

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) )

mdv  
Docket No. 50-322 O.L.

SUFFOLK COUNTY RESPONSE TO "LILCO'S MOTIONS  
TO SUPPLEMENT WITNESS PANELS, PLUS SEVERAL  
RELATED MATTERS"

On June 24, 1982, LILCO served Suffolk County with a "Motion to Supplement Witness Panels, Plus Several Related Matters." Attached to the Motion were separate motions to add one, two or three witnesses on 11 different pieces of pre-filed testimony. Thus, LILCO has sought to add witnesses on all but one item of testimony which had been filed by June 2, 1982, the date on which the Board made its statements regarding witness supplementation.<sup>1/</sup> Suffolk County hereby opposes the grant of these motions for the reasons stated below.

First, the County opposes the 11 specific motions to supplement because LILCO does not state any need or other reason that would justify LILCO's drastic action. The Board did invite

<sup>1/</sup> See June 2, 1982 Transcript, pp. 3136-38. LILCO did not move to supplement its testimony on SC Contention 20 (Simulators).

parties to consider supplementation of witnesses. (Tr. 3136-38). However, the Board's statements on this matter were in the context that supplementation would be proper only when the correct witnesses had not sponsored the prefiled testimony. We do not believe that the Board intended to extend a blanket for LILCO or any other party to enroll a new cast of witnesses as a matter of routine trial practice. To the contrary, it is our view that the Board limited the supplementation of witnesses to cases where a definite need for such supplementation was demonstrated. LILCO, however, has not attempted to justify its unusual action, but appears to have simply taken for granted the right to add witnesses on nearly every contention (one witness in two instances, two witnesses in five instances, and three witnesses in four instances).

The County believes that LILCO has failed in each instance to demonstrate why the proffered supplementation of witnesses is necessary or proper. There is no explanation by LILCO of why in each instance the original witnesses were not correct sponsors of the testimony. Thus, from LILCO's motions, it is impossible to determine whether LILCO is seeking to supplement because the original witnesses could not fully sponsor the testimony (which would arguably be within the Board's invitation to add witnesses, if it were clear LILCO had erred in the first place), or because LILCO is instead seeking to bolster a panel which could sponsor the testimony (outside the Board's invitation). In short, LILCO's

motions are deficient for failing to give any reason why the supplementation is necessary.

Second, as previously stated by Suffolk County counsel orally, the County opposes LILCO's supplementation of prefiled testimony because it is an after-the-fact action which disrupts orderly pretrial procedures and prejudices Suffolk County. LILCO, like Suffolk County, was required to prefile testimony on April 14, May 4, May 25, June 8 and June 22 pursuant to the schedule mandated by the Board. Suffolk County objected to the schedule as not permitting sufficient time, but the Board, urged by LILCO to establish an expedited schedule, ordered the tight schedule stated above. LILCO, accordingly, like the County, was required to file its testimony, sponsored by the correct witnesses, in accordance with the Board's schedule.

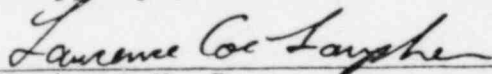
It would be unfair to allow LILCO at this late date (after LILCO has had an opportunity to review the County's testimony on each issue) to supplement its witness panels in the manner proposed. LILCO's technical resources have been available to LILCO counsel all along, particularly given their access to experts from General Electric and Stone & Webster. The County believes that LILCO's counsel should be held to the same burdens as the County's counsel, who have sought to establish witness panels with correct experts from the outset. Accordingly, if the Board believes supplementation by LILCO should be permitted, the Board should suspend the proceeding for a reasonable time in order to permit the County to consider and seek new experts. If this

action is not taken, the County submits that it will be prejudiced.<sup>2/</sup>

It has been suggested by the Board and LILCO that because LILCO has the burden of proof in this proceeding, LILCO should have leeway to supplement witnesses. The County disagrees. It bears repeating that it was LILCO which stated that it was ready to go forward on the very expedited schedule which the Board imposed. LILCO surely knew at that time that it, just like every other applicant in NRC proceedings, had the burden of proof. If LILCO now needs additional witnesses, it should be permitted to add them only (1) if LILCO justifies the need for such supplementation; and (2) LILCO does so under conditions which do not prejudice the County -- namely, after an adjournment to provide the County a reasonable opportunity to supplement its own witness panels.

