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LILCO, April 17, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LILCO'S RESPONSE TO JOINT OBJECTIONS OF SUFFOLK COUNTY AND THE STATE OF NEW YORK TO BOARD'S ORAL ORDER OF FEBRUARY 22, 1984, AND REQUEST FOR REVISION THEREOF

On February 22, 1984, this Board orally ruled on numerous matters at a prehearing conference. Among other matters, this Board excluded Suffolk County's proposed Contention IV and established a schedule for discovery and subsequent filings leading to hearings concerning the TDI diesel generators. Neither the County nor the State of New York voiced any objection to the schedule set or any of the Board's rulings until April 10, 1984 when both filed Joint Objections of Suffolk County and the State of New York to Board's Oral Order of February 22, 1984, and Request for Revision Thereof.

The objections come too late practically, if not technically. No new reasons are advanced in support of the County's proposed Contention IV. The County merely seeks rehearing of a

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matter already argued extensively, yet offers no compelling reason to revisit the issue. With respect to discovery, it is nearly at an end. Any request for reconsideration of this Board's rejection of Contention IV should have come within a reasonable time after the Board's February 22 ruling in order to avoid delay of an already protracted licensing proceeding. Additionally, the County's alleged problems with the discovery schedule are largely self-inflicted in view of its failure accurately to apprise the Board of its anticipated discovery before the schedule was set and to maximize those numerous discovery opportunities available to it.

Accordingly, as requested by the Board, LILCO hereby responds in opposition to the Joint Objections.

I. Contention IV Was Properly Excluded

This Board, in properly rejecting Suffolk County's Contention IV on quality assurance, stated that:

> We are not admitting Contention 4 . . . as a result of applying the reopening criteria to Contention 4. We find that given the litigation of the adequacy of the design, manufacture and performance of parts of the diesels, be they components or subsystems, which would take place under Contentions 1, 2, and 3, that litigation would include the quality aspects of those items. And given that Contention 4 is not likely to change the result that we would otherwise reach under those contentions.

Tr. at 21,613-14. The County offers no new arguments that would justify reversing this ruling.

Significantly, the Board's ruling permits litigation of specific quality assurance aspects of those items which will be subjected to scrutiny. This is entirely appropriate since quality assurance is intended to ensure the integrity of the design and manufacture of equipment. Thus, if the County has a factual basis, rooted in quality assurance concerns, for challenging the integrity of a specific component, it can do so. What the Board has not permitted is a sterile "fishing expedition" conducted under the rubric of a broad quality assurance contention.

Moreover, to the extent the County's proposed Contention IV was supported by specific quality assurance problems, exclusion of the contention was justified because of its inherent duplication. Indeed, the County's argument that it cannot identify quality assurance problems on a component-specific basis underscores the fact that litigation of a broad quality assurance contention would deal only in generalities.

In sum, any realistic concerns the County may have with regard to quality assurance for components legitimately in doubt will be fully and adequately covered by the litigation surrounding Contentions I, II and III. No valid rationale

exists for amending the Board's February 22 exclusion of Contention IV.

II. The Schedule for Discovery and Hearings Should Not be Changed

The County's description of discovery to date is misleading in several respects. An objective appraisal of the parties' efforts in discovery indicates that no, or at most a minimal, extension of the present discovery schedule is warranted.1/

A. The County Failed to Provide the Board with an Accurate Assessment of Its Discovery Demands

The Board's oral order scheduling discovery and hearings was apparently premised in part on the proposals for discovery submitted by the parties on February 17, 1984 in advance of the prehearing conference. At that time, the County2/ indicated

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1/ The Board should be aware that DG 103 experienced growth of a previously identified crack in its block during its two hour overload test on April 14, 1984. As previously anticipated, the adequacy of the block will be addressed by the DRQR program. The parties were already aware of the existence of cracks in the block and, presumably, the County's consultants are in the process of reaching their own conclusions. Accordingly, this development should not necessitate further protraction of the discovery schedule.

2/ The State of New York has propounded no discovery requests and has identified no consultants in its employ. Therefore, it

(footnote continued)

its intention to depose twelve specifically named witnesses and, possibly, some others described by generic category. At the prehearing conference on February 22, 1984, the County did not indicate any expanded discovery proposal. Yet, on March 1, 1984, the County notified LILCO that it desired to depose 25 specifically-named persons, one unnamed official of Elliott Turbochargers and possibly additional depositions of undetermined witnesses.

