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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Plant,)
Unit 1))

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

Suffolk County Request for Board Reconsideration
of Emergency Planning Schedule

The Licensing Board has previously expressed concern about the number of schedule-related filings that have been made in this proceeding. Suffolk County recognizes this concern. However, after receipt of Revision 3 to LILCO's emergency plan, the County is compelled to apprise the Board that, in the County's view, the present schedule is not workable.

Under the present schedule, trial on Group I issues is to resume January 10, 1984. With respect to Group II issues, summary disposition motions are due to be filed January 5 and testimony on February 8. We summarize below the factors which render this schedule unworkable.

1. Suffolk County's counsel received two copies of Revision 3 late in the day on December 22. On December 27, the County's counsel expected to receive 28 additional copies of

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Revision 3, which is the number of copies which are required to be sent to County witnesses and consultants. In fact, the County did not receive any additional copies on December 27, or as of 2:30 p.m. on December 28. Assuming the County receives these additional copies early enough in the day on December 29 to be able to repackage them and send them out on the same day, the County's witnesses and consultants will not receive them until Friday, December 30 -- the eve of the New Year's weekend -- at the earliest. Once Revision 3 is received by the County's witnesses and consultants, it of course must be incorporated into the Plan before any careful review of its contents can begin. Since it comprises about 800 pages, that incorporation process will take substantial time. Thus, it appears unlikely that meaningful consultant/witness review can begin before Tuesday, January 3.

Group II summary disposition motions are due to be filed on Thursday, January 5, 1984. That means Revision 3 must be incorporated into the Plan and reviewed by both lawyers and witness/consultants, analyzed and discussed, and appropriate summary disposition motions and affidavits completed and filed, all during a one-week period (at most), which includes a holiday. Moreover, LILCO's proposed meeting to explain Revision 3 is not scheduled until January 4, one day before summary disposition motions are due.^{1/}

^{1/}In its letter transmitting Revision 3, LILCO asserts that Revision 3 should have no impact on Group II issues because
(footnote continued)

2. The admitted contentions to be addressed in Group II of this litigation are based on Revision 0 of the LILCO Plan. Many of these contentions -- particularly Contentions 24, 26, 27, 28-34, 67-73, 78-82, and 85 -- no longer accurately reflect or address particular LILCO proposals, since the Plan, Appendix A, the OPIPs and the Public Information Brochure have now undergone three substantial revisions. Preparing summary disposition motions or testimony to address contentions that are not based on the now current Plan is obviously wasteful and pointless. Time should be built into the schedule for the County to review the latest revision and to revise and/or withdraw the contentions before Group II summary disposition motions or testimony are prepared.

3. The Contention 25 (Role Conflict) testimony filed on behalf of the County by the school administrator witnesses is based on Revisions 0, 1 and 2 of the Plan, which, for all school districts except Shoreham-Wading River, relied entirely on an early dismissal procedure to provide protective actions for school children. Revision 3 changes the proposed protective action provisions for school children very substantially by including both sheltering and evacuation/relocation as well as early dismissals. Indeed, based on preliminary review of

(footnote continued from previous page)
testimony is not due to be filed until February 8. See December 22, 1983 letter from D. Irwin to ASLB, p. 3. This ignores, of course, the January 5 summary disposition date.

Revision 3, it appears now that early dismissals will only be recommended when no protective actions are ordered for the general public. This obviously is a substantial change from prior versions of the Plan and no rationale for the change is provided. Thus, the Contention 25 testimony already submitted does not address the now current LILCO Plan and needs to be revised and/or supplemented. Depositions of the school administrator witnesses concerning their existing (i.e., now outmoded) testimony are scheduled for January 5-6. Moreover, cross-examination of that witness panel on that same outmoded testimony is scheduled for January 10 or 11. It of course makes no sense to have a trial regarding the adequacy of a LILCO proposal (total reliance on early dismissal except for Shoreham-Wading River) which has now been discarded. Revised testimony cannot be drafted, discussed, reviewed and submitted prior to January 10.

4. Revision 3 also contains extensive changes to the Appendix A provisions for traffic control and traffic strategies. To the County's knowledge, these changes are not reflected in the testimony on Contentions 65 and 23 submitted by LILCO on November 18. The Revision 3 changes must be reviewed and analyzed by the County's lawyers and consultants, however, before the LILCO traffic panel witnesses can be meaningfully cross-examined. The cross-examination of these LILCO witnesses is now scheduled to begin on January 11 or 12.

5. The testimony submitted by the Suffolk County witnesses on the traffic-related portions of Contentions 65 and 23 is based on Revision 1 of the LILCO Plan. After receipt of Revision 2, it was clear that at a minimum, the Suffolk County Police Department ("SCPD") witnesses' testimony would require extensive rework and supplementation to address the Revision 2 changes. Accordingly, in the days after November 18, the SCPD witnesses did substantial work to revise their testimony to reflect changes contained in Revision 2 of the Plan. That, of course, was before the County and Board were informed in early December of the anticipated release of Revision 3. We instructed the witnesses to stop working on Revision 2, based on LILCO's representation that Appendix A would be changed again. That certainly was true, since Revision 3 contains substantive changes to Appendix A that are even more extensive than those in Revision 2. Indeed, even LILCO acknowledges that the Revision 3 changes are more extensive than were contemplated at the December 2 conference of counsel. See December 22, 1983 letter from D. Irwin to ASLB, p. 2.

