

8/23/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-322-OL-3
(Emergency Planning)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SUFFOLK COUNTY OBJECTION TO
SPECIAL PREHEARING CONFERENCE ORDER

On August 19, 1983, this Licensing Board issued a Special Prehearing Conference Order (the "Order"), which contained rulings on admissibility of emergency planning contentions and established a schedule for emergency planning discovery and other matters. Pursuant to 10 C.F.R. § 2.751a, Suffolk County hereby objects to that portion of the Order dealing with scheduling. A separate objection regarding the Board's admissibility rulings will be filed within the time prescribed by the Rules.^{1/}

The Board ruled that all discovery must be completed by September 23, 1983. Based upon the September 23 discovery

1/ The County is taking the unusual step of filing separate objections relating to scheduling and admissibility of contentions because it is possible to prepare the scheduling objection much more rapidly. Since modification of the Board's schedule would have the potential to impact ongoing discovery activities, the County believes it useful to file this scheduling objection immediately.

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completion date, the Board set subsequent milestones leading to a hearing beginning on November 14. The sole Board explanation for this schedule was:

The Board finds that the subject of emergency planning for Shoreham should be treated efficiently and expeditiously to avoid delay in the final licensing adjudication. Accordingly, the Board orders a compact discovery schedule leading to commencement of a hearing on this proceeding on November 14, 1983.

Order at 1.

Suffolk County strongly objects to the Board's ruling that all discovery must be completed by September 23. There is no basis or justification stated by the Board for rejecting the discovery schedule proposed by the County. Surely, the Board's citation of a mere abstraction -- i.e., efficiency and expeditiousness -- lacks validity when compared with the detailed justification for each step of discovery which the County has demonstrated to be essential to the presentation of its case. Indeed, the County submits that its proposed discovery schedule is both expeditious and efficient in fact. And, most important, the County's schedule is fair.

(1) Suffolk County indicated to the Board in its August 4 filing and orally at the prehearing conference that it needed to take at least 20-25 depositions, many of which could not begin until requested documents had been produced

by LILCO. See August 4 Suffolk County filing, pages 11-15. As explained in detail in the County's August 4 filing, these depositions are essential in order to inquire into LILCO's ability to implement its Transition Plan and also to assess FEMA's review of the Plan. See August 4 Suffolk County filing, pages 2-3, 6-10.^{2/} Subsequently, in a letter to the Board which was hand delivered on August 17, the County advised the Board that LILCO has now asked to depose 21 County witnesses and other persons.^{3/} That means that Suffolk County and LILCO wish to conduct between 40 and 50 depositions.

Pursuant to the Board's suggestion that the parties work out discovery problems informally among themselves, on August 18, 1983, counsel for the County and LILCO prepared a tentative deposition schedule to cover initial deposition discovery desired by both LILCO and the County. The schedule covers the period from August 23 through October 7 and represents depositions by LILCO and the County of approximately 25 people. About 25 additional depositions remain to be scheduled. See Exhibit 2 hereto for details of that tentative schedule.

The Board's Order that all discovery must be completed by September 23 means that the tentative deposition schedule

^{2/} The County does not foresee the Board's admissibility rulings reducing the number of depositions it needs to take.

^{3/} On August 17, 1983, LILCO advised the County in writing regarding the 21 depositions it wished to take. A copy of that LILCO letter is attached as Exhibit 1. The County was informed orally by LILCO on August 18 of two additional depositions it wished to take.

worked out by the parties and described in Exhibit 2 is worthless. Indeed, in the time allotted by the Board for discovery -- 24 business days, starting yesterday -- it is clear that only a portion -- probably less than half -- of the 40-50 depositions contemplated by the parties can in fact be taken. Thus, the impact of the Board's ruling is to deny the parties the chance to prepare for trial in the manner they believe is necessary to make a legally sufficient record for review by this Board and, if necessary, other administrative and judicial reviewers.

Suffolk County respectfully requests that the Board particularize its response to the following questions: Which of the County proposed depositions did the Board decide were unnecessary? What were the Board's reasons? How is the Board's schedule "efficient" when it precludes parties from pursuing much of the discovery which they think is necessary? Within the "compact" discovery schedule ordered by the Board, did the Board assume that LILCO would take any depositions? How does the Board expect parties to conduct all depositions by September 23 when at least some documents will not presumably be produced until September 16? How did the Board balance the abstract concepts of efficiency and expeditiousness with the hard facts put before it by the County and with the practical dictates of fundamental fairness and due process?

