

RELATED CORRESPONDENCE

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 APR 23 A10:38

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
PLANNING & SERVICE  
BRANCH

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )

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

SUFFOLK COUNTY MOTION TO DIRECT  
APPEARANCE OF NRC PERSONNEL FOR DEPOSITION

Pursuant to 10 CFR § 2.720(h)(2), Suffolk County hereby requests the Presiding Officer of this Board to require the attendance and testimony of Craig Gordon and Robert Bores at depositions as set forth in the attached Notices of Deposition. Each of these individuals is an employee of the NRC who is or was a member of the Regional Assistance Committee ("RAC") that reviewed the LILCO Transition Plan for Shoreham at the request of FEMA.

The discovery sought through this motion 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 therein are relied upon as the bases for the opinions 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 concerning the bases for the facts and concerns stated in the RAC Review.

As noted above, both Messrs. Gordon and Bores are or were members of the RAC and participated in the RAC review of the LILCO Plan. If the above-described information, necessary for the County to conduct cross examination of the FEMA testimony, 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 the RAC members themselves. Because FEMA counsel has stated he "has no control over" the RAC members for purposes of requiring their attendance at depositions, the intervention of the Board is necessary.

10 CFR § 2.720(h)(i) provides:

The presiding officer may, upon, a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

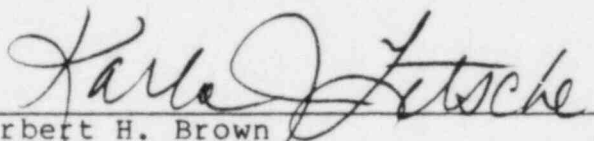
The circumstances set forth in Section 2.720(h)(i) are present with respect to Messrs. Gordon and Bores. These gentlemen each have direct personal knowledge of facts concerning the RAC review which, as set forth above, is material to cross examination of the FEMA testimony. Moreover, the only witnesses designated for appearance by the NRC (i.e., John Sears and Thomas

Urbanik), to the County's knowledge, do not have direct personal knowledge of material facts regarding the RAC review.

For the foregoing reasons, Suffolk County requests that Messrs. Gordon and Bores be directed to appear for depositions, as set forth in the Notices of Deposition that are Exhibits 1 and 2 hereto.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Karla J. Letsche".

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Dated: April 20, '984