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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

SUFFOLK COUNTY'S MOTION FOR RECONSIDERATION
OF ORDER SCHEDULING DOCUMENT DISCOVERY
REQUESTS ON SUFFOLK COUNTY PROPOSED
SUPPLEMENTAL DIESEL GENERATOR CONTENTIONS

On February 2, 1984, this Board, without requesting or hearing the views of any parties, issued an "Order Scheduling Document Discovery Requests on Suffolk County Proposed Supplemental Diesel Generator Contentions" (the "Discovery Order"). Suffolk County hereby moves the Board to reconsider and vacate the Discovery Order, on the basis of the matters and information discussed below, which the Board may not have (and in some cases, could not have) considered before issuing that Order.

The Discovery Order, issued on only the second business day after Suffolk County filed its Motion to Admit Supplemental Diesel Generator Contentions (the "County's January Motion"), requires the County, LILCO and the NRC Staff to file all "remaining requests for documents" by February 17, 1984. The only reason given by the Board for this requirement is that

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In the event some or all of the County's supplemental diesel generator contentions are admitted as issues in controversy, it would assist the efficiency of the proceeding to have all additional discovery requests for documents made at this time. This is so even if the County's and anticipated NRC Staff's arguments on the schedule for litigation are accepted.

Discovery Order at 1 (emphasis added).

Suffolk County respectfully submits that the February 17 deadline for document requests is not only extremely inefficient and wasteful for the County, but would significantly prejudice the County's ability to obtain information relevant to the proposed supplemental diesel contentions and to prepare for litigation.

1. The Discovery Order requires the County to spend considerable time, effort and money by having its attorneys and consultants review and analyze all documents and classes of documents known to exist and anticipate all documents and classes of documents which may exist and may be relevant to contentions or parts of contentions which may not even be admitted. The final request for discovery of such documents is due before contentions are admitted and before the conference of parties ordered by the Board to be held on February 22, 1984, to "identify the issues . . . in this proceeding." "Order Confirming Schedule for Supplemental Diesel Generator Contentions," January 4, 1984, at 2.

Suffolk County would like to believe that the Discovery Order reflects the persuasiveness of the County's January Motion, and that the Board will indeed admit all of the County's supplemental EDG contentions. In that case, the County's resources would not be wasted. But, of course, when it issued the Discovery Order on

February 2, the Board did not have LILCO's Response of February 7, 1984 and could not have known that LILCO would oppose all of the County's supplemental contentions or the reasons for that opposition. While we believe LILCO's Response is devoid of merit, we note that the Board will not have the NRC Staff's response to the County's January Motion until February 14, 1984. Assuming that the Board has not already made up its mind regarding admission of the supplemental contentions, the Discovery Order requires the County to expend substantial resources with respect to contentions which may or may not be admitted and in regard to issues not yet identified. It is difficult to perceive the benefit in "efficiency" which outweighs this potential waste.

Certainly it is difficult to understand how a fifteen day document request deadline would be "efficient" if the Board accepts the County's position that litigation should be deferred until after the NRC Staff has completed its evaluations of the diesels and of quality assurance at Transamerica Delaval. The Staff's last estimate was that its evaluations would not be completed until May 1984. Under that schedule a February 17 deadline is unnecessarily early, and a later, more realistic date would not delay litigation. The County does not know what arguments the Board has "anticipated" the Staff will make as to the schedule for litigation, so we are unable to judge whether or not those arguments will affect the Board's notion of "efficiency." Perhaps it would be best for the Board to defer action on a discovery request deadline until the Staff actually makes its arguments on scheduling.

2. Even assuming that all supplemental contentions are admitted and the County has adequately identified the issues, the Discovery Order does not allow the County sufficient time to prepare a comprehensive document discovery request. The supplemental EDG contentions are extremely detailed, but also cover every aspect of the diesels. The job of determining every document or class of document which may exist and be relevant to each contention and each subpart cannot be adequately completed in the fifteen days allowed by the Board. Moreover, as discussed below, it is impossible for the County now to request every relevant document which currently exists (as the Discovery Order requires), because there are likely to be many relevant documents which the County now has no reason to believe exist; the existence of relevant documents will be disclosed by documents as discovered and through depositions.

