

May 8, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Appeal Board <sup>85</sup> MAY -8 P4:01

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )

Docket No. 50-322-OL-3  
(Emergency Planning)

SUFFOLK COUNTY AND STATE OF NEW YORK MOTION  
FOR ADJUSTMENT OF BRIEF FILING REQUIREMENTS

By Notice of Appeal dated May 8, 1985, Suffolk County and the State of New York have indicated their intention to appeal those portions of the ASLB Partial Initial Decision on Emergency Planning (LBP-85-12) (hereafter "PID"), which were decided adversely to County and State positions. The purpose of this Motion is to request that the Appeal Board:

(a) Alter the permissible length of the appellant briefs from the 70 pages specified in 10 CFR § 2.762(e) to 165 pages; and

(b) Alter the time for the filing of appellant briefs from 30 days after the filing of a notice of appeal (10 CFR § 2.762(b)) to 56 days after the filing of such a notice.

8505070598 850508  
PDR ADOCK 05000322  
G PDR

DS03

Suffolk County and the State of New York would normally each be entitled to file a separate 70-page brief. However, as has been done in the past, the State and County intend to combine their views in a single brief so that a focused appeal can be presented. In these circumstances, a brief in excess of 70 pages should be permitted as a matter of course so as not to penalize the State and County for their efforts to coordinate their appeal. However, in the particular circumstances described below, the specific relief requested herein should be granted.

Preparing a focused appeal of the PID is certain to be a complex and time-consuming task. The Shoreham emergency planning proceeding was extremely complex, involving multiple issues and a record well in excess of 20,000 pages of transcript, prefiled testimony and exhibits. The PID is itself 427 pages long and includes findings on about 50 contentions, most of which have many subparts.

Suffolk County and the State of New York are still in the process of reviewing the PID to determine precisely which issues will be addressed in detail in our brief. As of this time, however, it appears that the issues likely to be appealed can be divided conceptually into three groups: (a) those on which the ASLB ruled entirely in favor of LILCO; (b) those on which there was a "split decision," i.e., a ruling in part for LILCO and in part for the County and State; and (c) those on which there was a ruling in favor of the County and State but the ASLB (improperly

in our view) left the resolution of noted deficiencies to be monitored and approved by the NRC Staff. In addition, our appeal may also include procedural issues dealing with pretrial and other ASLB rulings that affected the County's and State's substantive rights. While the largest number of issues will likely fall in the first category,<sup>1</sup> there will also be a significant number of appeal issues in the second, third, and procedural categories.<sup>2</sup>

The 70-page limit for a brief which must deal with such a large number of issues is simply not adequate. Indeed, even if some specific issues ultimately are not included in the appeal, it seems likely that 13 of the 16 major categories of issues (the Roman numeral issue categories addressed in the PID, see, e.g., I (Human Behavior), II.A (Conflict of Interest), etc.) will need to

---

<sup>1</sup> In the first category of issues, the County/State appeal brief will need to address contentions dealing with evacuation shadow, role conflict, LILCO's credibility, notification and mobilization of emergency workers, communications, training of emergency workers, notification of and information for the public, protective actions (sheltering and evacuation), protection of persons in special facilities (including hospitals, schools, nursing homes and the handicapped at home), and issues related to ingestion pathway planning. As noted, many of these contentions have multiple parts.

<sup>2</sup> For example, on Contention 16.E (public information brochure), the Board rejected some County/State arguments and accepted others, but left it to the Staff to ensure that the final brochure is adequate. See PID at 187-90. On the procedural side, we intend to contest the ASLB's ruling rejecting Contention 22.A-22.C, which alleged that the Shoreham EPZ needed to be enlarged.

be addressed.<sup>3</sup> The 70-page limit would allow just over 5 pages per major issue category (and almost every category involves multiple contentions), and would leave no space for discussion of procedural issues.

It is difficult at this time to estimate how many pages will be required for the brief. Assuming that 13 of the 16 major categories will need to be addressed, however, and that, on the average, at least 10-15 pages will be required for each broad category of issues,<sup>4</sup> it seems that at least 150 pages will be necessary. Procedural matters and issues will require some additional space. Based upon all the foregoing factors, the fact that the State and County will combine their efforts into a single brief rather than each filing a separate 70-page brief, and our current best estimate of space requirements, we request authorization to file a brief of up to 165 pages.

For the reasons mentioned above, we also seek an extension of time to file our brief. We obtained a courtesy copy of the PID on April 22, 1985. Under the regulations as things now stand, our brief must be filed on Friday, June 7, 1985. In light

---

<sup>3</sup> We will not address Category XVI on legal authority (PID 386-426) until our brief in response to LILCO's appeal. We also will not address Category X on relocation centers because the ASLB has not yet ruled on those issues. Finally, we doubt that any significant briefing will be devoted to Category XIV on loss of offsite power.

<sup>4</sup> The ASLB's PID devotes, on average, about 25 pages to each issue category.

of the magnitude and complexity of the record and the issues involved and the need for the State and County to coordinate their efforts in a single brief, additional time is necessary.<sup>5</sup>

In the health and safety phase of this proceeding, the Brenner Board PID was made available about September 20, 1983 and the Appeal Board provided extensions until December 23 for the filing of our brief.<sup>6</sup> Although the emergency planning "record" is comparable in size to the health and safety record, all issues pertain to one broad subject area (emergency planning) whereas the Brenner PID covered more diverse issues. Accordingly, we request a 26-day extension for filing our emergency planning appeal brief, i.e., until July 3, 1985.

The State and County do not object to similar extensions of time and page limits for LILCO and/or the Staff if they should so desire. We advised LILCO and Staff counsel orally about this Motion prior to filing. LILCO has not indicated either support or opposition. The Staff opposes a time extension and would agree to a 100-page brief length limit.

---

<sup>5</sup> Additional time also is required because at the same time the County and State emergency planning attorneys are preparing their appeal brief, they also must prepare for and participate in a trial on relocation center issues which now has been scheduled to start on June 4. See ASLB Memorandum and Order, dated May 6, 1985.

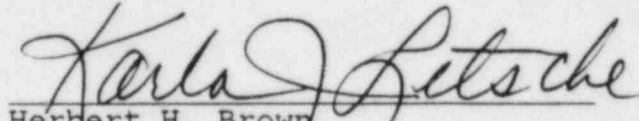
<sup>6</sup> The Board granted two extensions: one (of 10 days) for the filing of detailed exceptions (which now need not be filed); and one for filing the brief (a 30-day extension of the normal 30-day period). See ALAB Order dated September 21, 1983; ALAB Order dated October 26, 1983.



For planning purposes, it obviously is important to obtain an Appeal Board ruling on this Motion as soon as possible. Accordingly, we respectfully request that the Appeal Board rule on this Motion expeditiously.

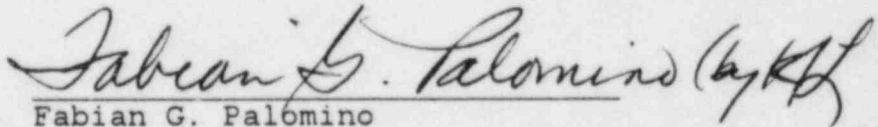
Respectfully submitted,

Martin Bradley Ashare  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11788



Herbert H. Brown  
Lawrence Coe Lanpher  
Karla J. Letsche  
KIRKPATRICK & LOCKHART  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Attorneys for Suffolk County



Fabian G. Palomino  
Special Counsel to the Governor  
Executive Chamber, Room 229  
State Capitol  
Albany, New York 12224

Attorney for Mario M. Cuomo,  
Governor of the State of New York

May 8, 1985