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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board ^{84 APR 23 AIO:36}

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)

MEMORANDUM EXPLAINING SUFFOLK COUNTY
DISCOVERY REQUESTS RELATING TO FEMA

Suffolk County is filing today several discovery pleadings relating to the FEMA testimony which was filed in this proceeding on April 19, 1983. Specifically, the County is filing the following pleadings:

1. Notices of Deposition of FEMA witnesses (Kowieski, McIntire, Baldwin and Keller);
2. Suffolk County Motion to Compel the Separate Appearance for Depositions of the FEMA witnesses;
3. Suffolk County Request for Production of Documents by FEMA;
4. Notices of Deposition of FEMA personnel involved in the FEMA RAC review (Acerno, Jackson and Lawless);

5. Suffolk County Application for Issuance of Subpoenas to RAC members (Melina, Fish, Bernacki, Olmer, Feldman and Lutz), with accompanying Subpoenas and Notices of Deposition;
6. Notices of Deposition of NRC RAC members (Gordon and Bores);
7. Suffolk County Motion to Direct Appearance of NRC Personnel for Deposition; and
8. Suffolk County Request for Production of Documents by NRC.

As we explain below, the County is filing several of the above pleadings -- specifically, Items 4-8 -- at this time as a precaution only; the County will inform the Board if Board action is necessary with respect to any of Items 4-8.

The discovery sought by the County relates to the FEMA testimony which was filed on April 19, 1984. The FEMA witnesses, Messrs. Baldwin, Keller, Kowieski and McIntire, attached a document to that testimony entitled "LILCO Transition Plan for Shoreham -- Revision 3, Consolidated RAC Review, Dated February 10, 1984," (hereinafter, the "RAC Review"), and rely throughout their testimony upon the facts found by the FEMA

Regional Assistance Committee ("RAC") and set forth in the RAC Review. They also discuss in their testimony the review comments of the RAC members, a RAC meeting, and discussions among RAC members that apparently were part of the process of producing the RAC Review.

Because the RAC Review will thus be offered into evidence, and the facts contained therein are relied upon as the bases for the opinions and conclusions expressed in the FEMA testimony, Suffolk County's cross-examination of that testimony must necessarily explore the facts set forth in the RAC Review, the bases for those facts, and the process by which those facts were identified. Such cross-examination cannot be conducted effectively without prior discovery of relevant documents and information possessed by knowledgeable individuals.^{1/}

FEMA counsel has agreed to the County's request to depose the four FEMA witnesses. Such depositions have been tentatively scheduled for May 8 and 9.^{2/} The County has also

^{1/} The County has never had discovery of FEMA witnesses or personnel concerning FEMA's RAC review. The limited FEMA discovery last Fall preceded that review, and with one exception (Mr. Kowieski) none of the FEMA personnel deposed by the County turned out to be sponsors of FEMA testimony or involved in the RAC review. Further, at the time he was deposed, Mr. Kowieski had in fact not reviewed even the prior versions of LILCO's Plan.

^{2/} The only matter relating to the depositions of the four FEMA witnesses which requires the Board's attention is the

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informed FEMA counsel of its desire for documents related to the RAC review, and FEMA counsel has stated that he may produce some, but has not yet identified what he will produce. Following further discussions, counsel will inform the Board if its intervention is necessary with respect to the document request directed to FEMA.

The County intends to pursue during its FEMA witness depositions the areas identified above which are necessary to enable us to conduct effective cross-examination of the FEMA direct testimony. If the four FEMA witnesses are able to respond to the County's questions on the RAC review upon which they rely, and if the County's Request for Production of Documents to FEMA results in the provision of all materials the County desires, it will not be necessary to pursue additional discovery with individual RAC members or with additional FEMA personnel (i.e., Items 4-8 above), and those pleadings will be withdrawn. If, however, the FEMA witnesses are not able to provide the information requested by the County, or if FEMA either does not have in its custody, or refuses to produce

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Motion to Compel the Separate Appearance of those witnesses. Counsel have agreed to work out among themselves the dates, times, and locations of those depositions following the Board's ruling on that Motion.

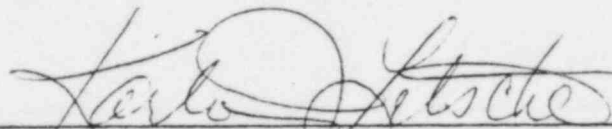
pertinent documents related to the RAC review, it may be necessary for the County to pursue the additional discovery described above directed to individual RAC members, the NRC, and other FEMA personnel. FEMA counsel has indicated that he will not agree to such additional discovery. We intend to ask the NRC Staff to agree to the requested Staff discovery if it becomes necessary to pursue it.

Thus, the only pleading which requires the Board's attention at this time is Item 2 above -- the Motion to Compel the Separate Appearance for Depositions of the four FEMA witnesses. The County intends to pursue its discovery requests directed to individual RAC members (including the two NRC members), the NRC, and FEMA personnel other than the four FEMA witnesses, (i.e., Items 4-8 listed above) only if its depositions of the four FEMA witnesses and Request for Production of Documents to FEMA do not produce the information necessary. The County will inform the Board immediately after the FEMA witnesses are deposed on May 8 and 9 as to whether the requested subpoenas and orders are in fact necessary, and whether the County seeks to compel responses to its document requests or the appearance of other FEMA personnel at depositions. However, because cross-examination of the FEMA witness panel is currently scheduled to begin on May 29, and therefore the necessary discovery would

have to take place during the period May 10-18, the County is submitting the Subpoena Application and Motion to Direct Appearance of NRC Witnesses at this time so the Board can give those matters its prompt attention should the need arise.

Respectfully submitted,

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Dated: April 20, 1984