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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board OFFICE OF SECRETARY
REGULATING & SERVICE
BRANCH

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

LILCO'S RESPONSE TO
SUFFOLK COUNTY'S MOTION TO COMPEL

Preliminary Statement

On August 26, 1983, Suffolk County asked the Board to compel Long Island Lighting Company to comply with the County request for excessively broad, ongoing discovery related to emergency diesel generator crankshafts. As the County's Motion to Compel reflects, the discovery sought can be summarized as follows:

Category 1: A request for all documents pertaining to the crankshaft failure and other crankshaft deficiencies^{1/} and to the attempts to determine the cause or causes of such failure.

^{1/} The County's sweepingly broad request also extends to "all crankshaft deficiencies that have been thus far discovered and that may yet be discovered."

Category 2: Requests for (a) notification to the County of significant developments in the efforts to determine the cause or causes of the crankshaft failure, (b) notification of examinations, tests and analyses concerning the crankshaft failure and (c) notification of meetings with the Staff concerning the crankshaft failure.

Category 3: Requests for access to the site or other locations for the County's representatives and consultants (a) to witness examinations, tests and analyses concerning the crankshaft failure and (b) to attend meetings concerning the crankshaft failure.

The County's requests are objectionable for the following reasons:

1. The requests are excessively broad given that the County bases its claim of right to discovery on the existence of diesel generator contentions concerning cylinder head leaks and vibration, and that no relationship has been established between the admitted diesel generator contentions and the crankshaft failure. The request is not reasonably calculated to lead to the discovery of admissible evidence concerning any relationship between the failure and the existing contentions. Rather, it is a premature and disruptive attempt to obtain broad, intrusive discovery on the crankshaft issue.
2. The County has failed to show the special circumstances necessary to warrant general and sweepingly broad discovery concerning the crankshaft issue prior to admission of a pertinent contention.
3. The County's broad discovery request for access to the site or other locations to witness examinations, tests and analyses, and to attend meetings, runs counter to the limitations

normally placed upon discovery requests for access to a party's premises. Such discovery, if granted, would interfere with the efforts underway to determine the cause of the crankshaft failure and to repair the diesel generators.

The County's failure to address the pertinent legal standards confirms the inappropriateness of its discovery requests. Despite this, LILCO agrees that some discovery should occur during the investigation of the diesel generator crankshaft failure. The unexpected failure of the crankshaft at a time when the Shoreham plant was essentially ready to load fuel will make it necessary to complete expeditiously any litigation on the diesel generators once the cause of the crankshaft failure and appropriate corrective action have been identified. The discovery proposed here by LILCO ensures that an expeditious schedule can be set without jeopardizing the rights of any of the parties. LILCO's principal concern is that discovery should be appropriately limited so as not to impose an unnecessary burden on LILCO during the investigation of the cause or causes of the crankshaft failure or otherwise interfere with the investigation. Consequently, LILCO proposes that the Board limit discovery in each of the three categories requested by Suffolk County as set out below:

Category 1: Documents

- a. Diesel Generator Master Plan (which has already been provided) and revisions to the plan, if any.

- b. Failure Analysis Associates' (FAA's) interim report on the results of the metallurgical examinations of the diesel generator 102 crankshaft.
- c. Any other technical interim reports on the crankshaft failure issued by FAA.
- d. The final report of Failure Analysis Associates.^{2/}
- e. FAA Report concerning the torsional stress tests on Emergency Diesel Generator 101.

Category 2: Notifications

- a. LILCO will provide the County with a periodic status report approximately every two to three weeks. The report will describe, as appropriate, (i) the status of the disassembly or assembly efforts for the diesel generators, (ii) the status of the major tests completed as part of the failure analysis process, including metallurgical tests and the torsional stress test, (iii) the schedule for completion of FAA's final report, and (iv) the status of any required corrective action for the diesel generators.
- b. With respect to notifications of meetings between the NRC Staff and LILCO, the NRC Staff should continue to send notifications in accordance with its current policy and practice.

