

145
LILCO, March 18, 1985

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 MAR 20 11:17

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Commission

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-4
) (Low Power)
(Shoreham Nuclear Power Station,)
Unit 1))

LILCO RESPONSE TO INTERVENORS' RENEWED
REQUEST FOR SUPPLEMENTATION ON SHOREHAM EIS

On March 4, 1985, the State of New York and Suffolk County (Intervenors) again requested the Commission to prepare a supplemental environmental impact statement (EIS) for low-power operation of the Shoreham plant. Intervenors premise their latest request on an alleged change of circumstance resulting from a decision by Judge Geiler of the New York State Supreme Court on Intervenors' petition for a declaratory judgment on the legality of certain aspects of the Shoreham emergency plan. While couched in terms of changed factual circumstances, Intervenors' request also invites the Commission to rethink its earlier decision not to supplement the Shoreham EIS. Such reconsideration is unnecessary; Intervenors' "changed circumstances" do not compel a supplementation of the Shoreham EIS.

Under the doctrine of res judicata, the Commission need not revisit the legal judgments it articulated in response to

Intervenors' earlier request for a supplemental Shoreham EIS. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-9, 19 NRC 1323 (1984).^{1/} There, the Commission found that "uncertainty about the ultimate disposition of contested offsite emergency planning issues is too speculative to be cognizable as a changed circumstance for the purpose of finding that a supplementary environmental evaluation is required by NEPA." 19 NRC at 1327. The Commission recently revisited and reaffirmed this filing in CLI-85-01, at 4-5. Accordingly, the question to be answered with regard to Intervenors' renewed request is simply whether Judge Geiler's decision represents the ultimate disposition of emergency planning issues. Even a cursory review of that decision reveals it is not.

Judge Geiler's decision addresses only whether New York State law permits LILCO to perform certain aspects of the Shoreham emergency plan. It does not judge whether that plan complies with NRC planning requirements -- a decision that rests with the Licensing Board; nor does it address the more comprehensive legal question of whether the Atomic Energy Act

^{1/} Should the Commission decide to revisit the legal judgments it reached in CLI-84-9, LILCO's analysis of those issues can be found in LILCO's Reply to the Answer and Opposition of Suffolk County to LILCO's Motion for a Low-Power Operating License, pp. 10-20 (July 18, 1983), LILCO's Reply Brief in the Appeal of the Licensing Board's Partial Initial Decision, pp. 115-119 (March 2, 1984), and Response of LILCO to Emergency Motion for Stay, D.C. Cir. No. 85-1042, pp. 14-16, 31-35, 74-82 (February 20, 1985).

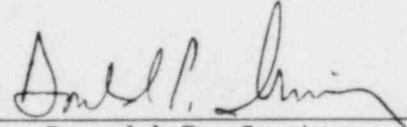
preempts the restrictive operation of New York State law -- a question that is still before the Licensing Board as well as other forums. Indeed, Judge Geiler's decision may not even be a definitive statement on New York State law since that decision will be appealed to higher New York State courts.

Thus, emergency planning issues have not been resolved and nothing relevant has changed since the Commission's earlier decision. Intervenors' continued speculation about the outcome of emergency planning issues does not warrant the preparation of a supplemental EIS for the Shoreham plant.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By



Donald P. Irwin
Robert M. Rolfe
Lee B. Zeugin

Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

DATED March 18, 1985

LILCO, March 18, 1985

CERTIFICATE OF SERVICE

DOCKETED
USNRC

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-4 (Low Power)

'85 MAR 20 AM 1:17

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that copies of LILCO Response to Intervenor's Request for Supplementation on Shoreham EIS were served this date upon the following by U.S. mail, first-class, postage prepaid or by hand (as indicated by one asterisk) or by Federal Express (as indicated by two asterisks).

Chairman Nunzio J. Palladino*
United States Nuclear
Regulatory Commission
1717 H Street
Washington, DC 20555

Commissioner James K. Asselstine*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Frederick M. Bernthal*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Thomas M. Roberts*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Commissioner Lando W. Zech, Jr.*
United States Nuclear
Regulatory Commission
1717 H Street, N.W.
Washington, DC 20555

Alan S. Rosenthal, Chairman*
Atomic Safety and Licensing
Appeal Board, United States
Nuclear Regulatory Commission
Fifth Floor (North Tower)
East West Towers
4350 East-West Highway
Bethesda, Maryland 20814

Gary J. Edles*
Atomic Safety and Licensing
Appeal Board, United States
Nuclear Regulatory Commission
Fifth Floor (North Tower)
East West Towers
4350 East-West Highway
Bethesda, Maryland 20814

Howard A. Wilber*
Atomic Safety and Licensing
Appeal Board, United States
Nuclear Regulatory Commission
Fifth Floor (North Tower)
East West Towers
4350 East-West Highway
Bethesda, Maryland 20814

Judge James L. Kelley,*
Chairman, Atomic Safety
and Licensing Board
United States Nuclear
Regulatory Commission
Fourth Floor
East-West Towers (West Tower)
4350 East-West Highway
Bethesda, MD 20814

Judge Glenn O. Bright*
Atomic Safety and Licensing
Board, United States
Nuclear Regulatory Commission
Fourth Floor
East-West Towers (West Tower)
4350 East-West Highway
Bethesda, MD 20814

Judge Elizabeth B. Johnson**
Oak Ridge National Laboratory
Building 3500
P.O. Box X
Oak Ridge, TN 37830

Edwin J. Reis, Esq.*
Bernard M. Bordenick, Esq.
Office of the Executive
Legal Director
United States Nuclear
Regulatory Commission
Maryland National Bank Building
7735 Old Georgetown Road
Bethesda, MD 20814

Herbert H. Brown, Esq.**
Alan R. Dynner, Esq.
Lawrence Coe Lanpher, Esq.
Kirkpatrick & Lockhart
8th Floor
1900 M Street, N.W.
Washington, DC 20036

Fabian Palomino, Esq.**
Special Counsel to the Governor
Executive Chamber, Room 229
State Capitol
Albany, NY 12224

James B. Dougherty, Esq.
3045 Porter Street
Washington, DC 20008

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, NY 11788

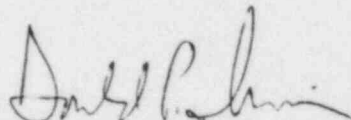
Stephen B. Latham, Esq.
John F. Shea, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, NY 11901

The Honorable Peter Cohalan
Suffolk County Executive
County Executive/
Legislative Building
Veterans Memorial Highway
Hauppauge, NY 11788

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

Mr. Martin Suubert
c/o Congressman William Carney
1113 Longworth House Office
Building
Washington, DC 20515

Docketing and Service
Branch (3)
Office of the Secretary
United States Nuclear
Regulatory Commission
Washington, DC 20555


Donald P. Irwin

Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

DATED: March 18, 1985