Between the County's February 17 filing and its March 1 letter, no discovery or other developments took place that would justify more than doubling the number of deponents. Indeed, there is no reasonable explanation for the County's earlier inability accurately to apprise the Board and LILCO of its discovery plans. Accordingly, the County should be estopped now from complaining that the number of days allotted for discovery is insufficient to complete the ever-expanding number of depositions.3/

(footnote continued)

has no standing to complain of the impending discovery cutoff. Nevertheless, all references in this response to "the County" apply equally to and include the State.

3/ Since the County continues to profess its inability to assess the issues, reach conclusions and provide witnesses, it is unclear whether the County's discovery plans are settled even now. Therefore, LILCO will not address here its objec-

(footnote continued)

B. Substantial Numbers of Documents Have Been Produced to the County

On February 29, 1984, the County served LILCO with a broad 43-page document request. In response, LILCO personnel and counsel have spent hundreds of hours in locating and reviewing files. As a result of this time-consuming review, LILCO has produced thousands of pages of documents to the County. LILCO began its production on March 16, 1984 and produced additional documents on March 17, 20, 29 and 30 and April 1, 4, 11 and 12. These documents should have given the County much of the information it needed to proceed with developing its case.4/

(footnote continued)

tions to the burdensomeness and excessive breadth of the County's present deposition plans.

4/ For example, Stone & Webster job books have already been turned over to the County almost in their entirety. These job books compile chronologically most documentation relating to purchases, installation and preoperational testing of the diesel generators. Thus, to a large extent these documents are responsive to a large percentage of the requests filed by the County. In addition, the County has had access to many of the documents it seeks here in proceedings before the New York Public Service Commission, proceedings in which the County is a party.

Attachment 2 to the Joint Objections of the County and State incorrectly claims that there are numerous requests for which the County has received no documents. In fact, the County has received documents in response to most of the requests. (See Attachment 1, letter from LILCO's counsel dated April 11, 1984 to Douglas J. Scheidt). Documents responsive to the few outstanding requests generally consist of incomplete owners group reports, DRQR matters, test reports and the like which have not been finalized. LILCO also believes that it will have produced all documents responsive to requests not objected to within the next two weeks.

Additionally, on March 30, 1984, the County served LILCO with a supplemental document request seeking in large part numerous treatises, engineering journals and publications, as well as documents duplicative of the original document request. Most of the treatises, journals and publications are equally available to the County's consultants as to LILCO's.

Thousands of documents have also been produced to the County by TDI at LILCO's request. Yet, the County complains that it was not able to look at TDI documents until March 22 and that it has not yet received copies of those documents from TDI. As a result, the County contends its consultants are not able to make the necessary analyses to reach final conclusions

to enable counsel for the County to take depositions. The County's argument in this respect is again misleading. Representatives of the County arrived at TDI's Oakland facility to review documents on March 22 and remained there until late on March 23. LILCO is advised that TDI offered to allow the representatives of the County to continue to review documents for as many days as the County's representatives thought necessary. The County's representatives, which included at least two County consultants, declined this opportunity. Accordingly, the County should not now be heard to complain and seek further delay in these proceedings on the basis of any asserted delay in receiving copies of documents. They had ample opportunity to review and study at TDI's facilities in March.

Moreover, the County inaccurately states that it has received no documents from TDI. LILCO is advised by TDI's counsel that TDI had offered to copy documents designated by the County on an expedited basis. Thus, on March 23, when the County's representatives departed TDI's Oakland facilities, they took with them 162 documents, including many drawings, approximating 250 pages. Not only did the County's representatives receive certain documents they apparently deemed sufficiently critical to be copied immediately, they had the opportunity to examine, analyze and review any of the documents or

drawings they so desired. Presumably, other critical documents could have been copied immediately had the County so requested. It is also important for the Board to know that, subsequent to the County's filing of its objections, TDI sent the County all other documents that had been requested.

In addition to ample opportunity to review documents, the County could have conducted a substantial number of depositions. LILCO identified the majority of its intended witnesses on March 2 and urged the County to concentrate its discovery efforts on these individuals. On March 22, LILCO responded to the County's expanded deposition notice. Although LILCO objected to the number of depositions proposed, LILCO provided information on witness availability and suggested that the County propose a deposition schedule. Despite this offer to begin depositions, the County has not yet scheduled the first one.

In view of the bulk of documents produced for the County's review and the numerous witnesses offered by LILCO for deposition, it simply is incredible for the County to claim that it could not have engaged the issues and conducted depositions by the close of the April 20 discovery cutoff.

