

LILCO, April 22, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

LILCO'S RESPONSE TO SC'S "MOTION TO REOPEN
RECORD ON SUFFOLK COUNTY CONTENTION 11" AND
REPORT ON DISCUSSIONS REGARDING THE SUBSTANTIVE
AND PROCEDURAL ASPECTS OF THE MOTION AND
ON THE SETTLEMENT STATUS OF SC CONTENTION 11

This document contains LILCO's response to Suffolk County's motion to reopen the record on SC Contention 11 and also contains LILCO's report on discussions regarding substantive and procedural aspects of the motion, as well as the status of settlement talks on this Contention.

I. LILCO'S RESPONSE

By motion served April 7, 1983, Suffolk County moves to reopen the record on SC Contention 11 -- Passive Mechanical Valve Failure. The County states that recent data compiled by the NRC and set forth in I&E Bulletin 83-03, "Check Valve Failures in Raw Water Cooling Systems of Diesel Generators" (March 10, 1983), "constitutes significant new information in support

of the County's position on SC Contention 11." SC Motion at 2. Accordingly, Suffolk County moves to reopen the record on the contention.^{1/} The County asks that the Bulletin be admitted into evidence and that the parties be allowed to supplement their findings to reflect the Bulletin, but the County specifically states that it is not requesting a hearing. SC Motion at 2-3. LILCO opposes the motion.

The proponent of a motion to reopen the record has a heavy burden. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-424, 6 NRC 122, 128 (1977). Thus, to prevail on its motion the County must demonstrate timeliness, the gravity of the issue, and the value of taking further evidence to resolve it. Vermont Nuclear Power Corp. (Vermont Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). SC has not made the showings necessary to reopen the record. The motion is untimely, the issues to which it pertains are not significant, and the information would have no material bearing on the resolution of the issues.

^{1/} Pursuant to the Board Order of April 14, 1983, the parties have discussed the possibility of settlement. Our report appears on pages 9 and 10 below.

Timeliness

Suffolk County does not pass the threshold requirement that a motion to reopen must be timely. The County argues that I&E Bulletin 83-03 presents new information regarding non-detectable valve failures at two operating BWR plants. Apparently because the Bulletin was issued on March 10, 1983, the County claims that it contains new information. SC Motion at 2. However, contrary to this assertion, most, if not all, of the information contained in Bulletin 83-03 has been available for the past several months and, in some cases, years. It is significant that Mr. Bridenbaugh in his affidavit did not assert that the Bulletin contained new information.

With the possible exception of events at Quad-Cities,^{2/} I&E Bulletin 83-03 does not report events or provide information that has not been reported in previous I&E documents. It establishes requirements for operating plants based upon an "analysis of check valve failures . . . at the Dresden and Quad-Cities nuclear power stations and other events which are described in Table 1."^{3/} The events described in Table 1 of

^{2/} I&E Bulletin 83-03 does not make clear whether the Quad-Cities information had been the subject of an I&E document prior to the publication of Bulletin 83-03 or if it had been otherwise disseminated to the public, and if so, when. Regardless, the Quad-Cities information is merely cumulative of information reported in previous documents.

^{3/} In terms of the purposes for which the County proposes to use it, Bulletin 83-03 does not have any independent significance apart from the events that it reports. Although the Bulletin establishes requirements related to the in-service

the Bulletin occurred between March 30, 1979 and August 25, 1982. The following table shows the dates of the I&E circular, bulletins and notices that are listed on Table 1 of Bulletin 83-03.

<u>Document</u>	<u>Date</u>
<u>I&E CIRCULAR:</u>	
78-15 -- Tilting Disc Check Valves Fail to Close	7/24/78
<u>I&E BULLETINS:</u>	
79-04 -- Incorrect Weights for Swing Check Valves Manufactured by Velan Engineering Corporation	3/30/79
80-03 -- Operability of ADS Valve Pneumatic Supply ^{4/}	1/14/82
<u>I&E INFORMATION NOTICES:</u>	
81-41 -- Failure of Swing Check Valve in the Decay Heat Removal System at Davis-Besse Unit No. 1	11/10/80
81-30 -- Velan Swing Check Valves	9/28/81
81-35 -- Check Valve Failures	12/02/81
82-08 -- Check Valve Failures in Diesel Generator Engine Cooling System	3/26/82

(footnote continued)

testing of valves which ostensibly could be relevant to a resolution of SC Contention 11, the County has shown no interest in LILCO's response. The attached affidavit of John A. Rigert shows that LILCO will comply with all requirements of Bulletin 83-03.

4/ I&E Bulletin 83-03 mistakenly identifies this Bulletin as 80-02. Bulletin 80-02 is entitled "Inadequate Quality Assurance for Nuclear Supplied Equipment."

82-20 -- Check Valve Problems

6/28/82

82-35 -- Failure of Three Check Valves in High
Pressure Injection Lines to Pass Flow 8/25/82

As indicated by the foregoing table, the circular, bulletins and all but two of the information notices listed in Bulletin 83-03 were published by the time of the litigation of SC Contention 11 in June 1982. The table also reveals that the most recent document that Bulletin 83-03 relies upon, I&E Information Notice 82-35, was issued on August 25, 1982. Thus, this information, which the County now wishes to insert in the record, has been available to the County for nearly eight months; most of it was available when SC Contention 11 was litigated.

