019

LILCO, July 26, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3
	)	(Emergency Planning
(Shoreham Nuclear Power Station, Unit 1)	)	Proceeding)
	)	

LILCO'S REPLY FINDINGS ON REOPENED CONTENTION 24.0 (NASSAU COLISEUM)

1. The following is LILCO's reply to the "Suffolk County and State of New York Proposed Findings of Fact and Conclusions of Law on Reopened Relocation Center Issues," dated July 15, 1985.1/ The Intervenors' findings are for the most part irrelevant to the issue to be decided, namely the functional adequacy of the Nassau Coliseum. Despite the fact that various issues that the Intervenors want to raise have been ruled at least four times2/ to be outside the scope of the

---

1/ LILCO refers to the Intervenors' proposed findings as "I.F." and to LILCO's proposed findings of July 10, 1985, as "L.F." For example, "I.F. ¶ 20" refers to paragraph 20 of the Intervenors' findings.

2/ First in the Board's Memorandum and Order (Reopening of the Record) at 5-7 (May 6, 1985); again in the Memorandum and Order Ruling on Motion of Suffolk County and the State of New York for Reconsideration and Other Relief (June 10, 1985); a third time when the Intervenors tried to introduce the issues in cross-examining LILCO's witness (see, e.g., Tr. 15,930-32); and a fourth time during cross-examination of the FEMA witnesses (see, e.g., Tr. 15,997-98).

DS03

reopened issue, the Intervenors reargue them yet a fifth time in their proposed findings. For example, the Intervenors, improperly, argue the following issues:

- the adequacy of congregate care centers (I.F. ¶¶ 17, 18)
- the distance of the Coliseum from the EPZ (I.F. ¶ 18)
- the number of evacuees expected to come to the Coliseum (I.F. ¶ 19 n.20, ¶ 25)
- contamination of groundwater (I.F. ¶ 22).

Hence several of the Intervenors' findings must be dismissed at the outset as irrelevant.

2. Equally irrelevant are the approximately one-third of the Intervenors' findings devoted to history and "background" (I.F. ¶¶ 1-8). They are also misleading. In detailing LILCO's previous difficulties in securing a relocation center, the Intervenors insinuate that LILCO has been less than competent. See I.F. ¶ 5. As the Board is aware, however, the main obstacle to LILCO's obtaining a suitable relocation center has been the opposition of the State and County. See LILCO's Proposed Findings of Fact and Conclusions of Law on Offsite Emergency Planning, at 247-49 (Oct. 5, 1984).3/ The Intervenors'

3/ The Intervenors also fail to mention that the relocation centers first designated by LILCO were picked originally by Suffolk County planners, and two of them were endorsed by New York State. See Testimony of Matthew C. Cordaro . . . for Phase II Emergency Planning Contention 74 (Location of Relocation Centers), at 8-11 (Mar. 2, 1984) (later withdrawn).

own actions caused LILCO's previous plans to fall through; for the Intervenors to suggest now that LILCO itself is at fault is, to put it mildly, unreasonable.

3. The fact that a particular point made in the intervenors' proposed findings is not specifically addressed here does not mean LILCO agrees with it. Though LILCO has the ultimate burden of proof in this proceeding, it is not required to answer every assertion the Intervenors might raise. When contentions are admitted in NRC proceedings, 10 C.F.R. § 2.732 does not automatically operate to require an applicant to disprove those contentions. Instead, the proponents of a contention bear the initial burden. See Louisiana Power and Light Co. (Waterford Steam Elec. Station, Unit 3), ALAB-732, 17 NRC 1076 (1983); Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 549-55 (1978).

4. The Intervenors ask the Board to find that the LILCO witness, Mrs. Elaine Robinson, was not qualified to provide the opinions she offered in her testimony. I.F. ¶ 14. This unfounded claim is refuted in at least two ways. First, Contention 24 is about "lack of agreements." Mrs. Robinson's unrebutted testimony was that, as a then-manager in the Local Emergency Response Implementing Organization ("LERIO"), she was "directly involved" in the negotiations between Nassau County, Hyatt Management, and LILCO. Tr. 15,858, 15,859-61 (Robinson).

Hence, she was clearly an appropriate and qualified witness on the issue of whether LILCO has obtained permission to use the Coliseum as a relocation center. Second, the Intervenors are unable to suggest any material information that Mrs. Robinson was not able to provide. The fact is that she did an admirable job of answering their questions, as anyone present in the courtroom or reviewing the record can attest. In fact, she displayed a detailed knowledge of how the Coliseum would function as a reception center. Also, Mrs. Robinson never presumed to make technical comments or assertions unless she was qualified to make them herself or had been informed of their accuracy by technical consultants. See, e.g., Tr. 15,901-02, 15,906, 15,907 (Robinson).

5. The Intervenors ask the Board to find that FEMA witnesses Baldwin, Keller, Kowieski, and McIntire also were unqualified to speak to the adequacy of the Coliseum. I.F. ¶¶ 14, 15. This claim, too, is unfounded. A witness does not have to have studied the Coliseum in detail to see that it is a big building designed to handle large crowds of people. That is all that is necessary for the extremely narrow issue here. It is clear that the details of how the Coliseum will be used are unnecessary for this Board's decision in light of the Waterford decision4/ and in any event will be observed in the

---

4/ Louisiana Power & Light Co. (Waterford Steam Elec. Station, Unit 3), ALAB-732, 17 NRC 1076, 1107 (1983); see also NUREG-0654 at 29 (emergency plans should be kept "as concise as possible").

graded exercise that must be held prior to full-power operation.

