

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY REQUEST
FOR CONFERENCE CALL

An important matter has just arisen concerning the testimony scheduled to be submitted on November 18 (Group I) and that scheduled to be submitted on January 18 (Group II). Suffolk County requests a conference call with the Board and other parties at the Board's earliest convenience to address the matter. An outline of the matter is set forth below.

During the past few weeks, the parties, on an informal and ongoing basis, have been discussing changes in witness lists, the order of presenting testimony, and other matters related to structuring the emergency planning litigation, particularly as that litigation has been divided into Groups I and II. As part of that process, on November 3, 1983, Suffolk County sent the attached letter to counsel for all parties.

The letter indicates the County's intention to submit testimony by Messrs. Finlayson, Radford, and Minor concerning the potential consequences of an accident at Shoreham and the likely

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health effects of an accident, concurrent with the January 18 submission of testimony on Group II issues. This testimony will relate directly and primarily to the protective action contentions that are in Group II (i.e., Contentions 61, 64, 67, 69, 71, 72 and 73). The County recognized in its November 3 letter that the referenced piece of testimony will also relate to small portions of Contentions 23 and 65, which are Group I issues.^{1/}

The County's November 3 letter explains that in order to keep repetition and cross-referencing to a minimum, the County intends to submit the Finlayson/Radford/Minor testimony with the bulk of the protective action contentions -- that is with the Group II issues. The letter also notes our belief that the consequence analysis and health effects portion of Contentions 23 and 65 are easily severable -- in terms of trial -- from the remainder of those contentions, and that they are not substantially different from the corresponding portions of the Group II contentions which also refer to accident consequences and health effects. Accordingly, in the County's view, deferring submittal of that small portion of the testimony relating to Contentions 23 and 65 would not affect the planned hearing on the Group I issues. The County's November 3 letter was sent to the other parties so they

^{1/} Prior to breakdown of issues into Group I and Group II, the County intended to submit one consolidated piece of testimony by Messrs. Finlayson, Radford, and Minor relating to consequences/health effects. That testimony would relate to portions of Contentions 23 and 65, as well as to portions of Contentions 61, 64, 67, 69, 71, 72, and 73. The essence of the County's November 3 letter was to advise the parties that the County would file this single block of testimony at the time it filed testimony on the bulk of the contentions to which it relates.

could, if they chose to do so, similarly structure the filing of their testimony.

On November 7, counsel for LILCO (Ms. McClesky and Mr. Christman) telephoned to discuss the November 3 letter. They stated that although (a) LILCO does not itself intend to submit any direct testimony on Contentions 23 and 64 relating to the consequences or health effects of an accident, and (b) LILCO intends to file a motion to strike portions of the County's testimony on those subjects on relevance grounds, it may also file a motion to strike such testimony on the grounds of untimeliness if such testimony were submitted on January 18 rather than on November 18. The stated basis for LILCO's position was that in the view of LILCO's counsel, all testimony related to Group I issues must be filed by November 18 in order to be timely, and that if the County believed any of its testimony filed on Group II issues related to Group I issues, it would be "untimely" to file that Group II testimony on January 18. On November 8, we received the attached letter from Ms. McClesky, which briefly sets forth LILCO's position.

The County disagrees with the LILCO view. The submittal of the Finalyson/Radford/Minor testimony in January is appropriate and, indeed, useful to orderly hearing procedure since it will avoid unnecessary repetition and relate most directly to the Group II issues.

We had not intended to bring this matter to the Board, since it appeared until recently to be a scheduling question which the

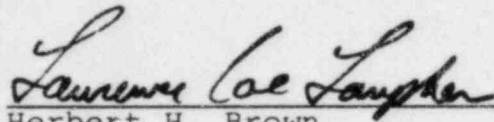
parties could resolve among themselves. Unfortunately, although we believe that LILCO's position is incorrect -- and that after hearing from the parties the Board would deny a LILCO motion to strike on the grounds of untimeliness -- we nonetheless do not wish to risk the possibility of any of the County's testimony being stricken as untimely.