Apparently the Board is not aware of the extent of document discovery previously requested by Suffolk County. The Discovery Order refers to "remaining requests for documents" in a manner that suggests the Board may believe that only a relatively modest amount of document discovery remains to be accomplished. This is not the case. The documents requested by the County regarding the issues raised by the supplemental EDG contentions (other than cylinder head cracking and Delaval quality assurance) are as follows:

(a) Failure analysis reports concerning the crankshafts and other components inspected during diesel disassembly, and LILCO status reports (and documents relating thereto) as agreed in the

resolution of the initial discovery dispute. See Letter to the Board from A. R. Dynner, 9/30/83; Memorandum and Order Confirming Rulings on Suffolk County's Motion to Compel Discovery on Diesel Crankshaft Failure, 10/4/83.

(b) Drawings showing the design of base plates at Shoreham and certain information regarding base plate cracks referred to in a memorandum on base plate cracking from Failure Analysis Associates. LILCO has refused to obtain the drawings for the County from Delaval, contrary to this Board's instructions at the January 3, 1984 telephone conference of the parties.

(c) All deficiency reports and their dispositions concerning the EDGs since August 12, 1983. LILCO rejected this request except for selected deficiency reports specifically identified by the County from other documents.

(d) All documents showing Delaval diesel product improvements since the Shoreham EDGs were released and LILCO's comments on such improvements. LILCO rejected this request except for nine particular documents selected by LILCO.

(e) Drawings and specifications for the replacement crankshafts and for the model "AF" and model "AE" pistons. LILCO has refused to obtain these documents for the County from Delaval, contrary to this Board's January 3 instructions.

It is apparent from this limited amount of documentary discovery that a very large volume of requests for documents pertinent to the County's supplemental contentions remains to be generated. Based upon the foregoing information, which we believe the Board has not previously known, it should be clear that a

February 17 deadline for final document requests is unrealistic and would seriously prejudice Suffolk County's ability to obtain relevant documents.

3. The Discovery Order requires that final requests for all documents now in existence be made by February 17; discovery of documents prepared in the future would not, of course, be barred. However, the Discovery Order fails to recognize that the County will be unable to identify and request many relevant existing documents except by reference to other documents produced upon request. It is likely that the Board, prior to issuing the Discovery Order, had not read the transcript of the January 26, 1984 meeting between the NRC Staff and the Delaval Owners' Group, and therefore did not realize the broad scope and nature of information to be developed concerning Delaval diesels; that information will, no doubt, identify many existing relevant documents.

The Owners' Group program will review Delaval diesel engine experience in the nuclear industry, in marine applications, and in non-nuclear industrial installations. Tr. 48-49 (Seaman). Data to be reviewed include maintenance records, operating loss, design changes and improvements, and failures at nuclear plant sites. Tr. 49 (Seaman). Delaval has provided blueprints, specification sheets, operating histories, quality documentation, and test records to the Owners' Group. Tr. 63 (Matthews). LILCO believes it is important to review the "design configuration of each component" and "its history in terms of its metallurgy and its manufacturer." Tr. 76 (Museler). It is certain that such data

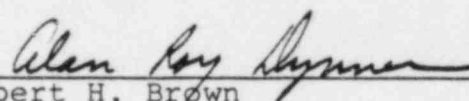
will include and refer to documents of which the County cannot now be aware.

Clearly it would be highly prejudicial to Suffolk County to deny it access to the foregoing documents and to relevant documents referred to therein, because the County cannot possibly identify and request all such documents by February 17, 1984.

For all the reasons discussed above, Suffolk County requests that the Board reconsider and vacate the Discovery Order. In view of the short time frame involved, we ask that the Board give expedited treatment to this Motion. The parties should be able to discuss a schedule for document requests after the issues are identified at the February 22 conference and after the County's supplemental EDG contentions are admitted.

Respectfully submitted,

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February 8, 1984

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NUCLEAR REGULATORY COMMISSION

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LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322 O.L.
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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION FOR RECONSIDERATION OF ORDER SCHEDULING DOCUMENT DISCOVERY REQUESTS ON SUFFOLK COUNTY PROPOSED SUPPLEMENTAL DIESEL GENERATOR CONTENTIONS, dated February 8, 1984, have been served to the following this 8th day of February 1984 by U.S. mail, first class, except as otherwise indicated.

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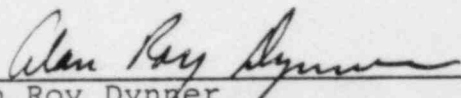
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DATE: February 8, 1984

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