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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
JUNE

74-100-2-11143

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

SUFFOLK COUNTY'S MOTION TO ADMIT PROPOSED
MODIFIED EMERGENCY PLANNING CONTENTION 88
AND SUFFOLK COUNTY'S REVISED TESTIMONY ON
EMERGENCY PLANNING CONTENTIONS 85 AND 88

For the reasons set forth below, Suffolk County hereby requests that the Board admit proposed Emergency Planning Contention 88, as modified to reflect Revision 4 of the LILCO Plan, and the attached revised testimony on Contentions 85 and 88 (Recovery and Reentry).

I. Background

Suffolk County and LILCO each filed direct written testimony on Contentions 85 and 88 on March 21, 1984. This testimony was based on Revision 3 of the LILCO Plan. On or about July 3, 1984, counsel for Suffolk County received one copy of Revision 4 of the LILCO Plan. Thereafter, on July 6, 1984, the County filed a Motion for Stay of Emergency Planning Hearings in Light of LILCO's Submission of Revision 4 of LILCO Transition Plan (hereinafter, "Motion for Stay").

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add:
J. Horn

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In its Motion for Stay, the County noted that, although it had not yet had an opportunity to review in any detail the contents of Revision 4, even a brief and cursory review of the document revealed that LILCO's submission of Revision 4 required an immediate stay of the proceedings in order to permit the parties time to review the Contentions and prefiled testimony upon which this litigation is based to determine whether and how they should be revised. Motion for Stay, at 2. The County pointed out that, among other things, Revision 4 contained a totally new procedure (OPIP 3.10.2 -- "Total Population Dose"). Id., at 2-3. In addition, the County noted that Revision 4 appeared to contain much additional and/or revised information concerning LILCO's proposed protective actions for recovery and reentry procedures. Id., at 3-4. In the County's view, while the full impact upon the Contentions and the testimony related to those subjects could not be determined until a complete review and analysis of Revision 4 had been performed, it was significant that the County had received, on July 5, 1984, LILCO's motions to admit supplemental and revised testimony on Contentions 85 and 88 (dealing with recovery and reentry procedures). Id., at 4. Indeed, in LILCO's own words, such supplemental and revised testimony was made necessary solely by Revision 4, which made LILCO's prefiled testimony of March 21 "no longer . . . an accurate

representation of the recovery and reentry provisions of the LILCO Plan." LILCO's Motion to Admit LILCO's Revised Testimony on Contention 88 (Dose Criteria and Cost Benefit Analysis for Reentry), at 3.

On July 10, 1994, the Board denied the County's Motion for Stay. Tr. 12,109. That same week, the Board required the parties to respond orally to LILCO's motions to admit supplemental and revised testimony on Contentions 85 and 88. Tr 12,846. In its response, the County first objected to having to respond to LILCO's motions without having had any opportunity to review Revision 4, which formed the underlying basis for LILCO's motions. Tr. 12,846-47. The County then argued that neither of LILCO's motions met the Board's standards for admission of such testimony, and that LILCO's motions should therefore be denied. Tr. 12,846-53. The County made clear, however, that if LILCO's supplemental or revised testimony should be admitted, the Board would be compelled to give the County an equal right to submit supplemental or revised testimony and, if necessary, to modify the Contentions previously admitted by the Board. Tr. 12,851-52. The County's position in this regard was made clear in response to a question from the Board following argument:

Judge Laurensen: Before we turn the microphone over to Mr. Zahnleuter, let me just inquire what the County would have us do, for instance, on the [Contention] 88 testimony? Do you prefer that we should

litigate the testimony that is already on file, on a revision of the [P]lan, Number 3, that has been abandoned?

Mr. Miller: Judge Laurensen, the County's position I think has been consistent in this matter. We don't prefer to litigate old matters or matters which according to LILCO have been made moot by a revision to its [P]lan.

