

RELATED CORRESPONDENCE

LILCO, July 6, 1984

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning
(Shoreham Nuclear Power Station,)	Proceeding)
Unit 1))	

LILCO'S MOTION FOR ADDITIONAL TIME
WITHIN WHICH TO PURSUE DISCOVERY
AND FILE A MOTION TO STRIKE SUFFOLK
COUNTY'S REVISED TESTIMONY ON CONTENTION 75

For the reasons stated below, LILCO requests that the Board (1) grant LILCO additional time within which to pursue discovery before filing any motion to strike Suffolk County's revised testimony on Contention 75 and (2) hold in abeyance any further rulings regarding relocation center testimony from the parties, including any rulings on Suffolk County's motion to strike LILCO's direct and supplemental testimony, until that discovery is completed.

I. BACKGROUND

LILCO and Suffolk County each filed direct written testimony on Contentions 74 and 75 on March 2, 1984. Each party moved to strike portions of the other's testimony on March 9. Late in April, Red Cross representatives informed LILCO that certain relocation centers previously relied upon by LILCO in

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its Plan were to be changed, because officials of the centers refused to make the centers available to the Red Cross for use during a radiological emergency. By letter dated April 27, 1984, counsel for LILCO told counsel for Suffolk County which centers would be relied upon by LILCO^{1/} in light of the information from the Red Cross, and suggested that the parties file supplemental testimony regarding relocation centers. When the parties were unable to come to an agreement regarding a schedule for filing additional testimony on relocation centers, LILCO asked that the Board set a schedule. Suffolk County argued that it should not be required to file additional testimony based upon representations made in a letter from counsel for LILCO to counsel for Suffolk County, but rather should be allowed to file after LILCO, contrary to usual practice in this proceeding of simultaneous filing, so as to avoid surprise to the County. The Board ordered on June 8, 1984 that LILCO should file supplemental testimony on June 15 and the County on June 26.

On June 26, 1984, Suffolk County filed its "Revisions to the Direct Testimony of David Harris and Martin Mayer on Behalf of Suffolk County regarding Contention 75." This revised testimony consists primarily of two letters, one from the District Superintendent of BOCES II and one from the President of SUNY-Farmingdale, disavowing any intention to allow their facilities

^{1/} The fact that a change would be made was communicated by telephone to counsel for the County the same day that the Red Cross notified LILCO.

to be used as relocation centers in the offsite emergency plan for Shoreham. The letters are dated June 21, 1984. Both of these facilities are relied upon in Revision 4 of the LILCO Transition Plan as relocation centers, have been identified as relocation centers since Revision 0 of the LILCO Transition Plan was first issued in May of 1983, were discussed extensively in LILCO's March 2 and June 15 testimony on relocation centers, and were identified in LILCO's April 27 letter as relocation centers. SUNY-Farmingdale was listed as a secondary center in Revisions 0 through 3 of the LILCO Plan, and the County was told on April 27 that LILCO would be relying upon it as a primary center; BOCES II was designated as a primary center since the inception of the LILCO Plan, and in prior County planning efforts dating back to 1980.

As explained below, LILCO may wish to pursue motions to strike the County's revised testimony on the grounds of untimeliness and lack of foundation, or to file supplemental testimony for good cause shown, but lacks the bases for those motions without further information regarding the June 21 letters.

II. THE SUPPLEMENTAL TESTIMONY MAY BE UNTIMELY

Suffolk County submits the June 21 letters as support for the proposition that BOCES II and SUNY-Farmingdale "have flatly stated that they are not available for use in implementing the LILCO Plan" (Revisions to Harris and Mayer Testimony at 2). As previously explained in LILCO's March 2 testimony on relocation centers, BOCES II and SUNY-Farmingdale have been relied upon by

LILCO from the inception of the LILCO Transition Plan in May of 1983. While the intervenors have long contended that Suffolk County Community College would not be available as a relocation center (see Contention 24.O, filed on July 26, 1983), there has been no suggestion that either of these two relocation centers would not be available for use until the June 21 letters were filed on June 26, and LILCO filed testimony as late as June 15 directly contradicting the June 21 letters. These letters, which are virtually identical, assert that SUNY-Farmingdale and BOCES II have no agreement with the Red Cross to use the facilities as shelters in a radiological emergency at Shoreham, and that the facilities will not be available for use in implementing the LILCO Plan, all "in accordance with the Governor's position" on emergency planning for Shoreham.^{2/}

Given the June 21 date on the letters and the statements in the letters by each of the authors that they have "recently become aware" that their facilities are being relied upon as relocation centers in the LILCO Plan, LILCO lacks a basis at this time to move to strike the letters on the grounds that they are untimely. It is a matter of record, however, that the State and the County have known for well over a year that both facilities would be relied upon as shelters in an emergency at Shoreham, and have known for well over two months that

^{2/} The BOCES II letter does note that BOCES II "has entered into an agreement with the American Red Cross concerning the use of the BOCES II Occupational Center in Islip as a mass care shelter"; the SUNY-Farmingdale letter does not mention an agreement with the American Red Cross, although it too has entered into one.

SUNY-Farmingdale's status had been changed from a secondary center to a primary center. LILCO had no knowledge of the existence or contents of the letters the County now seeks to put into evidence as revised testimony prior to their having been filed with the parties on June 26, 1984,^{3/} and the representative of the Red Cross to whom these letters are addressed was informed of their existence by LILCO on June 29, 1984.