C. Other Proceedings Constitute No Reason for Delay

The County urges the Board to consider the hearings pending before another licensing board on LILCO's Supplemental Motion for Low Power License as an additional reason for delay. Motion for Low Power License pending before another licensing board. LILCO seeks no extension on that basis and opposes any delay in this proceeding. The County's alleged inability to deal with both proceedings simultaneously is not an appropriate reason for delaying these proceedings.5/ Indeed, an intervenor's staffing problems are not generally considered an appropriate reason for delay. See Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367, 371 (1981).

The County's reference to LILCO's request for an extension of the PSC proceeding is similarly inapposite. Again, LILCO seeks no delay, extension or postponement here. To the extent that the County relies on arguments in the PSC case, however, this Board should be aware of its positions in that case. The County "strongly oppose[d]" any extension of time for LILCO. The County stated:

5/ If this were so, parties could control hearing schedules by unilaterally adjusting staffing levels.

> With regard to the next two months LILCO exaggerates the demands placed on its witnesses by discovery in the operating license proceeding. Only two of LILCO's current witnesses in this case are presently scheduled for depositions in the operating license proceeding, Messrs. Museler and Youngling (See Exhibit A). It should be possible for those witnesses to adjust their schedules in order to appear for depositions in the operating license proceeding and testify in this case. It is not unusual for a corporation LILCO's size to be engaged in more than one significant legal proceeding at the same time. LILCO has retained two law firms of substantial size as counsel in this and the operating license proceedings. Consequently there is no reason to believe that LILCO will be seriously impaired in its preparation for either case.

Response of Suffolk County and New York State Consumer Protection Board to LILCO Motion for Extension of Time and for Extension of Hearing Schedule, dated March 28, 1984, at 3-4.

Similarly, it is doubtful that the County will have many witnesses in this proceeding who are also engaged in the low power motion or in the PSC case. Similarly, it should be possible for the County's witnesses, employees and counsel to adjust their schedules in order to complete discovery and prepare for all proceedings in accordance with the existing schedules. And, similarly, the County has retained two law firms as counsel in this and the PSC proceedings. Consequently, in the County's own words "there is no reason to believe that [the County] will be seriously impaired in its preparation for either case."

D. Even If an Extension is Granted, the County's Proposal is Excessive

The County's 70-day discovery request includes 45 days for depositions. In contrast, only 40 days were originally allowed by this Board for both document production and depositions. The County, therefore, seeks not only an extension based on its asserted inability to review documents largely available to it, but also wants to expand the number of days available for depositions. There is no reason for such expansion. It will lead only to more delay and more expense. Although LILCO contests the need for the number of depositions to be taken, the schedule now in effect should be expanded by, at most, 20 days to give the County the same opportunity it would have had between April 1 and April 20, the earliest time it presumably would have been ready for depositions. The present eleven-day period between the close of discovery and the County's filing of the specifics of its contentions should be maintained. Consequently, if the Board finds that some extension of time is warranted, it should set a schedule with deadlines no later than the following:

May 10	Close of discovery
May 21	SC to file statement of issues
May 30	Responses to SC statement of issues

In sum, the 115-day delay proposed by the County is too long even if this Board finds, over LILCO's objection, that discovery should be extended. The County has failed to take advantage of discovery opportunities and failed to request an extension of the discovery schedule within a reasonable time after the Board's oral order. Accordingly, this belated request for an expanded, as well as extended, discovery opportunity should not be granted.

III. Conclusion

The objections of the County and the State to this Board's February 22 rulings are both untimely and unsupported by fact or law. Accordingly, the Board's order as announced should not be altered.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By Anthony F. Earley, Jr.

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Robert M. Rolfe
Anthony F. Earley, Jr.
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

DATED: April 17, 1984

LILCO, April 17, 1984

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO's Response to Joint Objections of Suffolk County and the State of New York to Board's Oral Order of February 22, 1984, and Request for Revision Thereof were served this date upon the following by first-class mail, postage prepaid, or by Federal Express, as indicated by an asterisk:

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Administrative Judge
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DATED: April 17, 1984

ATTACHMENT 1

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FILE NO.

April 11, 1984

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Washington, D.C. 20036

Diesel Generator Litigation - Document Discovery Request

Dear Mr. Scheidt:

This is in response to your letter of March 30, 1984 to Messrs. Ellis, Wolfe and Earley concerning the County's document discovery request recently submitted to Lilco.