Respectfully submitted,

David H. Gilmartin  
Patricia A. Dempsey  
Suffolk County Department of Law  
Veterans Memorial Highway  
Hauppauge, New York 11788



Herbert H. Brown  
Lawrence Coe Lanpher  
Karla J. Letsche  
KIRKPATRICK, LOCKHART, HILL,  
CHRISTOPHER & PHILLIPS  
1900 M Street, N.W., 8th Floor  
Washington, D.C. 20036  
(202) 452-7000

July 2, 1982

Attorneys for Suffolk County

<sup>2/</sup> It would be no answer that the County allegedly has had time since the initial filing of testimony to seek new experts. The County's present experts, who are essential in the search for additional experts, have been engaged in the hearing process or in preparing testimony on almost a full-time basis. The Board's schedule has permitted them no time to undertake such a search. The County, however, wishes to seek additional experts.

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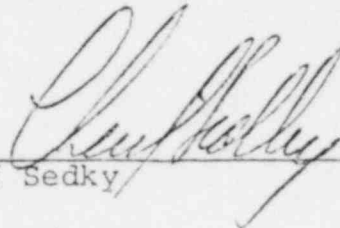
) Docket No. 50-322 O.L.  
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NOTICE OF APPEARANCE

Please note the appearance of the undersigned, who has been admitted to practice law before the District of Columbia Court of Appeals and the U.S. Supreme Court, as counsel for Suffolk County in the above-captioned docket.

Mr. Sedky is in the firm's Pittsburgh office. Please separately add his name and address to the Shoreham service list:

Cherif Sedky  
Kirkpatrick, Lockhart,  
Johnson & Hutchison  
1500 Oliver Building  
Pittsburgh, Pennsylvania 15222

  
\_\_\_\_\_  
Cherif Sedky

July 2, 1982

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NUCLEAR REGULATORY COMMISSION

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) Docket No. 50-322 (OL)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "SUFFOLK COUNTY RESPONSE TO 'LILCO'S MOTIONS TO SUPPLEMENT WITNESS PANELS, PLUS SEVERAL RELATED MATTERS,'" and the "NOTICE OF APPEARANCE" for Cherif Sedky, both dated this 2nd day of July, 1982, have been served to the following by U.S. Mail, first class, except as otherwise indicated.

Lawrence Brenner, Esq. (\*)  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. James L. Carpenter (\*)  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Peter A. Morris (\*)  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Edward M. Barrett, Esq.  
General Counsel  
Long Island Lighting Company  
250 Old Country Road  
Mineola, New York 11501

Mr. Brian McCaffrey  
Long Island Lighting Company  
175 East Old Country Road  
Hicksville, New York 11801

Ralph Shapiro, Esq.  
Cammer and Shapiro  
9 East 40th Street  
New York, New York 10016

Howard L. Blau, Esq.  
217 Newbridge Road  
Hicksville, New York 11801

W. Taylor Reveley III, Esq. (\*)  
Hunton & Williams  
P.O. Box 1535  
Richmond, Virginia 23212

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

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

Marc W. Goldsmith  
Energy Research Group, Inc.  
400-1 Totten Pond Road  
Waltham, Massachusetts 02154

Joel Blau, Esq.  
New York Public Service Commission  
The Governor Nelson A. Rockefeller  
Building  
Empire State Plaza  
Albany, New York 12223

David H. Gilmartin, Esq.  
Suffolk County Attorney  
County Executive/Legislative Bldg.  
Veterans Memorial Highway  
Hauppauge, New York 11788

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

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

Bernard M. Bordenick, Esq. (\*)  
David A. Repka, Esq.  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Matthew J. Kelly, Esq.  
Staff Counsel, New York State  
Public Service Commission  
3 Rockefeller Plaza  
Albany, New York 12223

Cherif Sedky, Esq.  
Kirkpatrick, Lockhart,  
Johnson & Hutchison  
1500 Oliver Building  
Pittsburgh, Penn. 15222

Mr. Jeff Smith  
Shoreham Nuclear Power Station  
P.O. Box 618  
North Country Road  
Wading River, New York 11792

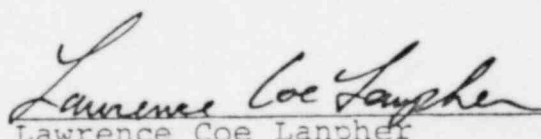
MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, California 95125

Hon. Peter Cohalan  
Suffolk County Executive  
County Executive/Legislative  
Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Ezra I. Bialik, Esq.  
Assistant Attorney General  
Environmental Protection Bureau  
New York State Department of  
Law  
2 World Trade Center  
New York, New York 10047

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

Stuart Diamond  
Environment/Energy Writer  
NEWSDAY  
Long Island, New York 11747

  
Lawrence Coe Lanpher  
KIRKPATRICK, LOCKHART, HILL,  
CHRISTOPHER & PHILLIPS  
1900 M Street, N.W., 8th Floor  
Washington, D.C. 20036

July 2, 1982

(\*) By hand on July 6, 1982