

9/22/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board '83 SEP 26 A11:25

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY REPLY TO LILCO
MOTION FOR A PROTECTIVE ORDER

On September 6, 1983, Suffolk County filed a Motion to Compel Responses to Discovery Requests Relating to Non-LILCO Support Organizations. On September 16, 1983, LILCO filed a Motion for Protective Order and Response to Suffolk County Motion to Compel Discovery. Pursuant to the Board's September 20, 1983 Order, Suffolk County now replies to LILCO's September 16 filing.

(1) Legal Authority. LILCO cites no precedents for its proposed protective order. Under 10 C.F.R. Sec. 2.740, discovery is permitted regarding data which are relevant to the subject matter but not privileged. The data sought in Ms. Robinson's deposition and in the County's document requests are undeniably relevant and no privilege has been asserted which would protect such data from disclosure to the County.

Under 10 C.F.R. Sec. 2.740(c), a protective order may be granted "to protect a party or person from annoyance,

DS03

embarrassment, oppression, or undue burden or expense"

LILCO does not plead any of these factors as a basis for its proposed order. Accordingly, for purely legal reasons, the LILCO motion should be denied.

(2) Alleged Interference. Instead of a legal basis to bar or restrict County discovery, LILCO asserts that County discovery should be limited because of alleged interference with LILCO's efforts to obtain support of non-LILCO entities. Indeed, LILCO clearly suggests that the County has participated in or condoned some alleged interference:

LILCO is aware of a number of incidents in recent months which indicate that Suffolk County, or others acting on behalf of Suffolk County, or with the approval or knowledge of Suffolk County, or independently, may be attempting to interfere with LILCO's negotiations with non-LILCO entities. Details of these incidents can be provided if the Board desires.

LILCO Motion, para. 4 (emphasis supplied).

When the County received LILCO's September 16 pleading, the County promptly requested LILCO to substantiate its charges against the County. See Exhibit 1 hereto. The County made clear to LILCO that it knows of no interference and that if LILCO were able to point to any, the County would have it stopped immediately. On Tuesday, September 20, LILCO's counsel informed the County's counsel by phone that it would not provide the County with any details of the charges it had made unless ordered to do so by the Board.

Thus, the County is left to attempt to rebut vague charges of interference which LILCO will not substantiate. The Board should reject LILCO's allegations for lack of substantiation. Under 10 C.F.R. Secs. 2.730, 2.732, LILCO has the burden of demonstrating the need for the order it seeks. Similarly, under Sec. 2.740(c), LILCO must establish "good cause" for the protective order. LILCO clearly has failed to sustain its burden under these regulations. Since these unsubstantiated charges form the basis for the alleged need for a protective order, the protective order request should be rejected.^{1/}

(3) LILCO's Selective Disclosure. LILCO's position is that it is entitled to a protective order regarding all discussions with non-LILCO entities. In fact, however, LILCO has selectively disclosed certain data already. Thus, after an employee of an ambulance company spoke before Governor Cuomo's Shoreham Commission and questioned LILCO's planning efforts, LILCO sent Commission Chairman Marburger certain documentation relating to that ambulance company.

^{1/} The County is aware that the Board has scheduled argument on this and other discovery disputes for September 26. LILCO should not be permitted at that time to attempt to substantiate its allegations. LILCO had the duty to present the bases for its motion in the motion or, at latest, in response to the County's letter requesting such substantiation. It should not now be permitted to come forward and surprise the County with alleged facts at oral argument.

See Exhibit 2. A LILCO spokesperson, Ms. Robinson, the person that the County wants to depose, also spoke before the Shoreham Commission and stated that she had notes of contacts with medical facilities and that she was willing to make them available to the Commission.

Thus, LILCO in another forum has asserted no privilege or need for a protective order regarding LILCO contacts with non-LILCO entities. It is inconsistent and improper for LILCO now to assert in this forum that a protective order is essential.

(4) Terms of LILCO's Proposed Protective Order.

On its face, LILCO's protective order is unreasonable.

For example:

(a) In paragraph 5(i) of the proposed order, LILCO seeks protection for all final agreements which have been reached with non-LILCO entities. This is absurd. Where final agreements have been reached, how can there possibly be any "interference" or "frustration" of negotiations? This provision is particularly surprising since the County had understood LILCO in the past to have agreed it would make the data available once agreements were reached. LILCO clearly has changed its mind and now wants to keep essential elements of its "plan" secret.

(b) The County's discovery requests sought not only the identity of the non-LILCO entities and the nature of the services to be rendered but also copies of all materials

which LILCO has provided to these entities. LILCO has refused to provide the County with the materials it has provided to those entities and its proposed order makes no provision that these materials now be provided.

