

12/18/78

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)

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Docket No. 50-322

APPLICANT'S REQUEST FOR SUMMARY  
DISPOSITION OF SUFFOLK COUNTY CONTENTIONS  
4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a(viii); and 14a

I. Reasons for Seeking  
Summary Disposition Now

The Applicant has become seriously concerned that the Shoreham Station will be physically complete and ready to load fuel before this proceeding has produced an initial decision, yes or nay, on the merits of Shoreham's application for an operating license. Our concern is rooted in the slow pace of the proceeding to date, the time likely to be required to take the remaining adjudicatory steps, in light of the numerous matters that Suffolk County (SC) still wants to litigate, and past experience with protracted nuclear litigation on Long Island. Accordingly, this pleading is filed for three reasons: (1) to indicate, in detail, why we believe that the Shoreham proceeding is in scheduling difficulty, (2) to urge that summary disposition of certain "ripe" contentions be used as a means to make progress, and (3) to invite other parties involved in the proceeding, should they not share the Applicant's sense of urgency, to explain why not, in meaningful detail.

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A. Slow Pace to Date

It is useful to sketch the principal developments that have occurred in the Shoreham proceeding so far:

August 28, 1975	LILCO files OL Application, FSAR and ER
March 18, 1976	NRC publishes notice of the Application's docketing and of the opportunity to request a hearing
April 14, 1976	New York AEC seeks participation as an interested state agency
April 15, 1976	OHILI and North Shore Committee file intervention petitions
April 19, 1976	Intervention deadline
April 21, 1976	Frysiak, Head and Shon named to Board
May 7, 1976	Board rejects OHILI and North Shore Committee petitions but with opportunity to amend
June 18, 1976	OHILI and North Shore Committee file amended petitions
November 10, 1976	Prehearing conference concerning OHILI and North Shore Committee's amended petitions
December 10, 1976	OHILI and North Shore Committee file a consolidated amended-amended petition
February 22, 1977	Board admits NY Energy Office (successor to NY AEC) and OHILI/Committee as a consolidated party, and Board orders a hearing
February 22, 1977	Head replaced on Board by Paris
March 17, 1977	Suffolk County files intervention petition
March 24, 1977	DES appears
May 16, 1977	DES comment deadline

August 1, 1977	Board rejects SC petition but with opportunity to amend
September 16, 1977	SC files amended petition
October 11, 1977	Second prehearing conference, focusing on contentions and the beginning of discovery
October 25, 1977	FES appears
November 10, 1977	SC files further argument on certain of its contentions, followed shortly thereafter by LILCO and Staff replies
November 11, 1977	OHILI/Committee file further argument on certain of their contentions, followed shortly thereafter by LILCO and Staff replies
January 27, 1978	Board rules on disputed contentions
February 6, 1978	Frysiak replaced on Board by Bowers
February 28, 1978, and March 2 March 8 April 4 April 19 April 25 June 14 June 19 July 7 July 17 July 24 August 23 October 12	Board rules on the timing and substance of discovery
March 8, 1978	Board rules on disputed contentions
March 29, 1978	Staff requests dismissal of OHILI/Committee contention 7(e) for systematic OHILI/Committee refusal to respond to discovery concerning it
April 19, 1978	Board dismisses OHILI/Committee contention 7(e) and poses fish-return and chlorine questions

June 23, 1978	Applicant requests summary disposition of OHILI/Committee contentions 7(a)(ii) and (iii), answers Board questions on fish-return and chlorine, and moves that there be no environmental hearings for lack of justiciable issues
June 28, 1978	Staff seeks essentially the same relief
July 25, 1978	Board grants summary disposition of OHILI/Committee contentions 7(a)(ii) and (iii)
August 4, 1978	Board finds its fish-return and chlorine concerns to have been answered and orders that no environmental hearings be held
August 18, 1978	Staff requests dismissal of OHILI/Committee contention 7(g) for systematic OHILI/Committee refusal to respond to discovery concerning it.
October 27, 1978	Board dismisses OHILI/Committee contention 7(g)