Category 3: Access

- a. LILCO has already permitted County

^{2/} This report will set forth FAA's conclusions regarding the cause or causes of the crankshaft failure of diesel generator 102 and the bases for these conclusions. It will compile the results of the inspection, tests and analyses conducted in reaching these conclusions.

counsel and consultants to inspect and photograph the failed crankshaft removed from Emergency Diesel Generator 102. LILCO will give the County similar access to the crankshafts on Emergency Diesel Generators 101 and 103 when those shafts have been removed from their respective machines. Such access will be scheduled to avoid interfering with diesel generator activities.

- b. LILCO will give the County access to the disassembled portions of Emergency Diesel Generator 102 and Emergency Diesel Generators 101 and 103 once those engines are disassembled. Such access will be scheduled to avoid interfering with diesel generator activities.
- c. LILCO will permit the County to attend meetings with the NRC Staff for which the Staff has issued a meeting notice.

LILCO believes this proposal is reasonable in light of all of the circumstances. It is important to note that LILCO's proposal is not intended to preclude additional discovery by the County at the appropriate time. Once the investigation of the cause or causes of the crankshaft failure is complete or essentially complete, the parties, as ordered by the Board, will discuss the schedule for litigation of the diesel generator issues. Those discussions should include consideration of any appropriate additional discovery.

I. The County's Discovery Request is Excessively Broad.

The County bases its request for discovery concerning the diesel generator crankshafts on the existence of its prior

diesel generator contentions concerning cylinder head leaks and vibration. The County claims that its discovery requests are relevant and material to these contentions because

no one at this time can preclude the possibility that the crankshaft failures are related to the cylinder head cracking and vibration issues To assess the potential relationship, the County must have access to the relevant data and documents.

County Motion at 4 (footnote omitted). And further, the County states that

there can be no precise conclusions regarding the relationship between the crankshaft failures and the cylinder head/vibration aspects of the County's diesel contentions until the cause or causes of the crankshaft failures are determined The County, however, is entitled to complete information regarding the crankshaft failures until it is determined that there is no relationship between the crankshaft failures and either the cylinder head cracking issue or the vibration issue.

County Motion at 7. But this statement incorrectly assumes that LILCO has the burden of showing the irrelevancy of the requests to the admitted contentions. The contrary is the case; the County must carry the burden of establishing relevancy. As all parties concede, a final conclusion concerning the relationship between the cylinder head and vibration issues and the crankshaft problems cannot be reached until the cause or causes of the crankshaft failure are determined. Thus it is premature

to commence discovery on this issue; the County provided no justification for starting now.

Also, the County's discovery request is excessively broad. Blanket discovery requests like the County's are not favored. In Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 34 (1976), the Appeal Board noted that

a blanket request for production of all "books, documents, papers and records which are relevant and relate to the subject matter of [an] examination . . ." is obviously without merit.

Id. at 34 (quoting from 4A Moore's Federal Practice ¶ 34.07 (2d ed.)). The Clinton case confirms that the scope of a discovery request must be tailored to the given situation. There, the Appeal Board ruled that a request for a wide range of documents supporting a study done by an expert witness was too broad where the purpose of the request was to obtain documents that would assist intervenors in cross-examining that expert witness on particular aspects of the study. Id. at 33. In the instant case, the appropriate scope of a discovery request premised on the existing diesel generator contentions should focus on the relationship or lack of relationship between the existing contentions and the crankshaft failures. The County's requests are not so focused.

Indeed, they are not focused at all. For example, in its August 18 letter attached to the motion to compel, the County requests

all documents . . . , whether preliminary or final, as and when they come into LILCO's possession or under its control, pertaining to the crankshaft failure or the attempt to determine the cause(s) of the failure.

Suffolk County letter dated August 18, 1983, at 2. It also asks for notification of LILCO's

plans (and any changes thereto) to determine the cause(s) of the crankshaft failure, including the kinds of examinations, tests and analyses it will carry out, the schedules for them, and the identification of persons who will be involved in the failure analyses and their responsibilities.