As you are well aware, during the past several weeks, we have submitted to the County documents responsive to various document requests under cover letters dated 3/16/84, 3/17/84, 3/20/84, 3/29/84, 3/30/84, 4/2/84 and 4/9/84, in addition to serving Lilco's formal response to the County's request on March 21, 1984. You have at this point received thousands of pages of documents responsive to various requests, over a very short period of time. Because of the tremendously broad scope and nature of the County's request and the resultant time consuming effort required to locate and review files that might contain documents responsive to these requests, there are some requests for which we have not been able yet to locate, review and produce the required documents. We are diligently working towards completing this task and will be furnishing these documents to you as quickly as is possible. However, while there are some requests outstanding, our records reflect that we have indeed furnished the County with documents responsive to most of the requests for which you indicated in your March 30, 1984 letter that the County had received no documents. Thus, contrary to your previous indications, responsive documents have been produced for the following requests:

I.10(i). We are enclosing herewith the original procurement specs for the Shoreham Emergency Diesel Generators, as well as the January 26, 1983 Revision 2. Our review of

documents at TDI's facility in Oakland, California indicated that TDI made many, if not all of the addenda and changes to the specs available to you in Oakland, California. However, in the next few days, we will be sending you copies of addenda or changes to specs even if duplicative of those furnished by TDI.

I.20. Four Owners Group Reports have been produced to the County relative to air start valves, rocker arm bolt cap screws, connecting rod bearings and pistons, respectively. As we noted previously, in our formal response, as the Owners Group Reports and the DRCH Report becomes final, we will furnish these to you immediately.

I.A.1.6. We furnished on March 15, 1984 production routing sheets on the replacement crankshafts and documentation showing fatigue strength thereof. Additional documentation responsive to this request was sent to you in Mr. Earley's April 2, 1984 letter to Alan B. Dynner.

I.A.1.10. Documentation relating to this category was sent to you with Mr. Earley's letter of April 2, 1984 to Alan B. Dynner.

I.A.2.1. Based on our review of TDI documents, we believe documents responsive to this request were made available to you at the offices of TDI in Oakland, California on March 22 and 23, 1984.

I.A.3. 1 and 2, These documents were made available to you by TDI in Oakland, California on March 22 and 23, 1984.

I.A.3. 3, We have previously furnished you an FaAA Report dated February 27, 1984 on AF and AE pistons which addresses this category.

I.A.3.4(a). We have previously furnished you an FaAA Report dated February 27, 1984 on AF and AE pistons which addresses this category.

I.A.4.3. The report on the cylinder head studs is in the process of being finalized and it may relate to this request. As soon as this report is completed, it will be furnished to you immediately.

II.A.1.2. This information is contained in the Owners Group Report dated March 12, 1984 on connecting rod bearings, previously furnished to you.

II.A.1.3. This information is contained in the Owners Group Report dated March 12, 1984 on connecting rod bearings, previously furnished to you.

II.A.2.6. As you are no doubt aware, an Owners Group Report on this subject matter is to be issued, and as soon as it is finalized it will immediately be made available to you.

II.A.7.2. On March 15, 1984, you were furnished with a letter from McHugh to Kammayer dated November 30, 1984 responsive to this category. As additional information and documentation is identified, it will be immediately provided to you.

II.A.8.2. To the extent TDI has responsive documents, they would have been made available for your inspection in Oakland, California on March 22nd and 23rd. We have also provided you with the name of the lawyer at Elliott Co., the turbocharger manufacturer, so that you could discuss your document request with him.

II.A.8.4. As indicated in our formal response, we have already agreed to make photographs responsive to this request available to the County for examination at the Shoreham site. Additionally, we furnished you on March 17, 1984 with a memo from Swanger from Milligan responsive to this request.

II.A.10.5(b). We have previously furnished you a FaAA memo dated September 17, 1983 responsive to this request.

II.A.10.5(c). Documents responsive to this request were made available by TDI to you in Oakland, California on March 22nd and 23rd.

It should also be pointed out that while your letter indicated you have yet to receive any substantial portion of documents from TDI, you did spend several days in Oakland reviewing documents. We understand that TDI placed no limits on the amount of time you had to review documents. Moreover, we

also understand that TDI made arrangements to produce certain documents you designated on an expedited basis and that these documents have been produced.

Finally, we are in the process of preparing a formal response to your most recent document production request attached to your March 30, 1984 letter and will provide you with this reponse in the next few days.

I remain,

Yours very truly,

HUNTON & WILLIAMS

Odes L. Stroupe, Jr.

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cc: Richard J. Goddard, Esq.
Fabian G. Palomino, Esq.
Robert E. Smith, Esq.

bc: Robert M. Rolfe, Esq.
Anthony F. Earley, Jr.
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