But we need equal footing. And we need time to look over Revision 4 and to file -- to determine first whether we need to revise our [C]ontentions. Maybe withdraw our [C]ontentions, I don't know. But to determine whether we need to do anything with respect to the pending [C]ontentions and to determine whether we, too, would need to revise or modify our testimony before the Board.

* * *

Tr. 12,853-54.

Although the Board granted LILCO's motions to admit the supplemental and revised testimony on Contentions 85 and 88 (Tr. 13,038), it agreed with the County that, in fairness, the other parties had to be given some opportunity to review LILCO's testimony and to prepare a reply. Tr. 13,037. Following discussion among the parties and the Board on July 17, 1984, it was agreed that the County would file its revised testimony on Contentions 85 and 88 on or before August 1, 1984. Tr. 13,310.

Pursuant to the Board's ruling, Suffolk County hereby requests that the Board allow the County to withdraw its previously filed testimony on Contentions 85 and 88, and replace that testimony with the revised testimony attached to this Motion. Similarly, the County requests that the Board allow the County to withdraw previously admitted Contention 88, and replace that Contention with the proposed Contention discussed below, which has been modified to reflect Revision 4 of the LILCO Plan.^{1/}

^{1/} In ruling that revised testimony must be filed on or before August 1, 1984, the Board stated the following:

Judge Laurenson: . . . We had had a discussion off the record concerning the scheduling of revised testimony by the County on Contentions 85 and 88 in response to our ruling of last week with regard to LILCO's revised and amended testimony on those two [C]ontentions.

And with the assistance of all parties here, I believe we have negotiated a schedule that is satisfactory to everyone. And just to summarize it, the County will file revised testimony on Contentions 85 and 88 on or before August 1st.

* * *

Tr. 13,310. The County believes that by this ruling, which reflected agreement among the parties, the Board granted the County the right to file revised testimony on Contentions 85 and 88, so long as such testimony is filed on or before August 1. Further, in the County's view, the Board's ruling in granting LILCO's motions to admit supplemental and revised testimony on Contentions 85 and 88 (Tr. 13,037-38) gives the County the right to modify the Contentions to reflect Revision 4 of the LILCO Plan. Nev-

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II. Discussion

A. Proposed Modified Contention 88

At the outset, it should be noted that the County is not seeking to modify the text of Contention 85; in the County's view, Revision 4 of the LILCO Plan does not require any modification to that Contention. However, the County is seeking to modify Contention 88 to reflect substantive and substantial changes in the Plan made by Revision 4. In discussing these changes, the County wishes to emphasize that, notwithstanding LILCO's changes, the basic thrust of the pre-existing Contention remains the same -- i.e., that LILCO's Plan fails to satisfy the planning standards of 10 CFR 50.47(b)(13) and NUREG 0654 Section II.M, governing reentry by the public into previously evacuated areas.

In Revision 4, two provisions have been removed from the recovery and reentry provisions in OPIP 3.10.1 of the Plan. First, whereas OPIP 3.10.1, Revision 3, provided that radiological criteria for reentry were to be determined in

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ertheless, by this Motion, the County believes it establishes good cause for the filing of the attached revised testimony and the admission of proposed modified Contention 88.

accordance with Attachment 1 of OPIP 3.10.1, which set forth radiological criteria for reentry in disintegrations per minute, LILCO has now removed Attachment 1 of OPIP 3.10.1 from the Plan and no longer relies on disintegrations per minute as radiological criteria for reentry. See LILCO's Motion to Admit LILCO's Revised Testimony on Contention 88 (Dose Criteria and Cost-Benefit Analysis for Reentry), at 1-2. Second, whereas OPIP 3.10.1, Revision 3, provided that decisions regarding temporary reentry would be based on a cost-benefit analysis of \$1,000/person-rem during temporary reentry, Revision 4 has now removed this provision from the Plan. Thus, the Plan, as revised, no longer provides for cost-benefit analysis during temporary reentry. Id.