Id. The County's other requests are similarly sweeping in scope and therefore inappropriate.

II. The County Has Not Demonstrated Special Circumstances Required to Permit Discovery in the Absence of a Contention.

As noted above, the County's discovery requests are an attempt to gain general discovery on the crankshaft issue without having a contention admitted on the subject. "Suffolk County's Notice of Potential Motion to Admit New Contention on Diesel Generators," dated August 22, 1983, does not constitute the admission of an issue for litigation. LILCO agrees with

the County's conclusion that it would be premature to submit a contention on the crankshaft issue prior to the identification of the cause of the crankshaft failure. For the same reasons, LILCO similarly believes that unfettered discovery on the crankshaft issue is also premature.

Under the NRC's Rules of Practice, discovery "shall relate to those matters in controversy which have been identified by the Commission or the presiding officer" 10 CFR § 2.740(b)(1) (emphasis added). It has been recognized, however, that licensing boards may have the authority to allow discovery prior to the admission of contentions in extraordinary circumstances. This authority flows from the Board's general power and duty to conduct a fair and impartial hearing and to control the course of the proceedings. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-2, 15 NRC 48, 53 (1982) (citing 10 CFR § 2.718); see Consolidated Edison Co. of New York (Indian Point, Unit No. 2), Power Authority of the State of New York (Indian Point, Unit No. 3), LBP-82-12A, 15 NRC 515, 518-19 (1982). It has also been recognized, however, that this power to order discovery prior to the admission of a contention should be sparingly exercised and only where circumstances justify such extraordinary measures. See Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), LBP-81-39, 14 NRC 819, 823 (1981).

The Indian Point decision cited above illustrates the extraordinary circumstances needed to justify discovery prior to the admission of a contention. The Indian Point Licensing Board exercised its power to grant a potential intervenor's motion to permit observation of an onsite emergency planning exercise, even though the Board had not yet ruled on the intervenor's petition for intervention, or admitted any contentions. According to this Board, the result was dictated by the unique circumstances of the case. In Indian Point, unlike most NRC cases, the Commission had ordered the Board to explore certain issues, including some pertaining to emergency planning. The Board reasoned that although a contention specifically dealing with the onsite drill had not been admitted, the Board's mandate to investigate emergency planning justified the authorization of discovery. 15 NRC at 518-19. Another significant factor in the Board's determination was that the scheduled date for the drill was only two days away from the date of the filing of the motion. Because the intervenors might not otherwise have the opportunity to watch an actual drill in progress prior to litigation of the issues, the Board concluded that it was appropriate to allow the intervenors to observe the drill even though no contention on the subject had been formally admitted. 15 NRC at 520.

On appeal, the Commission reversed the Licensing Board's decision, ruling that none of the matters relied on by

the Board justified its authorization of premature discovery. Consolidated Edison Co. of New York (Indian Point, Unit 2), Power Authority of the State of New York (Indian Point, Unit 3), Docket No. 50-247-SP, 50-286-SP, slip op. (Aug. 20, 1982). The reversal was based on several considerations applicable here. First, the Commission recognized "the clear right and responsibility of the licensee to control access to important and protected areas of nuclear facilities such as control rooms." Id. at 2. Second, the availability of many effective opportunities to ascertain, after the fact, how activities were conducted during the emergency exercise weighed against the presence of intervenors at the emergency exercise. Id. at 3. And finally, the Commission's decision "reflected its concern that the presence of outside observers might impair the usefulness of the exercise in terms of inhibiting the plant's operating personnel from responding to the simulated exercise problems with the spontaneity which would be likely under actual emergency conditions." Id. at 3-4. Thus, the Commission has made clear that Boards should be very sparing in the exercise of their inherent powers to authorize discovery prior to the admission of a contention. The County has made no showing that there are any special circumstances present in this instance to justify the exercise of that power. To the contrary, the factors considered by the Commission in Indian Point weigh against discovery at this time.