The County does not know the answers to these questions because the Board did not provide even a cursory explanation of why the schedule proposed by the County in its August 4 filing

(which called for depositions on virtually every business day between August 29 and October 21) was not wholly reasonable, efficient, and expeditious.^{4/}

The only seeming "reason" offered by the Board for its schedule is "to avoid delay in the final licensing adjudication." Order at 1. This unexplained phrase -- stated without any suggestion that the County's discovery schedule would cause undue delay -- is in sharp contrast to the oral statement by the Board that its "goal is to conduct a full, fair, and expeditious hearing of the case." Tr. 324 (emphasis supplied). The Board does not explain how the County's schedule would not be full or expeditious; nor does the Board explain how fairness can be ensured when parties are denied the opportunity to pursue necessary discovery.

Further, the Board ignores the fact that this emergency planning proceeding is without precedent. Not only the parties, but the Board itself will be treading new ground. In this first-of-a-kind circumstance, does the Board believe that rejecting the scheduling necessities of a central party can somehow foster the public interest? Indeed, is this what Congress had in mind in enacting Section 5 of the NRC Authorization Act, or what the Commission had in mind in

^{4/} The County's schedule was premised on only the County taking depositions. Since LILCO now has indicated a desire to take numerous depositions, the County's schedule would need to be extended to allow for the LILCO depositions.

interpreting it so that LILCO could have its current "opportunity" to prove the legitimacy of its so-called "utility plan"? What of the County's opportunity to prove its contention that LILCO's plan is unworkable?

Never before has there been a case where a utility has attempted to create offsite preparedness by itself. This LILCO effort raises unique issues of first impression, particularly when considered in light of the determination of the authorized local government that it is impossible to protect the public well-being in a Shoreham nuclear emergency. These issues do not lend themselves to simple pro-forma checklist review of LILCO's plan against NUREG-0654, but rather demand in depth analysis to determine whether the plan can be implemented -- will it work; will it actually protect people? However, the Board appears to treat this case as "business as usual."

By the ASLB's April 20 Order, as affirmed on May 20 by the Commission, LILCO was granted an "opportunity" to attempt to show its plan would work. The County is now entitled to an opportunity to prove that LILCO's plan will not work. To do this, however, a reasonable discovery opportunity must be afforded. The schedule set forth in the Order is unreasonable.

The County is now also entitled to an explanation by the Board of why the County's proposed schedule and supporting arguments are unacceptable. Indeed, the Board has an obligation to explain the bases for its rulings -- it is not enough

simply to state conclusions. See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33 (1977). The Board has failed to do so in this case.

(2) The Board appears to base its schedule on the view that a hearing must begin on November 14 "to avoid delay in the final licensing adjudication." Order at 1. The County believes this "delay" conclusion is irrelevant; the parties are entitled to a fair opportunity, in light of the actual complexity of the issues presented in this proceeding, to prepare their cases.

However, since the Board refers to "delay," the County wishes to point out that the Board is factually incorrect. A hearing does not need to start on November 14, 1983, to avoid "delay." Due to the recent diesel generator failure at Shoreham, LILCO itself has stated, as documented in a LILCO Press Release which is Exhibit 3 hereto, that "under the most favorable assumptions," the earliest fuel load date which it can predict is the first quarter of 1984. LILCO also stated that "under more adverse assumptions, fuel loading will begin significantly later."^{5/} Since fuel loading and low power testing generally take about 6 months, an emergency planning decision is "needed" no sooner than the third quarter of 1984

^{5/} The County also has been informed by LILCO counsel that LILCO intends to file with the Brenner Board information concerning indications of a failure in the crankshaft portion of a second diesel generator. If a second diesel has serious problems, the schedules for fuel loading could be further delayed.

-- at the earliest. Therefore, a hearing does not "need" to commence on November 14, 1983, in order for a decision to be reached by July-September 1984.

(3) There is no basis for the Board's implication that a hearing commencing November 14 will be expeditious if discovery is arbitrarily cut off on September 23. The County submits that the opposite is true. Because the schedule deprives the County and other parties of reasonable discovery opportunities, the hearing will necessarily be longer and less focused than would otherwise be the case. Thus, the opinions of and facts known by persons whom the County is unable to depose will be probed for the first time when those persons appear on the witness stand at the hearing, either as LILCO witnesses or when called to testify in response to County subpoena requests. In short, the Board's schedule will prove to be counterproductive to its asserted goal of avoiding delay.

