

June 7, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station,)
Unit 1))

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

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OFFICE OF SECRETARY
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NRC STAFF RESPONSE TO
MOTION TO INTERVENE ON
BEHALF OF THE RESIDENTS
OF NASSAU COUNTY

I. INTRODUCTION

On May 21, 1985, the Long Island Coalition for Safe Living (Petitioner) filed a petition to intervene ^{1/} "on the use of the Nassau County Veterans Memorial Coliseum in the LILCO evacuation plan as part of the reopening of the record with regard to the Coliseum." (Petition at 1). Petitioner asserts that it "is a coalition of some of the [13 listed] groups in Nassau County who are concerned with the health and well being of the residents of Nassau County as well as Suffolk County." (Id.)

Petitioner further states that it wishes to present two issues for consideration by the Board. These issues are

1. The Nassau County Board of Supervisors never approved the use of the Coliseum as part of the LILCO

^{1/} "Motion to Intervene on Behalf of the Residents of Nassau County"

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evacuation plan in the event of a nuclear accident at Shoreham.

2. The use of the Coliseum as a radiation decontamination center poses great danger and harm to the residents of Nassau County.

(Petition at 2 and see also the "Argument" portion of the petition at 3-4).

For the reasons stated below, the NRC Staff opposes the Petition to Intervene.

II. DISCUSSION

Hearings on the emergency planning phase of the Shoreham proceeding commenced in December 1982. With one exception, hearings have been completed. ^{2/} The record has been reopened by the Licensing Board on the narrow issue of whether the Nassau County Veterans Memorial Coliseum (Coliseum) is functionally adequate to serve as a relocation center for the anticipated general evacuees from the Shoreham EPZ. ^{3/} An evidentiary hearing on that issue is scheduled to commence in Suffolk County on June 24, 1985. The fact that the Coliseum is the designated relocation center has been widely known through press reports in Nassau and Suffolk Counties since October, 1984. It is against this background that the recent untimely petition to intervene must be viewed.

^{2/} See this Licensing Board's Partial Initial Decision dated April 17, 1985, LBP-85-12, 21 NRC _____. Cross appeals by LILCO and the State of New York/Suffolk County are pending before the Atomic Safety and Licensing Appeal Board.

^{3/} See this Board's unpublished Memoranda and Orders of January 28, 1985 and May 6, 1985.

In passing upon untimely petitions to intervene, the Board is required, pursuant to 10 C.F.R. § 2.714(a)(1), to consider and balance the following five factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The instant petition contains no discussion of these factors, and should be rejected for that reason alone.

Further, an examination of each of the factors, shows that the Petitioner has no basis for intervention. The instant petition was filed on May 21, 1985. Use of the Nassau County Coliseum as a relocation center, the gravamen of Petitioner's attempt to intervene, was reported in the press on October 24, 1984. No good cause, as required by 10 CFR § 2.714(a)(1)(i), could be set out to justify this seven month delay in filing the petition. See Duke Power Co. (Amendment of Materials License SNM-1773), ALAB-528, 9 NRC 146, 148-49 (1979). ^{4/}

^{4/} The Staff also notes that this is not a case where there was an absence of licensing documents that could, under appropriate

In regard to 10 CFR § 2.714(a)(1)(ii), the Petitioner has other means to protect its interest. A principal part of its complaint is that the Nassau County Executive lacks the power to allow the use of the Coliseum as a relocation center. Petition at 3. Plainly, this is a question of local law and a matter better tested in State courts than before this Board. Other means exist to protect Petitioner's rights other than the sought late intervention.

In regard to 10 CFR § 2.714(a)(1)(iii), the Petitioner has not shown that it could reasonably be expected to assist in developing the record. No prospective witness is identified. No proposed testimony is summarized. No details are given of any specialized or technical information that Petitioner will provide for the record in regard to the use of the Nassau County Coliseum as a relocation center is set out. It does not appear that Petitioner will materially assist in developing the record. See Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1&2), ALAB-704, 16 NRC 1725 (1982); Detroit Edison Co. (Greenwood Energy Center, Units 2&3), ALAB-476, 7 NRC 759, 764 (1978).

In regard to 10 CFR § 2.714(a)(1)(iv), there are parties to the proceeding that have sought to raise many of the same questions involving

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circumstances, serve to justify petitioner's extreme tardiness in seeking to intervene. Cf. Duke Power Company, et. al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). As noted above, the designation of the Coliseum has been widely known through press reports, in Nassau and Suffolk Counties, since October, 1984.

the use of the Nassau County Coliseum as the Petitioner. ^{5/} There is no showing that the Petitioner's interests are not represented by these other parties.