III. Limitations on Discovery Are Appropriate When Dealing With Requests for Access to Property.

Limitations on the County's discovery request are also appropriate because a number of them would require access to the Shoreham site and other facilities. For example, the County's request that its representatives and consultants be invited to attend "all meetings concerning the crankshaft failure which are to be attended by NRC Staff personnel" could be interpreted to include the almost daily contact between LILCO personnel and the NRC Resident Inspectors.^{3/} Permitting the County to attend all such meetings would require giving the County almost unfettered access to the Shoreham site. Also, the County's requests for access to witness examinations, tests and analyses, if granted, would require repeated entries into the secure areas of the plant.^{4/} By permitting essentially

^{3/} In fulfilling their responsibilities, the Resident Inspectors frequently call upon LILCO personnel at the plant to discuss the status of the diesel generator failure analysis and the recovery effort. These meetings and contacts are generally spontaneous in nature, based upon the ebb and flow of the activities being conducted at the site. Thus, it is not always possible to predict in advance when such meetings may occur. To inform the County in advance of all such meetings would be extremely difficult if not impossible, and it would certainly impair the ability of the Resident Inspector and other NRC Staff personnel to perform their monitoring functions.

^{4/} Involved would be up to three levels of security clearance. Admission to the site in general is restricted, using security measures similar to those employed during construction. In addition, security measures for the controlled area of the Shoreham site (where the permanent plant buildings are located) are now in place. Finally, special permission is required for access to the diesel generator room and the tempo-

unlimited access to secure areas, the Board would be removing from the licensee its "primary responsibility for access decisions" that the Commission found so important in Indian Point. The Commission ruled that it would not disturb a licensee's judgment in such a matter unless it appeared to be an unreasonable determination under the circumstances. As already noted, LILCO has not and will not completely exclude the County from access to the Shoreham site and to the diesel generators. The proposal set out on pages 3-5 above represents a reasonable effort to give the County access. As the Commission recognized in the Indian Point case, it is the licensee's responsibility in the first instance to make judgments concerning access to its facility. Removing that responsibility from LILCO would be inappropriate and contrary to the Commission's Indian Point decision.

Security considerations aside, any discovery involving access to another's property is inherently intrusive and therefore requires close scrutiny. The limits on discovery by entry onto private property such as that sought in this case, are generally more severe than those imposed on other forms of discovery.^{5/} In Belcher v. Bassett Furniture Co., 588 F.2d 904

(footnote continued)

rary diesel work areas in the turbine building because the diesels are considered vital pieces of equipment. Not only would access approval be required, but also security escorts would have to accompany County representatives as long as they were on site.

^{5/} It is appropriate to look to federal law for guidance. The Federal Rules of Civil Procedures are similar to the NRC's

(4th Cir. 1978), the court reversed a district order granting an onsite inspection of defendant's plant. The court stated that

[S]ince entry upon a party's premises may entail greater burdens and risks than mere production of documents, a greater inquiry into the necessity for inspection would seem warranted. We therefore reject the plaintiffs' contention that the inspection in this case must necessarily be governed by the general relevancy standard of rule 26(b).

Id. at 908. The court also noted that

[I]t is clear that the right to discovery is a qualified right that does not extend to making unnecessary and unwarranted excursions onto the property of another under the guise of supportable litigative need But any such invasion of a person's property rights must, in a language of our Supreme Court, "be judged with care. . . ."

Id. at 908 n.12 (quoting Hughes and Anderson, Discovery: A Competition Between the Right of Privacy and the Right to Know, 23 U. Fla. L. Rev. 289, 291 (1971)). And finally, the court observed that "courts have uniformly scrutinized the problems to insure that the anticipated benefits are real and necessary

(footnote continued)

rules of practice and have been used by licensing boards for guidance in discovery matters. E.g., Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 581 (1975).

and that the burdens will not be intolerable." Id. at 908-09 n.12. Thus, this general concern of the federal courts that entries onto another's property be appropriately limited, coupled with the security concerns expressed by the NRC in the Indian Point case, lead to the conclusion that any request for access to the Shoreham site, or to the facilities of LILCO's consultants and contractors, should be carefully scrutinized to determine whether such an entry is necessary and whether less intrusive means of discovery are available. LILCO believes its discovery proposal strikes an appropriate balance.