In view of the foregoing, the County respectfully requests that this Board:

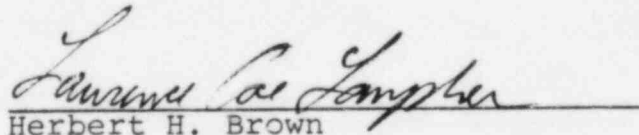
(a) Reconsider its schedule and adopt a new schedule consistent with the County's August 4 proposal, as extended commensurately to provide time for LILCO to take the depositions it has requested.

(b) If the Board does not adopt a schedule as requested by the County, then it should:

- (i) Provide detailed reasons for its actions; and
- (ii) Pursuant to 10 C.F.R. §§ 2.751a(d) and 2.718(i), certify the matter to the Commission for decision. Such certification is essential in this case of first impression so that the Commission, which by its May 12 Order directed the Licensing Board to proceed, may be fully apprised of the procedures which this Board is using to compile the "record" called for in that May 12 Order. See CLI-83-13, May 12 Memorandum and Order at 4.

Respectfully submitted,

David J. 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,
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Washington, D.C. 20036

Attorneys for Suffolk County

August 23, 1983

HUNTON & WILLIAMS

707 EAST MAIN STREET

P. O. Box 1535

EXHIBIT 1

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

August 17, 1983

1819 PENNSYLVANIA AVENUE, N. W.
P. O. BOX 18230
WASHINGTON, D. C. 20036
202-823-8650

FILE NO 24566.000003

DIRECT DIAL NO. 804-788-8701

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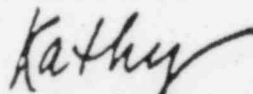
Dear Tip:

The following is a list of the persons LILCO wishes to
depose during Phase II emergency-planning discovery:

Inspector Richard C. Roberts, SCPD
Inspector Joseph J. Monteith, SCPD
Deputy Inspector Michael Turano, SCPD
Captain Ed Michaels, SCPD
Captain Peter Cosgrove, SCPD
Lt. John Packler, SCPD
Captain Snow, SCPD
Deputy Inspector Regensberg, SCPD
Officer Vincent Stiles, SCPD
Deputy Inspector Philip McGuire, SCPD
Phillip B. Herr
James H. Johnson
Donald J. Zeigler
Susan Saegert
Andrew Kanen
Peter F. Cohalan
Frank Jones
Robert Budnitz
Lee Koppelman
Laura Palmer
Robert Meunkle

Please do not hesitate to call me should you have any
questions about this list prior to our meeting on Thursday.

Sincerely,



Kathy E. B. McCleskey

301/869

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

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TELEX 440909 HIFPH UI

WRITER'S DIRECT DIAL NUMBER

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KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON

1500 OLIVER BUILDING

PITTSBURGH, PENNSYLVANIA 15222

(412) 355-6500

M E M O R A N D U M

August 19, 1983

TO: All Parties

FROM: Karla J. Letsche

RE: Partial Tentative Deposition
Schedule

Shoreham Nuclear Power
Station
Docket No. 50-322 O.L.

During a meeting on August 18, 1983, counsel for LILCO and Suffolk County agreed to a partial tentative deposition schedule, running from August 23 through October 7, which takes care of about half the depositions which LILCO and the County tentatively propose to take. There remain approximately 25 persons whose depositions still need to be scheduled. We anticipate further meetings to schedule these remaining depositions for times after October 7.

Because the meeting of counsel was held prior to the issuance of the Board's ruling on schedule and contentions, the attached partial schedule is, of course, subject to revision.

cc: Service List

Encl.

PARTIAL TENTATIVE
DEPOSITION SCHEDULE

<u>Witness</u>	<u>Date</u>	<u>Tentative Location</u>	<u>Party Taking Deposition</u>
Russell R. Dynes	August 23-24	Washington, D.C.	Suffolk County
Dennis E. Miletì	August 25-26	Washington, D.C.	Suffolk County
G. Hoyt Whipple	August 30	Washington, D.C.	Suffolk County
Leonard Hamilton	August 31	Washington, D.C.	Suffolk County
Captain Snow Captain Peter Cosgrove Lt. John Fackler Deputy Insp. Regensberg Officer Vincent Stiles	September 6-9	Long Island	LILCO
Edward Tanzman	September 12	Washington, D.C.	Suffolk County
Roger B. Kowieski	September 13	Washington, D.C.	Suffolk County
Fred Sharrocks	September 13	Washington, D.C.	Suffolk County
Thomas Urbanik, II	September 14	Washington, D.C.	Suffolk County
John Sears	September 15	Washington, D.C.	Suffolk County
Captain Ed Michaels Insp. Joseph Monteith Deputy Inspector Philip McGuire Deputy Inspector Michael Turano	September 19-21	Long Island	LILCO
Andrew Kanen/ Peter Polk	September 22-23	Undetermined	LILCO
Donald J. Zeigler	September 26	Washington, D.C.	LILCO
Susan Saegert	September 27	Washington, D.C.	LILCO
James Johnson	September 28	Washington, D.C.	LILCO
Inspector Richard C. Roberts	September 29	Undetermined	LILCO
Philip Herr Edward Lieberman	Week of October 3-7	Undetermined	LILCO Suffolk County



