

RELATED CORRESPONDENCE

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 APR 23 A10:37

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY APPLICATION FOR
ISSUANCE OF SUBPOENAS

Suffolk County hereby requests the Presiding Officer of this Licensing Board to issue subpoenas in the form attached hereto, to (1) Cheryl Melina, (2) Herbert Fish, (3) Ronald Bernacki, (4) Linda Olmer, (5) Joyce Feldman, and (6) Paul Lutz, ordering both appearance for depositions and production of documents. Each of these individuals is a member of the Regional Assistance Committee ("RAC") that reviewed the LILCO Transition Plan for Shoreham under the direction and at the request of FEMA, pursuant to the NRC's request that FEMA provide findings and determinations as to the adequacy and implementability of the Plan. Issuance of the subpoenas is authorized by 10 CFR § 2.720.

The discovery sought through the attached subpoenas is directly relevant to this proceeding. On April 18, 1984 FEMA

submitted the Direct Testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski, and Philip H. McIntire Concerning Phase II Emergency Planning. At page 2 of their testimony Messrs. Baldwin, Keller, Kowieski and McIntire state that "the RAC review [of Revision 3 of the LILCO Plan] is appended to this testimony and constitutes a part thereof." The "review" which is attached to the FEMA testimony is a document entitled "LILCO Transition Plan for Shoreham -- Revision 3, Consolidated RAC Review, Dated February 10, 1984," (hereinafter, the "RAC Review"), which contains "review comments," "ratings" of "inadequate" or "adequate" with respect to NUREG 0654 elements, and "Concerns Pertaining to LERO's Legal Authority Identified During RAC Review of LILCO Transition Plan for Shoreham -- Revision 3." In addition, in their testimony these gentlemen refer to the "review comments," a RAC meeting and discussions that were part of the process of producing the RAC Review, and they rely throughout their testimony upon the facts found by the RAC and stated in the RAC Review. See Testimony of Thomas E. Baldwin, et al. at 2-7, and passim.

Because the RAC Review will be offered into evidence and the facts set forth in that document are relied upon as the bases for the opinions and conclusions expressed in the FEMA testimony, cross examination of that testimony must necessarily

explore the facts and concerns set forth in the RAC Review, the bases for those facts and concerns, and the process by which those facts and concerns were identified. Such cross examination cannot be conducted effectively without prior discovery of the relevant documents and other information relating to the bases for the facts and concerns stated in the RAC Review.

The six members of the RAC to whom the requested subpoenas are directed are neither witnesses in, nor parties to, this proceeding. If the necessary information cannot be obtained through discovery directed to FEMA and the four FEMA witnesses, the only method available to the County for obtaining the information is by deposing and obtaining documents directly from the RAC members themselves. Because FEMA counsel has stated that he "has no control over" the RAC members for purposes of requiring their appearance at depositions, the requested subpoenas are necessary.

Based on the foregoing, Suffolk County requests that the Presiding Officer issue the attached subpoenas and thereby order the individuals named in those subpoenas to appear for depositions and produce documents, as set forth in the subpoenas.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-322
(Emergency Planning)

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 10 CFR §2.740a, Suffolk County, by its attorneys, will take the deposition upon oral examination of Craig Gordon on the subject areas of the Regional Assistance Committee review of the LILCO Transition Plan including the methodology, content, bases, conclusions, and processes involved therein, and the Consolidated RAC Review dated February 10, 1984, including the bases for the facts, comments, ratings and concerns contained therein. Such deposition will be taken before a Notary Public, or before some other authorized officer, at the offices of Kirkpatrick, Lockhart, Hill, Christopher & Phillips, 1900 M Street, N.W., Suite 800, Washington, D.C. 20036 on the 16th day of May, 1984, at 9:00 o'clock a.m. and from day to day thereafter until the examination is completed.

Dated: April 20, 1984

KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS

By John E. Birkenheier
John E. Birkenheier
Attorneys for Suffolk County
1900 M Street, N.W.
Washington, D.C. 20036

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Docket No. 50-322
(Emergency Planning)NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 10 CFR §2.740a, Suffolk County, by its attorneys, will take the deposition upon oral examination of Robert Bores on the subject areas of the Regional Assistance Committee review of the LILCO Transition Plan including the methodology, content, bases, conclusions, and processes involved therein, and the Consolidated RAC Review dated February 10, 1984, including the bases for the facts, comments, ratings and concerns contained therein. Such deposition will be taken before a Notary Public, or before some other authorized officer, at the offices of Kirkpatrick, Lockhart, Hill, Christopher & Phillips, 1900 M Street, N.W., Suite 800, Washington, D.C. 20036 on the 16th day of May, 1984, at 1:30 o'clock p.m. and from day to day thereafter until the examination is completed.

Dated: April 20, 1984

KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS

By John E. Birkenheier
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Attorneys for Suffolk County
1900 M Street, N.W.
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