IV. Summary of LILCO's Objections to the County's Requests

The County's motion to compel can be divided into three categories. Each will be dealt with in turn, demonstrating why the County's request is objectionable at present.

1. Documents

As already noted, requests for "all documents" related to a particular subject are not generally favored. This is particularly true where the discovery is justified only for a limited purpose. Here, the County's express purpose is to determine whether any relationship exists between the previously admitted diesel generator contentions and the crankshaft failure. Thus, the County's sweeping request for all documents relating to the failure is far too broad.

In addition, the County's request for "ongoing discovery" which would include both preliminary and final documents, "as and when they come into LILCO's possession or under its control," County Motion at 5 (quoting from County's Request, ¶ 3), is unreasonable and excessively burdensome. The diesel generator effort involves many different activities conducted both at the Shoreham site and at the facilities of LILCO's contractors and consultants. As indicated in the Diesel Generator Master Plan, personnel from LILCO Project, LILCO Start-up, LILCO OQA, LILCO QA, Stone & Webster Site Engineering, Failure Analysis Associates, Transamerica Delaval and others play important roles in the crankshaft effort. To require LILCO to give Suffolk County copies of all documents "pertaining to the crankshaft failures and attempts to determine the cause(s) of such failures" "as and when" they are developed would create substantial logistical problems. Moreover, much of the discovery would be unnecessary because, under the County's request, LILCO would be required to produce any drafts or preliminary versions of "correspondence, memoranda, written data, photographs, reports, notes, drawings, computer printouts, written analyses, and other forms of written data and material." Suffolk County letter dated August 18, 1983, at 2-3. In many cases, this would result in the multiple production of documents that do not change in any meaningful fashion. It also will result in the production of documents containing

discrete pieces of information that will be later included in more comprehensive documents. Consequently, the County's request would create additional work for LILCO personnel at a time when a substantial effort is required for investigation and correction of the diesel generator problems.

The "ongoing discovery" requested by the County could also disseminate misleading information since it could result in the production of preliminary or incomplete data. This is especially troublesome since recent experience with the diesel generators has demonstrated that any information provided to Suffolk County is likely to appear in local newspapers almost immediately. Publication of preliminary or incomplete information is not in the public interest.

Finally, the "ongoing discovery" of all documents related to the investigation of the crankshaft failure may have a "chilling effect" on the investigation itself. This "chilling effect" is acknowledged in Commissioner Robert's Additional Views in the Indian Point case. The Indian Point Licensing Board had ordered the Staff to preserve draft reports prepared by personnel involved in the emergency planning exercise. Commissioner Roberts did not believe this practice should be continued:

Draft handwritten notes by one observer of an emergency exercise, standing by themselves, are incomplete and can be misleading. An observer may not know until after the exercise

and after discussion with other participants in the exercise all that was going on during the exercise. Thus, comments jotted down by an observer whether favorable or unfavorable, may not be accurate. Due to this limitation, handwritten notes and drafts are ordinarily destroyed after preparation of the exercise report. Moreover, it is my understanding that many observers would not take notes of an exercise if required to preserve and distribute them. This would result in the preparation of exercise reports based on unrecorded observations. As such reports might be less complete, I do not believe that it is in the NRC's interest that Licensing Boards require the Staff and FEMA to preserve and distribute handwritten notes written during an emergency exercise.

Consolidated Edison Co. (Indian Point, Unit 2), Power Authority of the State of New York, (Indian Point, Unit 3), Docket No. 50-247-SP, 50-286-SP, slip op., Additional Views of Commissioner Roberts, at 3 (Aug. 20, 1982). The County's request to receive all documents, including drafts, as soon as they are generated is certain to have a similar undesirable chilling effect on LILCO and others engaged in the investigation and recovery efforts.

