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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)	)	
	)	

NRC STAFF'S RESPONSE TO GOVERNMENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO REALISM DISCOVERY REQUESTS, AND TO EXTEND DISCOVERY SCHEDULE

The NRC Staff opposes Intervenors' April 6, 1988 motion which seeks an extension of the discovery schedule until May 6, 1988.

On July 24, 1986, in CLI-86-13, 24 NRC 22, 32 (1986), the Commission remanded LILCO's realism argument for further proceeding. The Commission stated:

> Accordingly, we remand LILCO's realism argument to the Licensing Board for further proceedings in accord with this decision. The Board should use the existing record to the maximum extent possible, but should take additional evidence where necessary. [Footnote Omitted]

On February 29, 1987, this Board set out an outline for the litigation of the "realism" issues, and set forth a schedule for the litigation of those matters on March 7, 1987.

In spite of the fact that litigation of these matters has been pending for at least 20 months since the Commission Decision of July 1986, the Intervenors state in their Motion that "...the Governments have not yet decided upon or designated any witnesses on the realism issues, or even decided whether witnesses will be designated." Motion at 5. Intervenors

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also indicate they have not yet even considered and decided basic and fundamental questions involving the realism proceeding. As they state:

> While the Staff's interrogatories are not nearly as lengthy as LILCO's, they nonetheless require the Governments to consider and decide basic and fundamental questions regarding the realism proceeding. Thus, for example, if the Staff's interrogatories were to be answered, the Governments would need to decide such matters as whether they will subpoena witnesses or documents. Further, assuming documents and witnesses would be subpoenaed, the Governments would have to specify the persons and documents for which subpoenas would be sought, the subjects they intend to ask subpoenaed witnesses about, and the information hoped to be elicited.

Motion at 3, n. 6. The Intervenors thus show in their own motion that it is the Intervenors own lack of preparation that causes them to seek this extension of time.

The Commission in its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981), stated:

> Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.

The Commission there continued by outlining sanctions which might be imposed on parties who do not fulfill obligations in the hearing process.

The Intervenors here are not impecunious parties with few resources but a large county and a State. The Intervenors here should not be rewarded by extending their time to answer interrogatories concerning the nature of their "realism" case. Intervenors have known since July 1986, that they might be called upon to put on such a case and give that

information and have not yet considered or decided fundamental questions regarding this proceeding or what evidence they might offer.

Intervenors give four reasons for their need for an extension. None of them are valid. The first is that the interrogatories are burdensome. Motion at 6-7. The interrogatories here seek to find out the nature and theory of Intervenors' case. Certainly these are matters Intervenors knew they would be called upon to address since the issuance of CLI-86-13 and certainly since November 3, 1987 (52 Fed. Reg. 42078, 42086) when the Commission amended 10 C.F.R. § 50.47(c)(1). That regulation provides:

> ...it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

Plainly, the Intervenors have long been on notice that if they claimed they would not rely on a utility plan in radiological emergency, they must set forth in detail how they would respond.

Next, the Intervenors speak of their other obligations in this and allied proceedings. Motion at 7-8. However, these are not inexperienced or impecunious parties. Cf. Statement of Policy, supra. They have substantial resources as is evidenced by the number of attorneys involved in this proceeding on their behalf.

Next, Intervenors speak to LILCO's designation of the prima facie case on April 1, 1988. Motion at 8-10. LILCO's filing was not unexpected since that was the date designated by the Board for the filing of LILCO's prima facie case. In addition, Intervenors were

informed in CLI-86-13 that the record which existed was to be relied upon as the primary support for the realism arguments. 24 NRC at 32. Moreover, LILCO's earlier motions for summary judgment contained almost all of the same material. This material is not new, and its submission does not show why the Intervenors need more time to answer interrogatories going to their case and what the actions they would take in radiological emergency. Intervenors were told by the Commission in July 1986 (CLI-86-13), and again upon the amendment of 10 C.F.R. § 50.47(c)(1) in November 1987, that they were obligated to affirmatively state what they would do in emergency. It is too late in April, 1988 to say they have not considered or decided these fundamental questions. See Motion at 3, n. 6.