In regard to 10 CFR § 2.714(a)(1)(v), Petitioner's participation will both impermissibly broaden the issues and delay the proceeding. The reopened hearing is scheduled to start on June 25, 1985. The authority of the Nassau County Executive to allow use of the Coliseum, which Petitioner raises, is not now an issue. Questions of contamination of ground water, and the evacuation of people from the EPZ have been ruled not relevant to the reopened proceeding. See Memorandum and Order (Reopening of the Record), May 6, 1985. To the extent the Petitioner seeks to raise these matters, it would expand the scope of the proceeding and delay the hearing. See South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 891 (1981).

A balancing of all five of the factors in 10 CFR § 2.714(a)(1), not one of which weighs in Petitioner's favor, shows no basis on which to grant this untimely petition to intervene. ^{6/}

^{5/} It is noted that many of the issues the Petitioners seek to raise, such as the identification of congregate care centers and water pollution, have been ruled not relevant to the subject of the reopened proceeding--the adequacy of the Nassau County Coliseum as a relocation center. See "Memorandum and Order (Reopening of the Record), May 6, 1985." One new issue raised by Petitioner is the authority of the Nassau County Executive to allow use of the Coliseum. The Staff believes this issue is clearly beyond the scope of issues to be litigated.

^{6/} Discretionary intervention may be appropriate where a petitioner cannot establish a right to participate in a proceeding, but other

Precedent in this proceeding, weighs against grant of the subject petition. In 1983, prior to commencement of the emergency planning evidentiary hearings before this Board, a late filed petition to intervene by another citizens group was rejected as untimely by this Board. The Appeal Board affirmed the Licensing Board's analysis of the factors set out above. See ALAB-743, 18 NRC 387 (1983) and cases there cited. This Board's previous analysis and the Appeal Board's affirmation is relevant to the instant petition and is controlling. The petition should be denied on the authority of ALAB-743. 7/

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factors weigh in favor of the petitioner's participation. See Commonwealth Edison Co. (Dresden Nuclear Power Station), CLI-81-25, 14 NRC 616, 623 (1981). Chief among these factors is the significance of a contribution a petitioner might make to the record. Pebble Springs, supra. It is upon the Petitioner to show the worth of its contribution. See Nuclear Engineering Co. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 401 (1983). Petitioner has here failed to sustain that burden. See discussion of factor 10 CFR § 2.714(a)(1)(iii), above.

7/ In ALAB-743, supra, the Appeal Board, as had the Licensing Board, eschewed ruling on the question of the petitioner's standing to intervene in view of the insufficient cause under 10 CFR § 2.714(a)(1) to allow petitioner to enter the proceeding at a late date. The Petitioner here has not specifically addressed whether it has standing to intervene in this proceeding by showing it is within the "zone of interest" of relevant statutes, and that it would sustain an "injury in fact." See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1&2), CLI-76-27, 4 NRC 610, 613 (1976); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1&2), CLI-80-10, 11 NRC 438 (1980). Moreover, the signatories to the petition have not shown that they have any authority to file the petition, that Petitioner had any authority to file the petition on behalf of the groups listed at 1-2

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Finally, the Staff emphasizes that even if Petitioners could overcome the extreme lateness of their petition, and demonstrated standing to intervene, the issues they seek to raise are clearly beyond the scope of the issue to be heard at the reopened evidentiary hearing scheduled to commence on June 25, 1985. See Board's Order of May 6, 1985 and the NRC Staff's Response to Intervenor's Motion for Reconsideration, filed June 3, 1985. Thus, granting the petition would reopen the door to consideration of collateral issues which are not germane to remaining issues before this Board.

III. CONCLUSION

For the reasons set out above, the Coalition's late petition to intervene should be denied.

Respectfully submitted,

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of June, 1985

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of the petition, or that any member of those organizations had "standing" and authorized the filing of the subject petition. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978); Houston Lighting & Power Co. (South Texas Project, Units 1&2), LBP-79-10, 9 NRC 439, 444, aff'd, ALAB-549, 9 NRC 644 (1979).

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LONG ISLAND LIGHTING COMPANY)
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Docket No. 50-322-053
(Emergency Planning)

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION TO INTERVENE ON BEHALF OF THE RESIDENTS OF NASSAU COUNTY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of June, 1985.

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