LILCO's proposal, unlike the County's request, avoids the burdensome and chilling aspects of the County's request for documents and at the same time informs the County of developments relating to the investigation and correction of the crankshaft failure. Thus, the Board should limit the production of documents during the pendency of the diesel generator investigation to those set out on pages 3-4 above.

2. Notification

The County's request for notification involves three different categories of activities or events. First, the County wants to compel LILCO to advise it of "significant developments" in the attempt to determine the cause or causes of the crankshaft failure. County Motion at 7. The ambiguous term "significant developments" is nowhere defined and its scope would doubtless be a fertile area for continuing disputes. To avoid this LILCO proposes furnishing to the County the status report described on page 4 above. Also, the fact is that LILCO has advised Suffolk County of various developments concerning crankshaft matters. For example, the County has already received the following information from LILCO:

1. initial notification of the failure within hours of the discovery of the failure on August 13;
2. LILCO's request for a temporary deferral dated August 15;
3. LILCO's report on Shoreham's schedule dated August 22;
4. letter from LILCO's counsel to County's counsel dated August 23, 1983;
5. telephone call from LILCO's counsel to County's counsel apprising them of the substance of the August 23rd letter;
6. provision by LILCO counsel of the diesel generator Master Plan on August 25, shortly after it had been received by LILCO's counsel;

7. LILCO status report on the diesel generators dated August 25, 1983;
8. attendance by Suffolk County at a meeting at the Shoreham site between LILCO and the NRC Staff on September 2, 1983;
9. information to County counsel concerning the status of the removal of the crankshaft for Diesel Generator 102 in telephone calls on September 2 and 3, 1983;
10. access to site for County counsel and consultants to inspect and photograph the crankshaft for Emergency Diesel Generator 102 on September 3, 1983.

As already indicated, LILCO proposes to provide the County with a periodic status report approximately every two to three weeks. The first status report will be issued early next week and will be sent promptly to the Board and parties. This should be adequate to meet the County's legitimate needs at this time.

The second aspect of the notification request involves examinations, tests and analyses concerning the crankshaft failures. Since unlimited access to all examinations, tests and analyses to be conducted on the crankshafts is not appropriate (see pages 22-24 below), notification of such activities is unnecessary. More important, the investigation of the cause or causes of the failure of the crankshaft on Emergency Diesel Generator 102 and the cracks on Emergency Diesel Generators 101 and 103 is an ongoing process. Although it may be possible to

provide advance notice of some aspects of the investigatory process, LILCO, Stone & Webster, Failure Analysis Associates and Transamerica Delaval personnel are conducting many aspects of the effort on virtually an around-the-clock basis at the Shoreham site, and at other facilities. The nature of the diesel generator effort has required LILCO to take special measures, such as multiple shift coverage from the organizations involved and pre-shift meetings, to ensure appropriate coordination and notification of activities to be conducted on each shift. Thus, it would be very difficult, if not impossible, to provide the County with advance notification of all of the activities that fit into the category of examinations, tests and analyses. As noted above, however, LILCO will provide a status report containing information concerning the diesel generator investigation. Consequently, the LILCO proposal is a reasonable and adequate alternative to this portion of the County's notification request.

Finally, the County has requested notification of meetings between the NRC Staff and LILCO. For reasons already stated, such a requirement would be virtually impossible to satisfy in many instances. It would also significantly interfere with, and wholly preclude at times, the Staff's ability to gather necessary information. LILCO believes the objective of this discovery request will be adequately met by the Staff's existing policy concerning meeting notices. Notice of formal,

planned meetings between LILCO and the Staff are generally sent to all parties in the case and, in many instances, the County has received earlier oral notification of such meetings. This Staff approach has worked well in the past and should not be abandoned.

3. Access

The County's request for access has two parts: access to meetings with the NRC and access to examinations, tests and analyses. With respect to the former, LILCO will permit the County to attend those meetings between the NRC Staff and LILCO that are noticed in accordance with the Staff's existing policies.

The County's request for access to examinations, tests and analyses should not be granted for reasons already noted; they are reiterated briefly below.