(c) LILCO's proposed order bars the County from any contact with any entity with which LILCO is negotiating unless there is prior Board approval. This is absurd for several reasons. First, the County as a government must frequently have contact with bus companies, hospitals, etc. LILCO's broad order would bar these contacts even if totally unrelated to this ASLB proceeding. Second, the County does need to be able to contact these entities as soon as possible in order to prepare for litigation. Under LILCO's theory, the County is barred from any contact until an agreement is reached. What if an agreement isn't reached until just prior to hearing? How is the County to file testimony on lack of agreements or deficiencies in capabilities without any contact? Third, the necessity for Board approval will require day-to-day Board involvement in discovery. And what standards would LILCO have the Board apply when the County seeks the Board's "prior written consent"? Finally, why should the County be required to inform the Board and LILCO of every contact it intends to make with these non-LILCO entities? Is LILCO willing to tell the County of every contact it has with every non-LILCO entity?

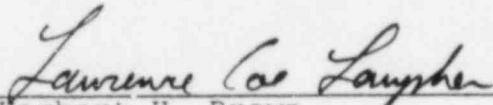
(d) LILCO's proposed "sanctions" -- dismissal of contentions -- are unreasonable. LILCO makes no attempt to justify

these sanctions, probably because there is no justification.

For all the foregoing reasons, LILCO's protective order request should be denied.

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,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Attorneys for Suffolk County

September 22, 1983

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

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(412) 355-6500

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September 16, 1983

BY FEDERAL EXPRESS

James E. Farnham, Esquire
Jessine A. Monaghan, Esquire
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dear Jim and Jessine:

We have just received the LILCO Motion for Protective Order and Response to Suffolk County Motion to Compel Discovery. In Paragraph 4, LILCO states:

LILCO is aware of a number of incidents in recent months which indicate that Suffolk County, or others acting on behalf of Suffolk County, or with the approval or knowledge of Suffolk County, or independently, may be attempting to interfere with LILCO's negotiations with non-LILCO entities. Details of these incidents can be provided if the Board desires.

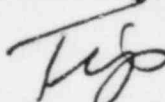
Regardless of whether the Board "desires" details, I hereby request that you immediately advise me of the basis, i.e., the precise details, for alleging that the County or "others acting on behalf of the County" or anyone acting "with the approval or knowledge of Suffolk County" have done anything "to interfere with LILCO's negotiations with non-LILCO entities." Your pleading certainly leaves the impression that the County has done something improper. To my knowledge, this is an entirely false allegation.

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

James E. Farnham, Esquire
Jessine A. Monaghan, Esquire
September 16, 1983
Page Two

I request that these details be provided to me no later than close of business on Monday. In the alternative, I suggest that you file a revised pleading deleting your allegations regarding the County.

Sincerely,



Karla J. Letsche

KJL:so

cc: Donald P. Irwin, Esquire



LONG ISLAND LIGHTING COMPANY

550 STEWART AVENUE • GARDEN CITY, NEW YORK 11530

ELAINE D. ROBINSON
MANAGER
COMMUNITY RELATIONS DEPARTMENT

September 2, 1983

Dr. John H. Marburger
President
State University of
New York at Stony Brook
Stony Brook, NY 11794

Dear Dr. Marburger:

I have been informed that Mr. Lon Fricano of MediBus Inc. appeared before you at a public hearing in Riverhead. I believe that his statements require some clarification.

I was present at the original meeting with Mr. Fricano on July 7, 1983 to discuss the potential participation of his company in the implementation of the emergency plan submitted by LILCO. We spent a considerable amount of time that day explaining the plan and answering Mr. Fricano's questions. Based on his expression of interest in participation, he was sent a proposed letter of agreement and a sample contract for his consideration. That correspondence is attached.

If there is any question about LILCO's position in the negotiations with MediBus, I, or one of the other people present, would be happy to answer them.

Very truly yours,

Elaine D. Robinson
Elaine D. Robinson

Attachment

cc:	Dr. M. C. Cordaro	- w/attach.
	Messrs. I. L. Freilicher	- w/attach.
	D. P. Irwin	- w/attach.
bcc:	Messrs. B. McCaffrey	- w/attach.
	J. Novarro	- w/attach.
	J. A. Weismantle	- w/o attach.
	T. Hill	- w/o attach.
	W. F. Renz	- w/o attach.