The SCPD witnesses therefore must re-revise their testimony on these Group I issues. To draft, discuss, review and submit such testimony will take several weeks from the date the SCPD witnesses finally receive Revision 3. (Note: other County testimony on traffic issues may also need to be changed in light of Revision 3; no accurate prediction is possible until a thorough review is conducted.) Presumably, LILCO will then want some time

to review the revised County testimony before LILCO begins its cross-examination of the County witnesses. Under the present schedule, however, the County's traffic witnesses on Contentions 65 and 23 may be cross-examined during the week of January 16. It is unlikely that the revised SCPD testimony can even be completed by the week of January 16, particularly if the hearing proceeds as scheduled for the week of January 10, since that will require the SCPD witnesses and the lawyers involved with traffic issues to be in hearings or hearing preparation prior to and during the week of January 10. Furthermore, it would be a waste of time to examine the SCPD witnesses on their present testimony which focuses solely on the now superceded Revision 1 of the LILCO Plan.

The need for the County to have an adequate opportunity to supplement its traffic testimony is particularly acute. Insofar as traffic issues are concerned, many of the Revision 3 changes were made by LILCO specifically to respond to matters raised in the testimony submitted by the County on November 18. See December 22, 1983 letter from D. Irwin to ASLB, p. 2 and Attachment 1, p. 1. Thus, if Revision 3 is to be received in evidence, it, in essence, constitutes rebuttal testimony by LILCO, since LILCO, after its filing of testimony on November 18, has submitted additional "testimony" designed to respond to the County's November 18 filings. For this proceeding to be fair,

the County must have an adequate opportunity to review this new LILCO "testimony" and prepare a suitable rebuttal/supplementation of its own.

6. Revision 3 appears to contain changes other than those regarding schools and traffic control mentioned above that relate to previously filed testimony on Group I issues (e.g., the sample EBS messages discussed in the LILCO testimony on Contentions 23 and 65, and the proposed training discussed in LILCO's testimony on Contention 25, have been changed). Revision 3 (if received in evidence) thus, in essence, again constitutes a submission by LILCO of supplemental testimony on the Group I issues. The County must now review Revision 3 as it affects its own Group I testimony and be given the opportunity to submit its own supplemental testimony to address the Revision 3 changes made by LILCO.

What does all the foregoing mean? The parties have received another extensive revision of the LILCO Plan, with review required to begin on the eve of crucial milestones under the present schedule, namely filing of Group II summary disposition motions and resumption of the Group I hearing. Revision 3 necessitates careful review and consultation among counsel and witnesses/consultants, revision or withdrawal of many Group II contentions, revision/scrapping of draft Group II testimony to reflect the new plan, and supplementation/revision of Group I testimony. All this will take some time, even if everyone remains completely dedicated to that task alone.

Suffolk County submits that the foregoing factors require the Board to reconsider the schedule which presently has been established. The County submits that the best means to adjust to these realities is to move the entire schedule back several weeks with a date set for submission of revised Group II contentions to be the "pacing" item for Group II summary disposition motions and testimony. The Board, of course, may have different ideas on the best means to address the present situation.

The County will not attempt to argue these points further in this filing, which is intended primarily to make the Board aware of the outlines of a very serious situation. Instead, the County requests the Board to convene a conference of counsel -- by phone or in Bethesda -- as soon as possible so that these matters can be fully discussed and the situation resolved.

Respectfully submitted,

David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
H. Lee Dennison Building
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

Dated: December 28, 1983

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NUCLEAR REGULATORY COMMISSION

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LONG ISLAND LIGHTING COMPANY)

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Docket No. 50-322-OL-3
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CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Request for Board Reconsideration of Emergency Planning Schedule have been served to the following by U.S. mail, first class, except where noted, this 28th day of December, 1983.

*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
--	--

*Dr. Jerry R. Kline Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Howard L. Blau, Esq. 217 Newbridge Road Hicksville, New York 11801
--	--

*Mr. Frederick J. Shon Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	**W. Taylor Reveley, III, Esq. Hunton & Williams P.O. Box 1535 707 East Main Street Richmond, Virginia 23212
---	--

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Mr. Brian McCaffrey
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

***Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, New York 11901

* By Hand
** By Telecopier
*** By Federal Express

Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Joel Blau, Esq.
New York Public Service Comm.
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

David J. Gilmartin, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Bernard M. Bordenick, Esq.
David A. Repka, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart Diamond
Environment/Energy Writer
NEWSDAY
Long Island, New York 11747

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Hon. Peter Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

*Eleanor L. Frucci, Esq.
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Ezra I. Bialik, Esq.
Assistant Attorney General
Environmental Protection Bur.
New York State Dept. of Law
2 World Trade Center
New York, New York 10047

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Jonathan D. Feinberg, Esq.
Staff Counsel, New York State
Public Service Commission
3 Rockefeller Plaza
Albany, New York 12223

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278


*James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Washington, D.C. 20472

Mr. Jeff Smith
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Ben Wiles, Esq.
Assistant Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224


KARLA J. LETSCHE
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

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