and without any evidence that a real safety concern exists.

the two terms are not equivalent. This information is crucial in the application of the accepted rules for interpretation of agency regulations under the Administrative Procedure Act and related case law.

The amicus brief will also explain the adverse effects on all types of nuclear power plants if the NRC abandons the historical interpretation and application of important to safety in licensing the Shoreham plant. This explanation will include a discussion of the adverse effects a new interpretation of the term would have on operating plants. These adverse effects on operating plants would not otherwise be adequately considered in the Shoreham proceedings, which involve only the licensing of a new plant but which will affect all nuclear plants. Moreover, part of the adverse impact involves the need to expend resources to demonstrate compliance with the changed regulatory definition. Since LILCO was required to bear this burden as part of the searching inquiry on the safety classification issue conducted in the Shoreham case, no separate consideration was given to this aspect of the issue. The impact of the diversion of finite resources to conduct an inquiry such as that done for Shoreham on every nuclear plant would be significant and needs to be considered by the Appeal Board.

Also, if the Appeal Board is to engage in essentially a policy-making decision involving the appropriate scope of the NRC's regulations, it needs to be aware of other initiatives underway to determine whether a need to expand the definition of important to safety exists. The Utility Group will address industry's efforts to determine whether a need does exist to expand the NRC's regulatory authority and, if so, precisely how and in what discrete areas it should be accomplished.

By demonstrating the entire range of industry-wide effects that would result from reversing the historical interpretation and application of the term "important to safety," the Utility Group's amicus brief will also demonstrate the impropriety of making such a major, far-reaching regulatory change in the context of just one plant's licensing proceedings. The amicus brief will, therefore, be invaluable in deciding the crucial issues (1) whether the NRC can change its interpretation of the terms "important to safety" without first justifying that change through the record developed by an informal rulemaking under the Administrative Procedure Act, and (2) whether the NRC should change its interpretation of a regulatory term in an individual licensing case even if it has the power to do so.

IV. CONCLUSION

For the foregoing reasons, the Appeal Board should permit the Utility Group to file a brief amicus curiae in the Shoreham proceedings no later than December 23, 1983, the date on which LILCO's brief is due. This brief will not exceed seventy (70) pages in length. If possible, the Utility Group would appreciate a ruling from the Appeal Board on this request by December 19, 1983. Thus, we ask that the Appeal Board set an appropriate schedule for the responses of the parties, if any.

Respectfully submitted,

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OFFICE OF SLURRY
DOCKETING & SERVICE
BRANCH

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

NOTICE OF APPEARANCE

Please note the appearance of the undersigned, who has been admitted to practice law before the Supreme Court of Virginia, as one of the counsel for the Utility Safety Classification Group in the above-captioned docket.


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DATED: December 9, 1983

CERTIFICATE OF SERVICE

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(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322 (OL)

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I hereby certify that copies of Utility Safety
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