LONG ISLAND LIGHTING COMPANY
175 EAST OLD COUNTRY ROAD • HICKSVILLE NEW YORK 11801

Direct Dial Number
August 18, 1983

Medi Bus, Inc.
225 Oser Ave.
Hauppauge, New York 11788

Attn: Mr. L.A. Fricano

Subject: Long Island Lighting Company
Shoreham Nuclear Power Station
Local Emergency Response Plan
for Suffolk County

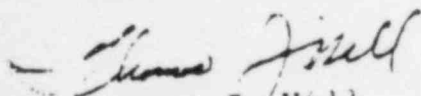
Dear Mr. Fricano:

Enclosed is the sample agreement for the furnishing of ambulances and/or ambulettes relative to LILCO's Local Emergency Response Plan for the Shoreham Nuclear Power Station.

Please review and submit by August 26, 1983 your best unit retainer and hourly rate pricing for the supply of the equipment and services indicated in Schedule "A" of the sample agreement. These prices will be subject to LILCO's review and final approval.

If you have any questions please contact the undersigned at 516-733-5085.

Very truly yours,


Thomas J. Hill

TJH:pr



LONG ISLAND LIGHTING COMPANY

175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

Direct Dial Number

Att:

Re: Shoreham Nuclear Power Station
Local Emergency Response Plan
LILCO Equipment Requisitions
Ambulances/Ambulettes

Gentlemen:

Long Island Lighting Company has filed an Emergency Response Plan in connection with the anticipated opening of our Shoreham Nuclear Power Station.

The Plan requires that we have the capability of acquiring the use of certain automotive equipment (busses, ambulances, ambulettes, fuel tank trucks, etc.) for training, drills and exercises and emergency response.

You have indicated that you are ready to make some of your manned equipment available to us, upon our prior telephonic notification to you, for our use in implementing the Plan.

We will later identify for you (and revise as necessary) our authorized representative who will notify you to have the manned equipment available for our use. We will attempt to give you as much advance notice as possible, but you understand that it is anticipated that it is impractical to specify a minimum notice period. We anticipate, however, that we will be able to advise you approximately 72 hours prior to our requisition for training purposes or for drills and exercises, and about 15-30 minutes prior to requisition in the event of an emergency.

The equipment and personnel which may be requisitioned by us from you, and the rate(s) of compensation for our use, are set forth on the attached Schedule 'A'.

You hereby agree that, promptly after we notify you, you and your employees and representatives will make your equipment and personnel (or so much thereof as we may requisition) available for our use, and you will supply promptly all necessary initial fuel, keys, certificates of registration, license plates, tags, etc., so that your equipment can be placed in use without delay. You further agree that all equipment supplied by you will be in good serviceable condition, and safe and fit for use, and that any drivers thereof will be duly licensed as customarily required by you.

In consideration of your agreement and consent as set forth above, we agree as follows:

(a) In the event we request that your manned equipment be provided, we assure you that the manned equipment will be utilized only in the same manner and for the same purpose as is customary in the usual conduct of your business as carried on by you.

(b) We will compensate you for our use of your manned equipment and personnel at the rate(s) set forth in Schedule 'A'.

(c) During the period of our use of your manned equipment, we shall be solely responsible for our negligent acts or omissions, and we will defend, indemnify and hold you harmless from and against all loss, damage (whether to your equipment or otherwise), and for bodily injury or death, arising out of or in any way connected with our negligent use of your equipment pursuant to this agreement.

(d) We hereby certify to you that, for the entire period of our use of your manned equipment, we will maintain in effect insurance coverage (including self-insurance) in an aggregate amount sufficient to meet our obligations under the preceding paragraph. Insurance specifically excluded by law is not included in this agreement.

(e) We further agree to pay you annually the sum of \$.00 as a reimbursement to you for your administrative costs involved in this agreement by you to provide ambulances/ambulettes subject to the prior rights of commitments under contracts with you, in the unlikely event of an accident at the Shoreham Nuclear Power Station.

This Agreement shall remain in effect for the five (5) year period commencing _____. The rates as shown in Schedule 'A' are firm for the twelve (12) month period commencing with the above date. The rates are subject to adjustment, on the yearly anniversary date, to reflect any increase resulting from any negotiated agreements reached with Labor Unions representing your employees, any general rate increase to your employees, any increase to your supervisory personnel and any increase in statutory obligations.

This agreement shall remain in effect for the five (5) year period commencing _____ and terminating at 12 o'clock midnight _____.

If you agree with the foregoing, will you please sign and return the attached copy of this letter, whereupon a binding contractual commitment shall exist between us.

Thank you for your cooperation.

