

DOCKETED
USNR 1/11/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 JAN 13 A11:08

Before the Atomic Safety and Licensing Appeal Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-322-OL

SUFFOLK COUNTY RESPONSE TO LILCO MOTION
TO STRIKE CERTAIN REFERENCES IN SUFFOLK COUNTY'S BRIEF

By Motion dated January 5, 1984, LILCO moved to strike from Suffolk County's brief on appeal certain references to its briefs of January 31, April 7, and May 9, 1983, which had been filed with the Licensing Board. See LILCO's Motion to Strike Certain References in Suffolk County's Brief, January 5, 1984. LILCO alleges that the references listed in Attachment 1 to the LILCO Motion constitute an improper attempt to incorporate by reference portions of the County's Licensing Board briefs. Pursuant to the Appeal Board's Order, dated January 6, 1984, Suffolk County now files this response and submits: (a) LILCO's Motion should be denied; and (b) even if the Board were inclined to agree with LILCO's argument, the proposed relief -- the striking of references -- is too severe and, instead, the alleged defect in the County's brief can be remedied by simply supplying the Appeal

D503

Board and the parties with the references to the underlying record.

A. LILCO's Motion Should Be Denied

LILCO has alleged baldly that all the references in the County's December 23, 1983 ALAB brief which are listed in Attachment 1 to the LILCO Motion constitute improper attempts to incorporate material by reference in violation of guidelines established by ALAB decisions. LILCO does not attempt, however, in any instance to provide any supporting explanation for this bald assertion. Thus, in essence, LILCO has filed a motion making unsupported allegations and expects the County to have to respond in detail to it. The County submits that LILCO's Motion does not comply with 10 C.F.R. §§ 2.730(b) and 2.732 and should be denied on its face.

Suffolk County has reviewed the references set forth in Attachment 1 to LILCO's Motion. As documented in Attachment 1 of this response, most of the references do not constitute at all attempts to incorporate by reference portions of earlier briefs. Thus, for reasons specified in Attachment 1 hereto, LILCO's Motion clearly must be denied as to these references.

B. LILCO's Remedy is Improper

LILCO asks that all references listed in Attachment 1 to the LILCO Motion be stricken. This "remedy" is not proper.

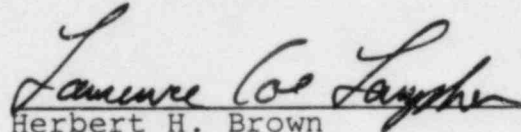
The County agrees that several of the references listed by LILCO arguably do constitute incorporations by reference. However, the proper remedy is not to strike those references but, rather, is to ask the County to supply the underlying record

references. See Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 127 (1977).^{1/}

The County has voluntarily set forth in Attachment 1 hereto the underlying record citations for those references which arguably constitute instances of incorporation by reference. The County does this in order to end needless further dispute on this matter, although it does not agree that even this "remedy" is required. See footnote 1. With these references supplied, the County submits that all possible appropriate relief has been provided and, accordingly, the LILCO Motion should be denied.

Respectfully submitted,

David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Lawrence Coe Lanpher
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Attorneys for Suffolk County

January 11, 1984

^{1/} In Wolf Creek the Appeal Board did not even require the references to be supplied, noting that "[i]t should not be particularly burdensome for the staff and the applicants to consult the earlier Coalition filing." Id. The same is true in this instance, particularly since LILCO has almost two months from now in which to submit its brief. As noted in the text, however, the County has submitted those references voluntarily.

Page in SC Brief	SC Findings Which LILCO Alleges Have Been Incorporated by Reference	<u>County Response</u>
6	County Findings, 5/9/83, at 37-49	Not an incorporation by reference at all. Rather this is citation to earlier Findings and to PID in support of the County's assertion that the ASLB improperly failed to address an issue raised in proceeding. Such a citation to the Findings is proper to document inadequate ASLB consideration of issues which have been raised.
14	<u>Id.</u> at 79-82	This arguably does constitute an incorporation by reference. The underlying citations are as follows: Goldsmith et al., ff. Tr. 1114, at 34-39; Tr. 1642-43, 1645-46, 1732-33, 1312-13 (Goldsmith); Tr. 4446, 4794-95, 4824 (Dawe); Burns et al., ff. Tr. 4346, at 141-43, 146-48; Tr. 4760, 4766, 4769 (McGuire); Tr. 7475-80 (Kirkwood); Tr. 7482-84 (Speis); Tr. 7128 (Hodges); Tr. 1737 (Hubbard); Tr. 6528-29 (Rossi); Tr. 4785-88, 4797-98, 4802 (Robare); Speis et al., ff. Tr. 6357, at 20, 22, 27.
14	<u>Id.</u> at 80-82	Not an incorporation by reference at all. Reference to earlier Findings was in support of argument that ASLB had mischaracterized what the County's position was. Reference to Findings was appropriate means to demonstrate County's position and ASLB's mischaracterization of it.
17	County Findings, 1/31/83, Vol. I, at 121-26	Not an incorporation by reference at all. Rather, detailed citations to record are provided. In addition, the County has cited its brief of findings under a "see generally" category, thus making clear that this was an additional reference for the ALAB's benefit in the event it desired to know what was argued before the ASLB.