We discussed the County's position with Mr. Bordenick, counsel for the NRC Staff. Although he indicated that he wished to review the County's November 3 letter and consult with Mr. Repka, his co-counsel, Mr. Bordenick stated that he did not believe the County's proposed order of filing presented any difficulties for the Staff. Accordingly, his preliminary view was that the Staff would have no objection.

Therefore, we request that the Board schedule a telephone conference call as soon as possible so we can discuss and obtain the Board's view on this matter.

Respectfully submitted,

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Attorneys for Suffolk County

November 9, 1983

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November 3, 1983

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Bernard M. Bordenick, Esq.
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Dear Don and Bernie:

This letter constitutes a further update of the Suffolk County witness list for the upcoming emergency planning hearings.

We previously advised you of our intention to submit testimony by Fred Finlayson, Greg Minor and Dr. Edward Radford concerning the potential consequences of an accident at Shoreham and the likely health effects of an accident. Such testimony will relate to contentions in both Group I (i.e., the November 18 group) and Group II (i.e., the January 1984 group): Contention 23 (see subparts D and H) and Contention 65 (see preamble and introductory paragraph) in Group I; and most of the Protective Action contentions that are not in Group I~~X~~ (i.e., Contentions 61, 64, 67, 69, 71, 72 and 73). Overall, the Finlayson/Minor/Radford testimony probably relates most directly to the Group II issues.

The recent division of issues into Group I and Group II has necessitated our rethinking the presentation of testimony to keep repetition at a minimum. To avoid having to repeat or continually refer back to Group I testimony in the Group II testimony, we will be submitting the testimony of Finlayson, Minor and Radford in January with the testimony on the bulk of the contentions to which it relates. This deferral has additionally become necessary because, as you know, Ted Radford is currently doing research in Japan and communicating with him to complete testimony is difficult.

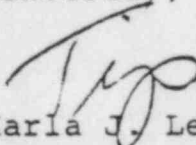
Those portions of Contentions 23 and 65 that will be addressed in the Finlayson/Minor/Radford testimony are easily separated from the remainder of those contentions, and are not substantially different from the portions of the Group II

Donald P. Irwin, Esq.
Bernard M. Bordenick, Esq.
November 3, 1983
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contentions to which that testimony also relates. Therefore, the submission of that testimony with Group II should not affect the hearing on the Group I issues, and we can reflect its applicability to the Group I issues in our proposed findings submitted after the Group II testimony.

I wanted to inform you of our intentions with respect to the foregoing matters so you can, if you choose, similarly structure the filing of your testimony.

Sincerely,


Karla J. Letsche

cc: Stephen B. Latham, Esq.
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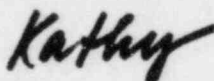
November 7, 1983

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Dear Tip:

For the reasons Jim Christman and I discussed with you during our telephone conversation today regarding your letter of November 3 to Don Irwin and Bernie Bordenick, LILCO objects to your plan to file Group I-related Finlayson/Minor/Radford testimony on January 15, 1984. As we stated during our discussion, your putting off testimony on portions of the Group I contentions constitutes, in our view, a change in the schedule about which the Board should be consulted. Barring a ruling from the Board, LILCO may very well choose to file a motion to strike any Group I testimony filed out of time.

Sincerely,



Kathy E. B. McCleskey

301/869

cc: Bernard M. Bordenick, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY REQUEST FOR
CONFERENCE CALL, dated November 9, 1983, have been served to the
following this 9th day of November 1983 by U.S. mail, first class,
except as otherwise noted.

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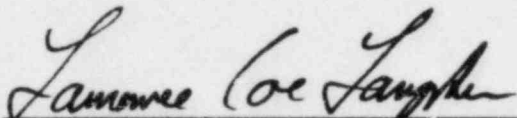
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DATE: November 9, 1983

* By Hand
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