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LILCO, April 13, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 APR 16 A11:06

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

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-3
) (Emergency Planning Proceeding)
(Shoreham Nuclear Power Station,)
Unit 1))

LILCO'S MOTION TO SET DEADLINE FOR SUBMISSION
OF NEW CONTENTIONS RELATING TO RAC REVIEW

On March 15, 1984, the Federal Emergency Management Agency (FEMA) issued the 61-page report of its Regional Assistance Committee (RAC) on the Shoreham Nuclear Power Station along with a cover letter from Samuel W. Speck, Associate Director of FEMA. The report, while not independently before this Board for adjudication, has been available to the parties virtually from the moment of its issuance.^{1/}

Nearly a month later, on April 9, with only after-the-fact notice to LILCO and without filing any contentions, Suffolk

^{1/} In a letter to the Board dated Monday, March 19, 1984, Suffolk County counsel Karla J. Letsche stated that the County had had access to the report since late the previous week. This means that the County must have received the RAC report either on the date of its issuance (Thursday, March 15) or the day after. The report was also served on the "Shoreham Hearing Service List" by NRC Region I on March 20.

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County has asked FEMA to provide it with deposition discovery on the RAC report. (See Attachment). FEMA counsel apparently agreed, on April 11 or 12, to make witnesses available to Suffolk County on May 8 and 9. LILCO understands that Suffolk County has also served a Freedom of Information Act request on FEMA for documents underlying the RAC review; this is not attached because Suffolk County did not serve a copy on LILCO, and LILCO has not been otherwise able to obtain it yet. Suffolk County's request for depositions includes all members of the RAC and is not limited in its scope to matters raised by existing contentions, or in any other fashion; and while LILCO does not know the exact content of the County's FOIA request, we believe it to be encyclopedic.

It appears obvious that Suffolk County is preparing to institute the broadest possible litigation on the content and basis of the RAC review. However, in the month since the RAC review's issuance the County has filed no proposed contentions on it, even though contentions are a prerequisite, under the NRC's regulations, to obtaining discovery on and litigating any matter. It is not clear to LILCO whether FEMA, in the May 8-9 depositions, intends to limit the County's questioning to matters relevant to or reasonably calculated to lead to production of material relevant to issues already placed in controversy by

existing contentions, as is contemplated by § 2.740(b)(1) of the Commission's regulations. If it does not, then the County will clearly have been able to put the cart before the horse and obtain discovery on matters outside the scope of issues in controversy in this proceeding. Equally clearly, bringing any new contentions to hearing will have been delayed by the absence of any identification of further issues. Given the stately pace at which the process of proposal and refinement of contentions, and subsequent discovery and testimony filing, can proceed under the Commission's rules unless expedited, there arises a very real risk that "new" FEMA material will not be ready for hearing (should hearings be allowed on it) until well after the existing body of contentions has been fully heard. Such delay is obviously highly prejudicial to LILCO, which pays approximately \$1,300,000 daily in debt service on Shoreham as a nonoperating plant.

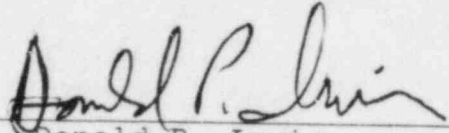
LILCO believes that a month is plenty of time for parties with the resources of those in this proceeding to have prepared contentions on a 61-page document. LILCO moves that the Board set next Friday, April 20, as the deadline for Suffolk County or any other party to submit any new contentions based on the RAC Review, so that responsive pleadings and a Board ruling on them are practicable before the depositions now scheduled for

May 8-9, and so that further proceedings based on the RAC Review, if they are ordered (an eventuality which LILCO does not concede), will not be needlessly delayed.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By


Donald P. Irwin

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DATED: April 13, 1984

Attachment: Letter, Karla J. Letsche, Esq. to Stewart M. Glass,
Esq., April 9, 1984.

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April 9, 1984

BY TELECOPIER

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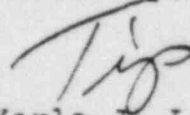
Dear Stewart:

Now that the RAC review is complete, the County needs to depose the RAC reviewers and the witnesses FEMA intends to use in the ASLB trial. (I assume that some of the reviewers will actually be FEMA witnesses and, thus, that these two groups actually coincide to a large degree). With the exception of Mr. Kowieski who, at the time of his deposition, had not begun any work on the LILCO Plan, the County has not had an opportunity to depose any of the FEMA personnel with knowledge of Shoreham-related matters.

We will be glad to take the depositions of these persons either before or after FEMA's testimony is filed, depending upon your wishes and their schedules. It appears, however, that given the two-week hearing break which starts today, it might be best to conduct at least some of the depositions the week of April 16. The religious holidays that week could pose a problem, but let's talk.

At any rate, please let us know the identity of the RAC reviewers and the persons FEMA intends to use as witnesses and the dates of their availability for depositions. I am sure we can then schedule their depositions at a mutually convenient time.

Sincerely,



Karla J. Letsche

cc: Fabian Palomino, Esq.
Donald P. Irwin, Esq.
Bernard M. Bordenick, Esq.
Stephen B. Latham, Esq.
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LILCO, April 13, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
(Emergency Planning Proceeding) Docket No. 50-322-OL-3

I hereby certify that copies of LILCO'S MOTION TO SET DEADLINE FOR SUBMISSION OF NEW CONTENTIONS RELATING TO RAC REVIEW were served this date upon the following by first-class mail, postage prepaid, or by hand (as indicated by one asterisk), or by Federal Express (as indicated by two asterisks), or by telecopier (as indicated by three asterisks).

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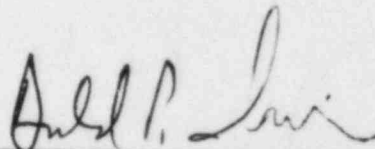
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