In short, LILCO filed its Shoreham FSAR and updated ER well over three years ago, in an effort to start early on the lengthy path toward an operating license. The OL adjudicatory process, in turn, began formally more than 2-1/2 years ago. A lot, though not enough, has taken place in the interim. The pace has almost invariably been slow.<sup>1/</sup>

#### B. Long Way to Go

As the events of July 25 and August 4, 1978 indicate, only health and safety issues remain in this proceeding. They, however, are legion. See Part C below. As to them, the

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<sup>1/</sup>The sequence of events sketched above so indicates. E.g., Suffolk County did not even bother to file its 80-page inter-vention papers until eleven months after the deadline for inter-ven-tion had passed. Similarly, the first prehearing conference was initially set for August 11, 1976, rescheduled for October 20, and finally held on November 10.

Board indicated in its Order of March 8, 1978 that discovery (which began in October 1977) will have its final phase after the Staff issues its Safety Evaluation Report. Such discovery will then be followed by final particularization of contentions (their particularization having begun several years previously).

The Board stated on March 8:

The discovery period for the SER will be as follows: (1) 30 days after its issuance, discovery requests must be filed, (2) 20 days thereafter responses must be filed, and (3) 20 days thereafter particularized contentions must be filed.

Id. at 5.

Predicting the likely progress of nuclear licensing cases is always something of a quixotic endeavor. Nonetheless, the time has come seriously to attempt it in this proceeding. If the Board's March 8, 1978 Order continues unchanged, the following sequence could well evolve:

SER is issued	0 day
Discovery request deadline	30 days
Answers to discovery	50 days
ACRS meeting	60 to 120 days
Particularized contentions deadline	70 days
Replies to same and summary disposition motions	85 days
Replies to summary disposition motions	105 days
Board ruling on issues to be litigated	120 days
Testimony filed	140 days
Hearings begin	155 days

In other words, it is easy to envisage the passage of 155 days, or 5 months, between the appearance of the SER and the

beginning of hearings. Skipping for the moment the likely extent of the hearings, it is also easy to foresee another three months for briefing and ASLB decision:

Record closes	0 day
LILCO files findings	20 days
Intervenors file	30 days
Staff files	40 days
LILCO replies	50 days
Board issues decision	80 days.

Thus, this proceeding could easily consume 3 months after the SER appears, without counting the time required for the hearings themselves. These pre- and post-hearing sequences assume, moreover, that once the SER issues, the previously slow pace of the proceeding will quicken. If not, much more time could be required. The deadlines noted above are not generous.

How long are the hearings likely to be? Potentially quite long, as noted below.

### C. SC Litigation Desires

SC has made known its litigation objectives on numerous occasions:

- (1) in a March 17, 1977 intervention petition,
- (2) in a May 17, 1977 reply to other parties' responses to that petition,
- (3) in a September 16, 1977 amended intervention petition,
- (4) in an October 6, 1977 reply to other parties' responses to its amended petition,

- (5) during oral argument at the October 11, 1977 prehearing conference,
- (6) in a November 10, 1977 supplement to its September 16 amended petition, and most recently,
- (7) in a 144-page document, dated November 30, 1978, that repeats and reargues all its health and safety contentions, including those previously rejected by the Board.<sup>2/</sup>

All told, these SC filings total more than 300 pages. They advance well over 100 discrete issues. While the Applicant believes that most of these issues raise little or nothing of substance in the Shoreham proceeding, the fact that issues are frivolous often poses no bar to their lengthy discussion in nuclear licensing cases.

#### D. Past Experience

The duration of prior nuclear proceedings on Long Island was described in "Applicant's Request that the Board Set a Schedule for Resolution of Environmental Issues" at 4-5 (Feb. 24, 1978). Suffice it to say that there were 70 days of AEC hearings on the Shoreham CP application, spread over a 29-month period. There were 44 days of NRC hearings on the Jamesport CP application spread over a 10-month period, with a subsequent 3-month re-opening of the record for radon purposes. New York State hearings

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<sup>2/</sup> Except as the content of this document bears on the summary disposition requests presented here, we see no need for comment on SC's latest statement of its views. This SC document appears to have been offered principally in response to certain Staff interrogatories. We do not understand the document to be the final particularization of SC contentions, which is now slated to appear 70 days after issuance of the SER. See Board Order of March 8, 1978, at 5.

on Shoreham at the CP stage lasted 21 days, and New York State Article VII and VIII hearings on Jamesport have totalled 50 and 123 days, respectively, so far. Thus, there have been over 300 days of hearings on LILCO's two nuclear projects since the fall of 1970. The pattern has been for there to be more, not less, time in hearings as the years progress.