LILCO seeks additional time within which to pursue through limited, focused discovery consisting of certain document requests and depositions (1) precisely when the authors of these two letters actually did become aware that their facilities were being relied upon in the LILCO Plan, (2) who told them, (3) whether any other individuals at their facilities were aware previously that the Red Cross was relying upon their facilities as shelters, (4) what their understanding was when representatives of these facilities entered into agreements with the Red Cross to use the facilities as disaster shelters, and (5) the timing of the notification of the Red Cross and LILCO that these shelters (if the letters are true) are no longer being offered for use in an emergency at Shoreham. After further exploration of these matters, LILCO may very well have a basis to argue in a motion to strike that this evidence has not been timely submitted by Suffolk County.

^{3/} As indicated in the certificate of service attached to the County's revisions, LILCO received them on June 27, through express mail.

III. AT PRESENT, THERE IS NO FOUNDATION
FOR ADMITTING THE TWO LETTERS

In addition to the serious questions that are raised regarding the timeliness of the two letters Suffolk County seeks to introduce into evidence, LILCO may also wish to move to strike the letters on the ground that there is no foundation for admitting them into the record. There is no indication in the County's revised testimony that Drs. Harris and Mayer had any contact whatsoever with either the authors or the addressee of the two letters, that Drs. Harris and Mayer know anything regarding when the letters were written, who wrote them, what the nature of the agreement referenced in the BOCES II letter is with the Red Cross, what the authors' understandings are of the "Governor's position" referenced in the letters, what their understandings are of the use to which LILCO may put their facilities, or any other background information that would shed light on the meaning of the letters.

Suffolk County's offering of the June 21 letters through witnesses without any apparent connection to the letters differs from the sort of documentation LILCO generally has attached to its testimony. LILCO witnesses have extensive contacts with the organizations whose letters are relied upon in their testimony, and in most cases LILCO is a party to the submitted document, either as an addressee or an author if the document is a letter, or as one of the parties entering into a contract. The intervenors therefore are afforded the opportunity to conduct meaningful cross-examination of LILCO witnesses

regarding the documents attached to LILCO's testimony. In contrast, there is no indication whatsoever in the County's testimony or in the submitted letters that Dr. Harris or Dr. Mayer, or any other representative of Suffolk County, has been involved in any way with those letters; Suffolk County has not produced the authors of the letters as witnesses in this proceeding to explain the letters; and the State of New York has filed no testimony regarding relocation centers in this proceeding. LILCO is entitled to pursue the foundation for these letters through deposition and, if warranted, to move to strike the letters on the ground that no foundation has been laid for admitting the letters into testimony.

IV. REQUEST FOR TIME WITHIN WHICH TO PURSUE DISCOVERY

In light of the information set out in parts I through III above, LILCO requests that the Board do the following:

1. hold in abeyance any further rulings or hearings regarding Contentions 24.0, 74 and 75⁴/;
2. grant LILCO a period of one week from the date of the Board's order within which to pursue discovery regarding the new information contained in the County's revised testimony;

⁴/ LILCO contacted the other parties by telephone on Monday, July 2, 1984 to suggest, in light of the new information received as part of the County's submitted revisions to its testimony, that the parties jointly request the Board to hold in abeyance any further decisions regarding this testimony in order to allow LILCO to pursue discovery regarding the new information and make any testimony modifications necessary. The NRC Staff agreed with this proposal; Suffolk County refused the proposal in a letter dated July 3, 1984. In light of Suffolk County's refusal, LILCO did not pursue the issue with the other parties.

3. grant LILCO a period of one week and five days from the date of the Board's order within which to file a motion to strike the County's revised testimony, or a motion showing good cause for filing supplemental testimony responding to the June 21 letters, based upon information obtained during discovery; and

4. hold in abeyance any rulings regarding Suffolk County's motion to strike LILCO's supplemental testimony until discovery and subsequent filings are completed.

It is LILCO's hope that, should the Board grant this motion, the parties will resolve matters regarding the details of discovery without involving the Board, including agreeing upon dates for depositions and for the production of any documents that may be requested. Consequently, LILCO is not today filing any formal discovery requests.

IV. CONCLUSION

For the reasons stated above, LILCO requests that the Licensing Board grant LILCO one week within which to pursue discovery regarding the new information contained in Suffolk County's revised testimony, that the Board hold in abeyance any further rulings on the County's motion to strike LILCO's supplemental testimony on relocation centers, and that the Board grant LILCO one week and five days from the date of the Board's order on this matter to file a motion to strike the County's revised testimony or to file a motion showing good cause for filing supplemental testimony responding to the revised testimony.

Respectfully submitted,

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DATE: July 6, 1984

LILCO, July 6, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
(Emergency Planning Proceeding)
Docket No. 50-322-OL-3

I certify that copies of LILCO'S MOTION FOR ADDITIONAL TIME WITHIN WHICH TO PURSUE DISCOVERY AND FILE A MOTION TO STRIKE SUFFOLK COUNTY'S REVISED TESTIMONY ON CONTENTION 75 were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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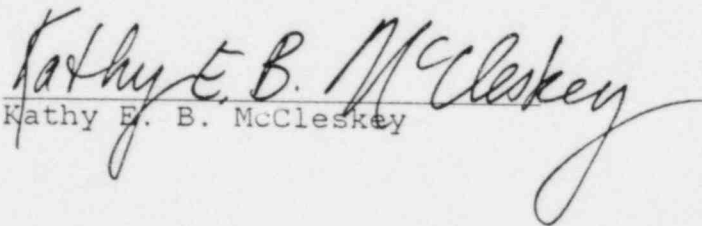
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