250 OLD COUNTRY ROAD
MINEOLA, N.Y. 11501



CORPORATE COMMUNICATIONS
DEPARTMENT
JAN K. HICKMAN, Manager

(516) 228-2308

EXHIBIT 3

FOR IMMEDIATE RELEASE
August 18, 1983

Long Island Lighting Company today announced that it has increased from \$50 to \$75 million the amount of a sale of preferred stock scheduled for August 22.

At present, there is no new information available as to the status of the diesel generator which experienced a crankshaft failure during a pre-operational test. The Company is today filing a Current Report on Form 8-K with the Securities and Exchange Commission to report on the recent developments at Shoreham regarding the diesel generator. The text of the Form 8-K follows:

"On August 12, 1983, during testing, the crankshaft of one of the three emergency diesel generators at Shoreham failed. The crankshaft was initially thought to have been cracked, but was in fact broken. Successful completion of testing of all three generators is a prerequisite for permission to load fuel and to begin low-power testing. Although an analysis of the cause of the crankshaft failure has begun, until such analysis has been completed, the Company is unable to predict when fuel loading and commercial operation will occur. Under the most favorable circumstances, correction of the damage caused by the failed crankshaft as well as a determination of the adequacy of all three diesel generators, in light of such failure, could be accomplished by late November 1983.

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"Moreover, the Company does not know at present to what extent there will be delays in the commencement of the diesel generator hearings by the Atomic Safety and Licensing Board that has been considering the Company's application for an operating license. These hearings were to have begun on August 29, 1983, but have been suspended until additional information concerning the crankshaft failure is available. The Company believes that the diesel generator hearings will be lengthier than originally contemplated. Thus the Company believes that, under the most favorable assumptions, fuel loading will not take place until some time during the first quarter of 1984. Under more adverse assumptions, fuel loading would begin significantly later. The Company's previous estimates that the successful completion of power ascension tests at Shoreham during the period between fuel load and commercial operation would require approximately six to nine months assumed timely authorization from the Nuclear Regulatory Commission to increase levels of power beyond 5%. While the Company believes that the emergency response planning hearings can still be conducted concurrently with those relating to the diesel generators, it cannot provide any assurance that the commencement of the emergency response planning hearings will not also be delayed. Any delays in the receipt of such timely authorization or in the emergency response planning hearings may delay the date of commercial operation. The Company believes that the likelihood of such delays has increased as a result of the developments regarding the emergency diesel generators.

"Based upon an assumed commercial operation date of May 1, 1984, the Company had estimated the total cost of the Shoreham unit at approximately \$3.4 billion. Under all assumptions, the Company now believes that commercial operation by May 1, 1984 is no longer achievable. Although the Company cannot provide an estimate of when commercial operation will take place, it does estimate that delay in the commencement of commercial operation increases the cost of the unit approximately \$35 million to \$45 million a month. Any delay in the commercial operation date of Shoreham and any change in its costs will affect the assumptions and therefore the relief which the New York Public Service Commission may grant in the Company's pending electric rate case."

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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY OBJECTION TO SPECIAL PREHEARING CONFERENCE ORDER, dated August 23, 1983, have been served this 23rd day of August 1983 by U.S. mail, first class, to the following, except as otherwise noted.

(*)	James A. Laurenson, Chairman Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Ralph Shapiro, Esq. (#) Cammer and Shapiro 9 East 40th Street New York, New York 10016
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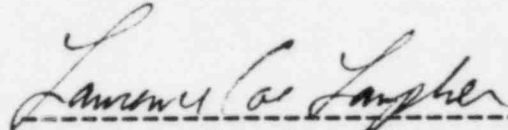
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DATED: August 23, 1983

(*) By Hand
(#) By Federal Express