6. The Board must also dismiss the Intervenors' suggestion that "LILCO has only itself to blame for [the] absence" at the hearing of Mr. E. B. Sumerlin, Jr., the General Manager of the Coliseum. I.F. ¶ 14. The Intervenors misapprehend the law regarding burden of proof. LILCO produced a perfectly competent witness. L.F. ¶ 8. If the Intervenors wanted a different one, it was up to them to secure his presence at the hearing.

7. The Intervenors would have the Board find that LILCO has not demonstrated that the Nassau Coliseum can legally be available to LILCO for use as a relocation center. I.F. ¶ 16. Such a finding would be contrary to the evidence. As a basis for the finding the Intervenors cite nothing more than that approval has not been sought from the Nassau County Board of Supervisors. I.F. ¶ 16 n.18. If the Intervenors thought this made the agreement between LILCO and Hyatt Management illegal, there were ways to demonstrate it -- by presenting a witness or by submitting a legal brief, neither of which the Intervenors did. Moreover, the Board was correct in declining to become involved in local political disputes. Finally, we note that New York law provides that a county executive has broad powers in an emergency:

> Upon the threat or occurrence of a disaster, the chief executive of any political subdivision is hereby authorized and empowered to and shall use any and all facilities, equipment, supplies, personnel and other resources of his political subdivision in such manner as may be necessary or appropriate to cope with the disaster or any emergency resulting therefrom.

N.Y. Exec. Law § 25.1 (McKinney 1982). Even without an agreement, then, the County Executive's commitment to help would ensure the availability of the Coliseum.

8. The emphasis the Intervenors place on the fact that the FEMA witnesses found insufficient detail in the LILCO plan, I.F. ¶ 16, is misplaced. The information that FEMA needs for its review is more detailed than the Board needs for its purposes. See Waterford, supra n.4. As stated in the FEMA Affidavit, ff. Tr. 15,991, at 2, final approval of the Coliseum will be made only after an exercise is held, during which the facility's adequacy and function can be evaluated. It is at this time that the various details of the LILCO plan will be put to the test. For present purposes, the FEMA witnesses have said that the Coliseum "appears to be a suitable facility for use as a reception center." FEMA Affidavit, ff. Tr. 15,991, at 2.

9. The Intervenors' assertion that the LILCO witness could only "speculate about the consequences to the Nassau County water supply from any radioactive contaminants which

might enter the water supply from the decontamination activities proposed to be carried out at the Coliseum," I.F. ¶ 22, is outside the scope of the reopened issue and, in any event, incorrect. In fact, the witness relied on technical consultants and a member of the Radiological Emergency Preparedness Group of the New York State Department of Health in concluding that any possible radioactive contaminants in wastewater flow from the Coliseum would be dealt with by "vast dilution." Tr. 15,906 (Robinson). FEMA agreed fully, relying on advice from the Environmental Protection Agency. Tr. 16,010-11 (Keller).

10. The Intervenors would have the Board find that LILCO has no provision for handling and disposing of the radioactive clothing that would be discarded by evacuees. I.F. ¶ 23. No such finding can be made. First, it is outside the scope of the issue of the functional adequacy of the Coliseum. Second, it is contrary to the evidence: the LILCO witness clearly indicated that LILCO has a procedure for dealing with the low-level waste. L.F. ¶ 20. Third, the procedures for disposal of this type of low-level waste material are in the procedures for onsite preparedness, Tr. 15,908 (Robinson), which are not at issue in this proceeding. Fourth, such details are minutiae such as the Waterford case tells us are not to be litigated.

11. The Intervenors' findings with respect to the issue of congregate care centers, see, e.g., I.F. ¶¶ 17, 19, are irrelevant to this reopened proceeding. Indeed, the Board ruled that the Intervenors' persistent questioning on this issue during the hearing was "out of order." Tr. 16,029.

12. The Intervenors' references to the number of evacuees expected to come to the Coliseum in the event of a Shoreham emergency, I.F. ¶ 25, are, like the congregate care issue, irrelevant to the reopened issue. The potential number of evacuees has already been litigated. Tr. 15,972 (Robinson).

13. Thus, the Board should reject the proposed findings offered by Suffolk County and the State of New York in their entirety. It is perfectly clear that the Nassau Coliseum is both available as and suitable for a reception center. There is simply no evidence to the contrary, and nothing the Intervenors can say in their proposed findings can change that.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

BY James N. Christman
James N. Christman

Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, VA 23219

DATED: July 26, 1985

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO'S REPLY FINDINGS ON REIPENED CONTENTION 24.0 (NASSAU COLISEUM, were served this date upon the following by first-class mail, postage prepaid:

Morton B. Margulies,
Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Jerry R. Kline
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

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

Bernard M. Bordenick, Esq.
Oreste Russ Pirfo, Esq.
Edwin J. Reis, Esq.
U. S. Nuclear Regulatory
Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Donna Duer, Esq.
Attorney
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
East-West Tower, North Tower
4350 East-West Highway
Bethesda, MD 20814

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

Mary Gundrum, Esq.
Assistant Attorney General
2 World Trade Center
Room 4614
New York, New York 10047

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Christopher McMurray, Esq.
Kirkpatrick & Lockhart
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

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

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

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278

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

Ralph Shapiro, Esq.
Cammer & Shapiro, P.C.
9 East 40th Street
New York, New York 10016

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

Jonathan D. Feinberg, Esq.
New York State Department of
Public Service, Staff Counsel
Three Rockefeller Plaza
Albany, New York 12223

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Room 840
Washington, D.C. 20472

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

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

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

James N. Christman

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: July 26, 1985