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UNITED STATES OF AMERICA MAY 31 AIO:11
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-OL-3
(Emergency Planning)

SUFFOLK COUNTY MOTION FOR STAY
OF EMERGENCY PLANNING HEARINGS

Suffolk County learned on May 23, 1984 that LILCO intends to issue a new version of the LILCO Transition Plan -- Revision 4 -- sometime in the near future.^{1/} Among other things, this Revision is apparently intended to address the 32 deficiencies identified in the FEMA RAC Report (other than LILCO's lack of legal authority to implement the Plan, which was also identified by FEMA). Based on the speculation and predictions contained both in LILCO's prefiled written testimony and oral testimony on cross examination to date, it is clear that Revision 4 of the LILCO Plan likely will also contain many other substantive changes, additions, deletions, and modifications.

As the Board is aware, the hearing that is currently in progress is based upon prefiled testimony -- and contentions -- that deal with the proposals contained in Revision 3 of the LILCO

^{1/} There has been no precise date announced, but according to a statement by LILCO counsel Mr. Irwin on May 23, Revision 4 will be issued "within a few weeks."

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Plan. In addition, the FEMA RAC Report, upon which the FEMA testimony and FEMA findings to be used by the Board under 10 C.F.R. § 50.47(a)(2) are based, is also based upon Revision 3 of the LILCO Plan.

Under the current schedule, the Board and parties are about to continue hearings on Revision 3. When LILCO issues Revision 4 and if this Board decides to consider that document in this proceeding, the hearings potentially will be pointless, or, at a minimum, will be in need of supplementation. These hearings will be dealing with a document -- Revision 3 -- that is about to be withdrawn by LILCO, and that contains proposals that are about to be changed; LILCO's action in revising its Plan will, in fact, render obsolete, inaccurate, and/or incomplete many of the contentions upon which this entire proceeding is premised.

Clearly, contentions as well as testimony will have to be revised, supplemented, and modified following the appearance of LILCO's changed Plan. And, after Revision 4 appears, the issues that already have been heard concerning the Revision 3 version of the Plan may have to be reopened, and new hearings may have to be conducted upon revised and supplemental testimony, in order for the record to reflect the facts as they pertain to the proposals in Revision 4, rather than those in either Revision 3 or the speculation contained in LILCO's testimony.

Under the Atomic Energy Act and NRC regulations, if the Board intends to base its licensing decision on Revision 4 of the LILCO Plan, intervenors are entitled to a hearing on its ade-

quacy, with an opportunity to submit and challenge evidence on that subject. See Union of Concerned Scientists v. NRC, No. 82-2053, May 25, 1984, (D.C. Cir.) (slip op.).

In the County's view, the Board has only two options. On the one hand, it can decide now that it will not consider either LILCO's new version of its Plan (Revision 4), or any FEMA review of that Revision, but instead will base its licensing decision on Revision 3.^{2/} If such a determination were made, the hearings could continue since the prefiled testimony and admitted contentions addressed in that testimony all deal with Revision 3.

On the other hand, the Board could determine that it will accept Revision 4 of the Plan when submitted by LILCO, and will consider that Revision in its licensing decision. Presumably, such a determination would also mean that the Board would consider FEMA findings relating to Revision 4 rather than, or in addition to, those relating to Revision 3. If the Board determines to consider Revision 4, then the proceedings should be stayed.

Suffolk County requests that if the Board determines that it will consider the forthcoming Revision 4, it should immediately stay the hearings on LILCO's Plan, pending (1) the issuance by LILCO of its Revision 4, and (2) the setting of an appropriate schedule for the submission of revised contentions and testimony,

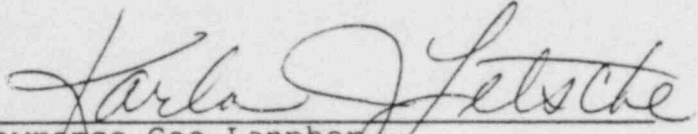
^{2/} Such a decision would be inconsistent with the Board's rulings on Suffolk County's motions to strike LILCO testimony that purported to address unidentified "future revisions" or other speculation about Plan additions or modifications that may be made to change Revision 3.

as appropriate, given the contents of Revision 4. In addition, in the County's view, the Board must make the determination as to whether it intends to consider Revision 4 now. It would be an exercise in futility to proceed blindly with the scheduled hearings on a document that is about to be withdrawn by the Applicant, in the face of LILCO's stated intention to submit in the near future a new and different version of its Plan to FEMA for review and to the NRC and this Board for licensing. There are no provisions in the NRC regulations for the conduct of hearings on an emergency plan that is not part of the license application. Furthermore, a continuation of the hearings would be a useless waste of the parties' resources, and would only result in more issues that would have to be reopened later. Suffolk County would be severely prejudiced if it were required to expend its resources and those of its consultants twice, rather than once. Accordingly, the County submits that the current hearings should be stopped -- until such time as LILCO's Revision 4 has been made available to everyone, and contentions and testimony have been modified or supplemented as necessary.

Suffolk County submits that an immediate stay of the proceedings is the only appropriate response to LILCO's announced intention to submit a new version of its Plan to this Board and to FEMA.

Respectfully submitted,

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DATED: May 29, 1984

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NUCLEAR REGULATORY COMMISSION

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LONG ISLAND LIGHTING COMPANY)

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(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion for Stay of Emergency Planning Hearings have been served on the following this 29th day of May 1984, by U.S. mail, first class, except as otherwise noted.

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