Very truly yours,

LONG ISLAND LIGHTING COMPANY

By: _____

Accepted and Agreed to
this _____ day of _____ 1983.

(_____, Supplier)

By: _____
Authorized Signature

Submitted by _____

Date _____

SCHEDULE 'A'

Ambulances and Ambulettes

The following is a list of the automotive equipment for training, drills and exercises and emergency response that is available for LILCO's requisition:

<u>Description of Equipment</u>	<u>Total Numbers Available</u>	<u>Storage Yard Location</u>
Ambulances	_____	_____
Ambulettes	_____	_____

Rates - *

Manned Equipment - Hourly Rate Per Vehicle

	<u>Ambulances</u>	<u>Ambulettes</u>
Normal Work Day Monday thru Friday 8:00 AM - 4:30 PM	\$ _____	\$ _____
Overtime Rate Monday thru Friday and Saturday	\$ _____	\$ _____
Overtime Rate Sundays and Holidays	\$ _____	\$ _____

Minimum Rental Period - Manned Equipment

Submitted by _____

Date _____

Ambulances _____ Hrs.

Ambulettes _____ Hrs.

All equipment will be fueled and completely checked prior to departure and refueled upon return. Cost of refueling shall be invoiced at the going market price plus a 10% mark up.

Radiological Training for Drivers - During normal work day, Monday thru Friday, as scheduled. Will be at the employees hourly rate of pay plus an administrative Adder of % as compensation for statutory costs, overhead and profit. Location of training to be as mutually agreed.

Rates will commence as follows:

Normal (and in continuation of the) Work Day: - When equipment and/or equipment with operator are available for dispatching by LILCO.

Beyond Normal Work Day (including Saturday, Sundays and Holidays)

At time of request for service.

All rates will terminate when equipment is returned to storage the location.

LILCO insurance coverage will commence when the equipment is dispatched from your bus storage location.

All equipment is to be checked at time of return by representatives of the ambulance company and LILCO, and any deficiencies or damages noted. Claims for damages or deficiencies will not be considered beyond those noted at time of return.

All drivers shall have valid New York State Operator Licenses for the particular equipment being operated, and shall have received Radiological training.

*Rates include overhead and profit and all required support personnel including, but not limited to drivers, supervisors, dispatchers, radio operator, tow truck operators, checkers, mechanics and all necessary peripheral equipment.



LONG ISLAND LIGHTING COMPANY
175 EAST OLD COUNTRY ROAD • HICKSVILLE, NEW YORK 11801

MATTHEW C. CORDARO, Ph.D.
VICE PRESIDENT

July 12, 1983

Medi Bus, Inc.
225 Oser Avenue
Hauppauge, New York 11788

Letter of Agreement

Att: Mr. L. A. Fricano:

Dear Mr. Fricano:

This letter confirms that in order to ensure proper response in the unlikely event of an accident at the Shoreham Nuclear Power Station, Medi Bus, Inc. agrees to make available up to _____ ambulances and _____ ambulettes in return for a yearly reasonable retainer to be paid by the Long Island Lighting Co. (LILCO). In addition, Medi Bus, Inc. and LILCO intend to enter into a contract providing the details of the terms by which Medi Bus, Inc. will provide ambulances and/or ambulettes including indemnification by LILCO of the Medi Bus, Inc. against any and all liability for personal injury or property damage; reimbursement for use of the ambulances and/or vans; and a description of manner in which the ambulances and/or vans will be used.

Under this Letter of Agreement and the proposed contract, LILCO's use of Medi Bus, Inc. equipment will be subject to prior rights of contracts with Medi Bus, Inc.

Please indicate your agreement by signing below.

Very truly yours,

Matthew C. Cordaro

Accepted: Medi Bus, Inc.

Date

By:

President

Submitted by _____

Date _____

All rates as contained in this schedule are firm for the twelve (12) month period commencing _____ and are subject to adjustment for the following twelve (12) month periods, effective with the commencement date indicated above, in accordance with and to the extent of any negotiated agreements reached with unions representing your employees, any general rate increases made to your employees, any increases in the Hourly Rate of supervisory personnel and any increases in statutory obligations.

LILCO will reserve the right to cancel this contract upon 6 months written notice.

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))
_____)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY REPLY TO LILCO MOTION FOR A PROTECTIVE ORDER, dated September 22, 1983, have been served to the following this 22nd day of September 1983, by U.S. mail, first class, except as otherwise noted.

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| (*) James A. Laurenson, Chairman
Atomic Safety and Licensing Board
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DATED: September 22, 1983

* By Hand
** By Federal Express