- 26 Id. at 215-40 Not an incorporation by reference. Detailed citations to PID are provided. Citations to County Findings are in addition to the PID findings and thus are helpful references to permit the ALAB to know what was argued before the ALAB.
- 27 Id. at 245-49 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- Burns et al., ff. Tr. 4346, at 102;
Goldsmith et al., ff. Tr. 1114, at 67-68;
Tr. 5666-67, 5731-32, 6150 (Burns);
SC Ex. 22, at 2-34;
Tr. 6462, 6629, 6654-57 (Thadani);
Tr. 7510-12, 7143-44, 7147 (Conran).
- 50 County Findings, 4/7/83,
 Vol. I, at 33-39 Not an incorporation by reference at all. Citation is in context of assertion that County raised an issue before the ASLB but the ASLB did not specifically consider it. Citation is for purpose of documenting fact that the issue was specifically raised.
- 56 Id. at 59-71 Not an incorporation by reference. Reference to Findings was to provide only an example. At any rate, since reference is to housekeeping deficiencies, the lack of citations at page 56 of brief is of no importance since detailed record citations on housekeeping deficiencies are provided at pages 62-67.
- 58 Id. at 28-33 Not an incorporation by reference at all. Rather, the citation to the County findings was in context of pointing out that the County had made specific arguments which the ASLB had never addressed. The citation to findings in this context is proper to show that ASLB had not provided a properly articulated decision which responds to arguments which specifically were raised.

- 63 Id. at 67-68 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- SC Ex. 66, Field Audit 1086, Finding 4.2,
Field Audit 1275, Finding 4.1, Field Audit
1325, Findings 3.1, 4.1;
SC Ex. 56, FQC Audit 34, Finding N.2.C, FQC
Audit 40, Finding 13(A)(5).
- 103 Id. at 166 This arguably does constitute an incorporation by reference. The underlying citation is as follows:
- Tr. 19,707-08 (Minor).
- 103 Id. at 168 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- Minor, ff. Tr. 19665, at 6; Tr. 19,709 (Minor).
- 104 Id. at 168-69 Reference to County Findings may be deleted.
- 104 Id. at 167-68 Reference to County Findings may be deleted.
- 111 County Findings, 1/31/83,
Vol. II, at 21-24, 26-27 Not an incorporation by reference at all. Rather, this is another instance where ASLB has failed to address specific arguments raised by the County. Reference to Findings is appropriate to document fact that specific arguments were made.
- 112 Id. at 22 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- Tr. 9028 (Hodges, Calone); Tr. 9029, 9223
(Calone); Calone et al., ff. Tr. 8870,
(Attachment 1), at 1-3.

- 112 Id. at 26 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- Tr. 9060-64, 9070-71 (Hodges).
- 113 Id. at 23 This arguably does constitute an incorporation by reference. The underlying citations are as follows:
- Tr. 8239-42 (Eckert); Tr. 6161-62 (Kascsak).
- 115 Id. at 34-36 Not an incorporation by reference but rather a reference in support of statement regarding what the County had argued. Thus, a reference to Findings to document what County had argued was entirely proper.
- 116 Id. at 34 Not an incorporation by reference. Rather, the County asserts that ASLB misstated the issue in its PID. To support this assertion, it is entirely proper for the County to cite to its Findings to document what the issue was which the County framed for decision.

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 O.L.
)
)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY RESPONSE TO LILCO MOTION TO STRIKE CERTAIN REFERENCES IN SUFFOLK COUNTY'S BRIEF, dated January 11, 1984, have been served to the following this 11th day of January 1984 by U.S. mail, first class, except as otherwise indicated.

Lawrence J. Brenner, Esq.
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ralph Shapiro, Esq.
Cammer and Shapiro
9 East 40th Street
New York, New York 10016

Dr. George A. Ferguson
Administrative Judge
Atomic Safety and Licensing Board
School of Engineering
Howard University
2300 6th Street, N.W.
Washington, D.C. 20059

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, New York 11801

W. Taylor Reveley, III, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dr. Peter A. Morris
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Mr. Brian McCaffrey
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Jeff Smith
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

David J. Gilmartin, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Bernard M. Bordenick, Esq.
David A. Repka, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart Diamond
Environment/Energy Writer
NEWSDAY
Long Island, New York 11747

Stephen B. Latham, Esq.
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Hon. Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Ezra I. Bialik, Esq.
Assistant Attorney General
Environmental Protection
Bureau
New York State Department
of Law
2 World Trade Center
New York, New York 10047

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jonathan D. Feinberg, Esq.
Staff Counsel
New York State Public
Service Commission
3 Rockefeller Plaza
Albany, New York 12223

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Alan S. Rosenthal, Chairman*
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gary J. Edles*
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Howard A. Wilber*
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

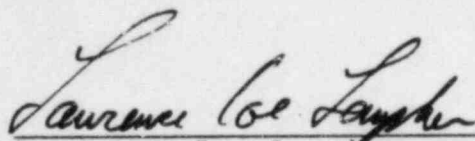
Dr. Peter F. Riehm
KMC, Inc.
801 18th Street, N.W.
Washington, D.C. 20006

Anthony F. Earley, Jr., Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Bruce L. Harshe
Consumers Power Company
1945 W. Parnall Road
Jackson, Michigan 49201

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Ben Wiles, Esq.
Assistant Counsel to the
Governor
Executive Chamber
State Capitol
Albany, New York 12224


Lawrence Coe Lanpher
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

DATE: January 11, 1984

* By Hand on 1/12/84