The untimely nature of SC's motion is exacerbated by the fact that in November 1982 the County was made aware that check valves generally had been the subject of numerous I&E documents. LILCO witness John F. Alexander testified on the role of the Independent Safety Engineering Group during the litigation of quality assurance and quality control issues. In the following dialogue with Judge Brenner, Mr. Alexander explains that the NRC Staff has put out numerous bulletins regarding check valves.

A. (Witness Alexander) Approved projects we have are crane check valves. There have been a lot of problems with a particular model of crane check valves. It turns out that, lucky us, we had some of

those at the plant. So we proposed increasing the frequency for inspecting these check valves to make sure that they didn't, or to catch an incipient failure of these check valves.

Q. Where did you pick up the check valve situation?

A. (Witness Alexander) We got that from INPO on the significant event report program.

Q. Do you know if the NRC Staff put out a bulletin on it?

A. (Witness Alexander) They put out a plethora of bulletins on that one, check valves. But that particular model hasn't hit their system yet. But they have covered just about all of the check valves at one point or another.

Transcript at 14,419-20 (Nov. 17, 1982). This dialogue occurred after the publication of all I&E documents identified in Table I of Bulletin 83-03. The attached affidavit of John F. Alexander shows that at the time of his testimony ISEG had 15 valve-related projects completed or underway; six of the projects addressed problems that had been, or subsequently were, identified in the I&E bulletins or notices listed in Bulletin 83-03.

It is significant for present purposes that Suffolk County chose not to cross-examine Mr. Alexander regarding the valve-related problems, the I&E documents or LILCO's response to them. Had the County done so, it could have then explored many of the documents and events that it now wishes to rely upon.

Gravity of the Issue/Value
of Taking Additional Evidence

Four sub-issues developed during the hearings on SC Contention 11: (1) whether sufficient consideration was given to passive failures in Shoreham's single failure analysis, (2) whether Shoreham's in-service testing program complies with applicable ASME codes, (3) whether Shoreham appropriately uses position indicators, and (4) whether the industry evaluation program at Shoreham is adequate. As is evident, all of these issues must be resolved on the basis of Shoreham-specific facts.

The County does not and cannot establish Bulletin 83-03's direct bearing on these issues. Rather, it would use the Bulletin in a general sense to show "that the likelihood of undetected valve failure may be greater than previously anticipated and that the inservice testing programs used by licensees have not been adequate to identify such failures." SC Motion at 1. Although these two issues may be tangentially related to SC Contention 11, the proffered evidence would be of little value in resolving the central issues. The Bulletin itself does not present any Shoreham-specific facts, and, therefore, cannot assist the Board in resolving issues that necessarily depend for their resolution upon Shoreham-specific facts. For example, Bulletin 83-03 neither establishes the probable frequency of valve failure at Shoreham, nor provides any information regarding Shoreham's in-service testing program.

For the foregoing reasons, LILCO strongly opposes the motion of Suffolk County to reopen the record on SC Contention 11. If, however, the Board thinks it appropriate to admit Bulletin 83-03, then LILCO requests that the attached affidavit of John A. Rigert showing LILCO's response to the Bulletin also be admitted into evidence and that the parties be allowed to supplement their proposed findings to reflect it. The relevance of this information is demonstrated by the affidavit of Dale G. Bridenbaugh, attached to the County's motion, which asserts that LILCO should be required to comply with certain requirements of the Bulletin. Bridenbaugh Affidavit at 2.

Mr. Rigert's affidavit states that LILCO already does or will comply with the requirements for operating plants established by Bulletin 83-03. In particular, his affidavit states that the in-service testing of the check valves used in the diesel generator cooling water systems complies with the requirements of the Bulletin. The check valves are tested quarterly with both forward and reverse flow to verify the integrity of valve internals -- which is the basic requirement that Bulletin 83-03 imposes. Rigert Affidavit at 2-3.

II. REPORT ON DISCUSSIONS REGARDING
THE SUBSTANTIVE AND PROCEDURAL
ASPECTS OF THE MOTION AND ON THE
SETTLEMENT STATUS OF SC CONTENTION 11

A. Discussions on Substantive and Procedural Aspects

The parties have not reached any agreement on the substantive merits of the motion. The positions of the parties are reflected in their respective filings.

In the event the Board reopens the record on SC Contention 11, the parties have reached two procedural agreements. First, if the Board admits I&E Bulletin 83-03 and the affidavit of John A. Rigert showing LILCO's compliance with it, no party will request further hearings.

Second, the parties also recommend the following schedule for filing supplemental filings:

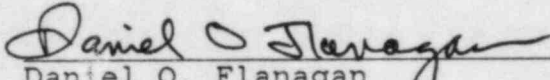
- (1) LILCO to file 7 days after the Board's order reopening the record,
- (2) SC to file 10 days after LILCO's initial filing,
- (3) NRC Staff to file 10 days after SC's filing, and
- (4) LILCO to reply 7 days thereafter.

B. Report on Settlement Status

Following the NRC licensing review of Shoreham's draft valve testing plan on November 30 and December 1, 1982, the parties met to discuss settlement possibilities on December 21, 1982. Resolution was not reached on any issue at that time.

Pursuant to the Board's Order of April 14, 1983, the parties again discussed the possibility of further settlement talks. The time available before the filing of LILCO's response to the County's motion did not permit the talks to develop to the point where either the likelihood of settlement or the value of further technical discussions could be judged. The parties will discuss the issue next week and decide then whether future talks would be productive. The parties will keep the Board informed of the status of the negotiations.

Respectfully Submitted,


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DATED: April 22, 1983