Past experience dictates that this proceeding be conducted so that it can accommodate, if necessary, a long seige of Shoreham OL hearings. By Long Island standards, this means the assumption, for planning purposes, that there will be at least 10 months between the opening and close of the hearing record.

#### E. Recapitulation

It has been suggested above that there might easily be 5 months of "final" prehearing work after issuance of the SER, 10 months between the opening and close of the hearing record, and 3 months for briefing and decision. That comes to 18 months from issuance of the SER to Board decision.

It has been exceptionally difficult, to date, to predict when the SER will appear. And it seems certain that at least one supplement will be required at some point after the document-in-chief is issued. There now appears to be reason to believe that the SER will be issued at some point in February 1979. Eighteen months from February 1979 run to August 1980. The Applicant projects, however, that Shoreham will be physically ready to load fuel at some point between March and July 1980. Accordingly, this proceeding seems to be in scheduling difficulty.



Thus, rather than passing another quarter year in discovery while waiting for the SER to appear, the Applicant now moves for summary disposition of the following contentions: SC contentions 4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a (viii); and 14a. In our judgment, sufficient information already exists to permit their disposition. The Applicant will move in the near future for summary disposition of other contentions now "ripe" for resolution. In this fashion, we hope to eliminate certain issues or, failing that, to sharpen their focus. To the extent that the latter occurs -- that is, a precise identification of matters which the Board thinks appropriate for hearings rather than summary disposition -- the Applicant will request early hearings.

If other parties have some better idea for getting on with this proceeding, we are eager to listen. If, conversely, other parties have no sense of urgency, we look forward to their concrete analysis, akin to that on pages 5-8 above, of why no time constraints exist.

## II. Summary Disposition

The following documents constitute the Applicant's request for immediate resolution, pursuant to 10 CFR § 2.749, of the contentions noted above:

- (1) Motion for Summary Disposition of SC Contentions 4a(vii) and 7a(ii) with attached Affidavit of G. R. Heine II,
- (2) Motion for Summary Disposition of SC Contention 4a(x),
- (3) Motion for Summary Disposition of SC Contention 7a(iii) with attached Affidavits of William J. Tunney and Robert S. Blackman,
- (4) Motion for Summary Disposition of SC Contention 7a(vi) with attached Affidavit of William J. Tunney,
- (5) Motion for Summary Disposition of SC Contention 7a(vii) with attached Affidavit of William J. Tunney,
- (6) Motion for Summary Disposition of SC Contention 12a(viii) with attached Affidavit of Robert M. Kascsak, and
- (7) Motion for Summary Disposition of SC Contention 14a with attached Affidavit of Robert M. Kascsak.

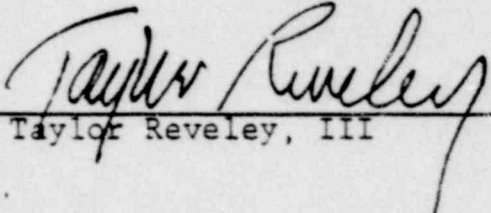
For the reasons stated in the foregoing materials, the Applicant urges that SC contentions 4a(vii), (x); 7a(ii)-(iii), (vi)-(vii); 12a(viii); and 14a be dismissed because, as to each, "there is no genuine issue to be heard." 10 CFR § 2.749(a).

In the alternative, if the Board finds summary disposition inappropriate as to any affected contention (in whole or part), the Applicant requests that the Board, after reviewing the attached materials and replies from other parties, (a) state the exact issue(s) to be litigated from among the

contention(s) in question and (b) set a schedule for the prompt beginning of hearings on such issue(s).

Respectfully submitted,

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