

DOCKETED  
USNRCUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges  
James A. Laurenson, Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. ShonOFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCHIn the Matter of )  
)  
)LONG ISLAND LIGHTING COMPANY )  
)  
)(Shoreham Nuclear Power )  
Station, Unit 1) )  
)  
)Docket No. 50-322-OL-3  
(Emergency Planning Proceeding)

April 4, 1984

RESPONSE OF GOVERNOR MARIO CUOMO,  
REPRESENTING THE STATE OF NEW YORK,  
IN OPPOSITION TO "LILCO'S MOTION  
TO STRIKE DIRECT TESTIMONY OF  
CHARLES V. FAILLA ON BEHALF OF  
NEW YORK STATE REGARDING CONTENTION  
24.F.2."

Governor Mario Cuomo, representing the State of New York, hereby  
opposes LILCO's motion of March 24, 1984 to strike the direct testimony of  
Charles V. Failla (hereinafter, "LILCO's motion").

Mr. Failla's testimony has been submitted on behalf of the State of  
New York. It pertains to Group II-B Contention 24.F.2. The testimony,  
which is two and one-half pages long, shows that if a nuclear accident  
were to occur during school sessions, seven of the bus companies under  
contract to LILCO could in fact provide LILCO with only 69 buses. This

add.  
J. Failla  
OCA

DS03

figure represents approximately 10% of the number of buses nominally committed by the seven bus companies to LILCO.

LILCO's motion claims that the State's testimony on Group II-B Contention 24.F.2 unfairly surprises LILCO and disrupts the progress of this licensing proceeding. For the reasons set forth below, LILCO's claims are untrue.

With respect to LILCO's first claim of surprise, it should be noted that the State filed its testimony in a timely manner. LILCO does not refute this. In addition, as is evident from the State's cover letter of March 21, 1984 to LILCO (attachment 4 to LILCO's motion), the State offered to provide LILCO with an opportunity to inspect the official New York State Department of Transportation records relied on by Mr. Failla. By letter of March 26, 1984, LILCO requested a copy of these records, and, indeed, the State has already provided a copy of the records to LILCO. The State's cover letter of March 21, 1984 to LILCO (attachment 4 to LILCO's motion) also offered to make Mr. Failla available to be deposed. Such a deposition would be convenient for LILCO because Mr. Failla works in the State Office Building in Hauppauge. The official New York State Department of Transportation records relied on by Mr. Failla are also located in the same place. However, as of April 3, 1984, the State has received no request from LILCO to depose Mr. Failla. Thus, the State has been reasonable in accomodating LILCO's requests for discovery concerning the testimony.

The State's cover letter of March 21, 1984 (attachment 4 to LILCO's motion) stated that

"The State of New York determined for the first time on March 20, 1984 that it would submit Group II-B testimony concerning Contention 24.F.2 (prior commitments by bus companies to provide buses to school districts)."

LILCO describes this statement as "inherently incredible." However, the State of New York did determine for the first time on March 20, 1984 that it would submit testimony concerning Contention 24.F.2.

As LILCO admits in the last two sentences of the first paragraph on page three of its motion, the State never had any plans prior to March 20, 1984 to file testimony on Contention 24.F.2, nor did the State have any plans prior to March 20, 1984 to engage Mr. Failla as a witness. It was only on March 19, 1984 that counsel for the State learned that the New York State Department of Transportation in Hauppauge possessed precise inventories of the number and condition of private school buses on Long Island. (Counsel for the State was in Hauppauge at that time in anticipation of the commencement of hearings on March 20, 1984.)

The official records were not gathered until March 20, 1984. At that time, the official records were compared to the number of buses private bus companies had already committed to schools. This information was set forth by LILCO in a numerical listing in an answer to one of Suffolk County's Interrogatories. The official records were also compared to the number of buses private bus companies had committed to LILCO. This information was set forth by LILCO in tabular form on pages six and seven of its Group II-A testimony on Contention 24.F.1, 4 and 5. Thus, it was on March 20, 1984 that the State determined it would file testimony

showing that if a nuclear accident were to occur during school sessions, seven of the bus companies under contract to LILCO could in fact provide LILCO with only 10% of the buses nominally committed by the seven bus companies to LILCO.

With respect to LILCO's second claim that the State's testimony will disrupt the progress of this licensing proceeding, it should be noted that Contention 24.F.2 is a Group II-B contention. The schedule for testimony on Group II-B contentions has not been established yet and there will be at least one month before testimony on Group II-A contentions will be completed. Accordingly, there is an abundant amount of time available before trial for LILCO to evaluate the State's two and one-half pages of testimony.

If LILCO then determines that it has a need to present additional testimony, the Board may permit LILCO to present such additional testimony, after showing good cause in a timely motion. It may not be said that the existence of that procedure unnecessarily broadens issues in mid-litigation, as LILCO has asserted on page six of its motion.

In addition, if LILCO were to attempt to present additional testimony on Contention 24.F.2, LILCO would be in a position no different than the State is now in concerning LILCO's testimony on Group II-A Contention 24.I. The State found out for the first time when LILCO filed its testimony on Contention 24.I that many of the "transfer points" designated in the Plan were eliminated and were replaced with other facilities at different locations. If the State determines that it has a need to present additional testimony on Contention 24.I, the State will seek to present such additional testimony


after showing good cause in a timely motion. Rather than disrupting the progress of the hearing, as LILCO claims, this procedure facilitates the efficient receipt of relevant new information.

For the reasons set forth above, the State requests that the Board deny LILCO's motion to strike the State's testimony on Group II-B Contention 24.F.2.

Respectuflly submitted,

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges  
James A. Laurenson, Chairman  
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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station, )  
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CERTIFICATE OF SERVICE

I hereby certify that one copy of the

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OF CHARLES V. FAILLA ON BEHALF OF NEW YORK STATE REGARDING  
CONTENTION 24.F.2"

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