Lastly, the Intervenors seek to blame this Board for their inability to reply to the interrogatories. Motion at 10-11. They state they are hampered by the Board's failure to set forth its reasons for the denial of LILCO's summary disposition motion. It may be that certain of the matters asked in the interrogatories are not considered by the Board to be in dispute, but this does not show why the interrogatories cannot be answered. Similarly, the fact that matters asked by LILCO may or may not be relevant does not show that answers to such matters may not lead to relevant evidence and cannot be asked in interrogatories.

To the extent that Intervenors say they need the summary disposition opinion to determine whether to seek further discovery, they are certainly late. Discovery opened on March 7, 1988 -- and closes six weeks later on April 15, 1988. Either the Intervenors complete discovery within that period, or they are barred from discovery. The fact that

they might winnow their discovery after review of the Board's summary disposition opinion, does not show they cannot proceed with any needed discovery in the time provided.

The Intervenors also state their request for an extension of discovery to May 6, 1988 should be granted because it "would not significantly impact the likely commencement date of the realism hearing. Motion at 4. They recognize that such an extension of discovery will delay the filing of realism issue testimony until May 20, motions to strike that testimony until May 27, and responses to those motions until June 3, 1988. Motion at 3. Thus, a delay of the realism hearings is likely. The hearings on other issues is scheduled to start on May 16, 1988, and the realism hearings to begin at least a week after conclusion of those hearings. Should the hearings on other issues even go to May 27, 1988, the realism issue hearings might start on June 6, 1988. Delaying discovery and the filing of testimony, as requested, would not make that date for starting the realism hearings likely. Thus, the delay sought will affect the hearing schedule.

Moreover, the extension of discovery would prejudice other parties as it would shorten the time other parties would have between discovery, the filing of testimony and the start of hearings. For this reason also, the Motion should be denied.

CONCLUSION

Intervenors' Motion to extend the discovery period in the realism proceeding should be denied for each of the reasons set out above.

Respectfully submitted,

Edwin J. Reis
Deputy Assistant General Counsel

Dated at Rockville, Maryland
this 8th day of April, 1988

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO GOVERNMENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO REALISM DISCOVERY REQUESTS, AND TO EXTEND DISCOVERY SCHEDULE" 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 or, as indicated by double asterisks, by telecopy, this 8th day of April 1988.

James P. Gleason, Chairman**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jerry R. Kline**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Frederick J. Shon**
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Philip McIntire
Federal Emergency Management Agency
26 Federal Plaza
Room 1349
New York, NY 10278

Joel Blau, Esq.
Director, Utility Intervention
Suite 1020
99 Washington Avenue
Albany, NY 12210

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

Jonathan D. Feinberg, Esq.
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223

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

Douglas J. Hynes, Councilman
Town Board of Oyster Bay
Town Hall
Oyster Bay, New York 11771

Stephen B. Latham, Esq.
Twomey, Latham & Shea
Attorneys at Law
33 West Second Street
Riverhead, NY 11901

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

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

Anthony F. Earley, Jr.
General Counsel
Long Island Lighting Company
175 East Old County Road
Hicksville, NY 11801

Dr. Robert Hoffman
Long Island Coalition for Safe
Living
P.O. Box 1355
Massapequa, NY 11758

Alfred L. Nardelli, Esq.
New York State Department of Law
120 Broadway
Room 3-118

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. W. Reed Johnson
115 Falcon Drive, Colthurst
Charlottesville VA 22901

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick & Lockhart
South Lobby - 9th Floor
1800 M Street, NW
Washington, DC 20036-5891

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

Spence W. Perry, Esq.
General Counsel
Federal Emergency Management
Agency
500 C Street, SW
Washington, DC 20472

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, NY 11792

Ms. Nora Bredes
Shoreham Opponents Coalition
195 East Main Street
Smithtown, NY 11787

William R. Cumming, Esq.
Office of General Counsel
Federal Emergency Management
Agency
500 C Street, SW
Washington, DC 20472

Barbara Newman
Director, Environmental Health
Coalition for Safe Living
Box 944
Huntington, New York 11743

Edwin J. Reis
Deputy Assistant General Counsel