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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board '84 MAR 29 10:31

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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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 REMOVE  
CONTENTION 77 FROM CLUSTER 3

Suffolk County hereby requests that the Board remove Contention 77 from Cluster 3 (which is likely to come to hearing this week), and reinsert Contention 77 into the hearing schedule at a later date, to be proposed by the parties. Suffolk County is filing this Motion because LILCO has refused to agree to a change in the order of litigation proposed by the County for the purpose of accommodating the schedule of one of the County's expert consultants. Although in the past the parties have always been successful in mutually accommodating such scheduling difficulties as they have arisen, LILCO has on this occasion, refused to do so. Accordingly the County must bring this matter to the Board's attention.

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PDR ADDCK 05000322  
G PDR

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## DISCUSSION

Given the progress to date and projected progress of the hearing, it appears possible that Cluster 3, involving Contentions 21.C, 77, 93-95, 96, and 92 may come up late in the week of March 26.<sup>1/</sup> The County's consultant on Contention 77 has an unalterable personal commitment that renders him unable to be in Long Island to assist in cross-examination during the period March 28 through April 6. The County's cross-examination on Contentions 21.C, 93-95, and 96, is unlikely to take more than one day. Because of the pending motions to strike it is difficult to estimate the amount of time that will be necessary for cross-examination on Contention 92, but in any event, it appears very possible, if not certain, that Contentions 21.C, 96, 93-95, and 92 (i.e., all of Cluster 3 except Contention 77) will be completed well before April 6.

In light of this situation, after having attempted, without success, to reach LILCO counsel by telephone over the weekend, the attached letter (Exhibit 1) was telecopied to LILCO

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<sup>1/</sup> Cluster 3 involves contentions in Group II-A on which only LILCO has to date submitted direct testimony. Hence, the hearing on that cluster will involve cross examination of LILCO witnesses.

counsel Mr. Irwin first thing Monday morning. As the letter explains, it is necessary that the County's consultant be present to assist counsel during the County's cross-examination of the LILCO panel on Contention 77, which involves several technical issues. The discovery of the consultant's scheduling conflict led to the County's request that Contention 77 be removed from Cluster 3 and reinserted at an agreed upon later point in the schedule. As the letter also points out, the three LILCO witnesses on Contention 77 - Matthew Cordaro, Charles Daverio and Michael Miele -- are together on several other witness panels, (specifically, on Contentions 81, 60-64, 85 and 88) so the re-scheduling of cross examination on Contention 77 could be coordinated with their other appearances on the witness stand. Finally, the County understood that the purpose behind placing Cluster 3 where it is in the schedule was to accommodate the planned vacation of a LILCO witness, Carol Clawson, whose appearance at the hearing would not be affected by the proposed deferral of Contention 77.

The above matters were discussed during a telephone conversation between County counsel and counsel for LILCO which followed the transmittal of the County's letter. During that conversation, LILCO counsel Mr. Irwin proposed moving

Contention 77 to another place within Cluster 3, and it was explained that such a change would not eliminate the problem. Even if Contention 77 were at the end of Cluster 3, it would still be likely to come up well before April 6, and thus the County would not have its expert consultant available. Moreover, the fact that in the past, and as recently as last week with respect to LILCO's witness Mr. Schiffmacher, all parties have attempted to accommodate the scheduling problems of experts was also discussed. Mr. Irwin stated that he would consider the County's request.

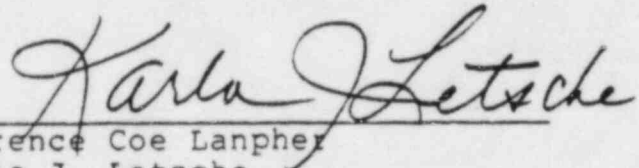
Later, the attached letter from Mr. Irwin (Exhibit 2) arrived by telecopier. It merely reiterates his earlier proposal -- that is, that LILCO would agree to moving Contention 77 within Cluster 3 -- but with the additional limitation that Contention 92 would remain the last issue in that cluster.

The County is not aware of LILCO's reasons for refusing to agree to the County's request. The County's proposal does not appear to the County to cause any hardship or prejudice to LILCO or its witnesses, nor would it result in any delay in the progress of the proceeding, since litigation of the rest of Cluster 3, and the Clusters that follow, could go on as planned.

For the foregoing reasons, the County requests that the Board remove Contention 77 from Cluster 3, and reinsert it at a point in the schedule, subsequent to April 6, 1984, to be proposed by the parties.

Respectfully submitted,

Martin Bradley Ashare  
Suffolk County Department of Law  
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Attorneys for Suffolk County

March 27, 1984

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March 26, 1984

BY TELECOPIER

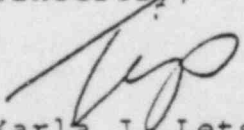
Donald P. Irwin, Esquire  
Hunton & Williams  
707 East Main Street  
Richmond, Virginia 23212

Dear Don:

Based upon hearing progress to date and projections for the coming week, it appears that the third cluster of issues (LILCO panels on 21.C, 77, 96, 93-95, and 92) may begin late this coming week. I would like to remove Contention 77 from that cluster, because of a conflict involving my expert consultant on that issue, whom I will need to have with me during my cross examination. I understand that Carol Clawson's scheduled vacation was the reason for having that cluster where it is in the schedule. Since she is not on the panel for Contention 77, and the witnesses who are will be on the stand several other times, it does not appear that sliding Contention 77 out of Cluster 3 would create a problem or frustrate our previous scheduling goals. I propose that we agree to reinsert Contention 77 back into the schedule at a mutually convenient spot.

Please let me know at your earliest convenience if this proposal is acceptable, so we can inform the Board.

Sincerely,

  
Karla J. Letsche

KJL:so

cc: Fabian Palomino, Esq.  
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March 26, 1984

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BY TELECOPIER

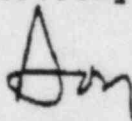
Dear Tip:

As I indicated, I have checked again concerning your desire to remove the hearing on Contention 77 from the cluster of issues with which it is grouped. As you know, all of these issues are ones on which LILCO, and only LILCO, has filed testimony, and thus LILCO, and only LILCO, has witnesses whose schedules are affected. Nevertheless, LILCO is willing to adjust the position of the hearing on Contention 77 to any point within the cluster as long as Contention 92 remains the last issue. I hope this will solve your problem.

As I indicated to you in our discussion, LILCO has no desire to be unreasonable on this issue. However, the entire orchestration of the Group I schedule involved a sufficient number of scheduling and other trade-offs among the parties on a wide range of fronts that we are loath to disturb it except within narrow ranges.

Please let me know if the offer above solves your problem. If it doesn't, I understand that you expect to bring it to the Board's attention promptly.

Sincerely yours,



Donald P. Irwin

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LONG ISLAND LIGHTING COMPANY )

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION TO REMOVE CONTENTION 77 FROM CLUSTER 3 dated March 27, 1984, have been served to the following this 27th day of March, 1984 by U.S. mail, first class, except as otherwise noted.

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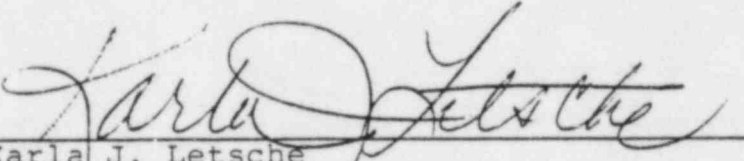
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