First, the request is an overly broad attempt to gain comprehensive discovery on the crankshaft issue.

Second, the request is premature and unnecessary because the information sought will be available at a more convenient time. In the Commission's Indian Point decision, a significant factor in denying access to an emergency planning drill was the ability of the intervenors to review, after the fact, documentation generated during the emergency planning

exercise. In the present case, both LILCO and the NRC will develop documentation concerning the examinations, analyses and tests the County now seeks to observe. LILCO has already agreed to provide Suffolk County with FAA's final report concerning the diesel generator crankshaft, FAA's interim report on the metallurgical tests and the report on the torsional stress test of Diesel Generator 101 as soon as they are available. The results of routine NRC I&E inspections, generally documented in I&E reports, will also be available. The County has made no showing that its requests to be kept up to date on developments relating to the diesel generator crankshafts and its request to be present at examinations, tests and analyses are necessary to ensure that it has access to this information. To the contrary, this information will be available to the County after the fact. Consequently, their present requests cannot be justified.

Third, an unlimited right of access will create an unnecessary burden on LILCO and may delay the progress of the investigation. The security requirements and coordination difficulties have already been discussed above. The chilling effect, discussed below, would also impede the progress of the investigation. At a minimum, granting the County's request is likely to slow the completion of the investigation no matter how diligent the parties are in attempting to coordinate any County participation.

Fourth, a broad right of access to witness activities concerning the diesel generator crankshafts is contrary to principles set out in both NRC and federal cases concerning discovery involving entry onto the premises of a party.

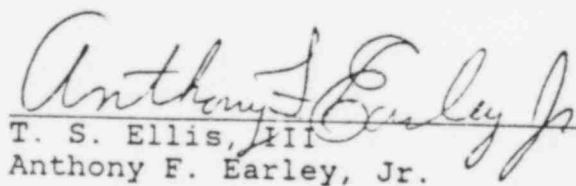
Finally, the presence of County representatives and consultants would inevitably have a chilling effect on the conduct of examinations, tests and analyses. The importance of this last consideration was emphasized in the Commission's Indian Point decision discussed above. The Commission recognized the potential for a chilling effect where intervenors were permitted to observe an emergency drill and concluded that its potential could not be justified where there were other means to achieve the ends sought. Here, the potential for a chilling effect is even more likely than in Indian Point. There a large number of observers were already scheduled to witness the emergency planning tests in question. Here, the potential for an adverse impact on the quality of the investigation is greater where the activities to be witnessed are not usually observed. The presence of County personnel would chill the exchange of information among personnel involved in these activities. As a result, permitting the County to have the discovery that they request might have an adverse effect on the adequacy and thoroughness of the investigation itself.

V. Conclusion

The County has not demonstrated, and cannot demonstrate, that it is necessary for them to have the broad, expansive discovery on the crankshaft issue that it requests at this time. LILCO, however, does not ask the Board to completely bar the County from receiving information concerning the diesels and from gaining access to the Shoreham site. Indeed, LILCO has already given County representatives and consultants status reports and documents concerning the diesels. The County has also been given access to the Shoreham site to attend a meeting with the NRC Staff and to photograph and inspect the failed crankshaft from Emergency Diesel Generator 102. These opportunities coupled with the additional discovery LILCO proposes will give the County reasonable access to the information that it seeks without interfering with the diesel investigation while it is in progress. For the reasons stated in this response, the Board should limit discovery on the crankshaft issue to that set out on pages 3-5 above until the investigation is completed.

Respectfully submitted,

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DATED: September 12, 1983

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CERTIFICATE OF SERVICE

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

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I hereby certify that copies of LILCO's Response to
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the following by first-class mail, postage prepaid.

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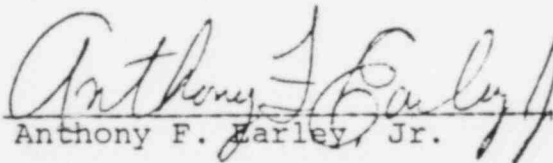
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