In addition, Revision 4 has added a totally new procedure to the LILCO Plan -- OPIP 3.10.2. This procedure sets forth a method for calculating total population dose. Previously, the LILCO Plan did not include a method for calculating or estimating total population exposure. See LILCO's Motion to Admit Supplemental Testimony on Contention 85 (Recovery and Reentry), at 1.

To reflect these changes to the LILCO Plan, the County proposes to modify Contention 88 as follows:2/

2/ In order to indicate the modifications made to Contention 88, language added to the text has been underlined and a

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Contention 88. ~~OPIP-3.10.1-sets-forth-"Ac-~~
~~ceptable-Surface-Contamination-Levels"-in~~
~~units-of-disintegrations-per-minute--The~~
~~Plan-does-not-include-a-method-for-con-~~
~~verting-such-information-into-radiation~~
~~doses-to-the-public-(e.g.,-person-rem).~~
The LILCO Plan also fails to state the dose
criteria that will provide the basis for a
determination that it is safe for the pub-
lic to reenter previously evacuated areas.
The Plan calls for cost-benefit analysis
based on a \$17,000/person-rem during tempo-
rary reentry (OPIP-3.10.1-at-5), but pre-
vides no guidance on how to analyze a situ-
ation in order to be able to apply this
criterion. Thus the Plan fails to comply
with 10 CFR Section 50.47(b)(13) and
NUREG-0654, Sections II.I.10.7 and II.M.1.

As the above discussion indicates, Revision 4 includes a
substantial rewriting of LILCO's proposed procedures for recov-
ery and reentry. In addition, Revision 4 includes a totally
new procedure -- OPIP 3.10.2. These LILCO changes have made
modifications to Contention 88 necessary.

B. Revised Testimony on Contentions 85 and 88

The County's revised testimony is relevant, material
and probative to the issues raised in Contentions 85 and 88.
Further, the testimony could not have been filed earlier, since
LILCO did not serve Revision 4 until on or about July 3 and did

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dashed line has been drawn through deleted language. The
only word added to the text of Contention 88 is the word
"LILCO" before the word "Plan" in the first sentence of
the modified Contention.

not file its motions to admit supplemental and revised testimony on Contentions 85 and 88 until on or about July 5. Further, the Board did not admit LILCO's testimony until July 13, and the testimony now proffered by the County is filed within the time limit set by the Board and agreed to by the parties on July 17. Tr. 13,310. Finally, the parties will not be prejudiced if this testimony is admitted, since the Contentions at issue have not yet been heard.

This Board has previously noted that, for an adequate showing of "good cause," proffered testimony must be shown to be relevant, not cumulative, and incapable of being filed in a more timely fashion. See Board Order dated February 28, 1984, at 7. Here, the proffered testimony meets the requisite showing of good cause. First, it is relevant to the issues raised in the Contentions at issue, to LILCO's supplemental and revised testimony admitted by this Board on July 13, and to Revision 4 of the LILCO Plan. Further, the testimony is relevant to an issue of decisional importance in this proceeding. Contentions 85 and 88 raise questions about LILCO's procedures and methods for recovery and reentry in the event of an emergency at the Shoreham plant. The testimony responds to the changes made by LILCO in Revision 4 of the Plan and LILCO's approach to recovery and reentry. The testimony supersedes the County's position taken in the March 21 testimony, when LILCO was

relying on Revision 3 of the Plan. Thus, the County has withdrawn some testimony, and modified other testimony, to reflect the changes recently made by LILCO. For these reasons, the prior testimony the County now seeks to withdraw, if used as the basis for hearings on Contentions 85 and 88, would not provide a complete or accurate record for decision.

Second, the proffered testimony is not cumulative with any other testimony. The recovery and reentry issues discussed in the testimony have not yet been litigated and thus, at this time, the information contained and discussed in the revised testimony does not appear as evidence anywhere in the record. Further, the testimony responds to changes made by LILCO in Revision 4 of the Plan, which is new information.

Finally, it is clear that the proffered testimony is timely, since it is being filed within the time period set by the Board, as discussed above.

III. Conclusion

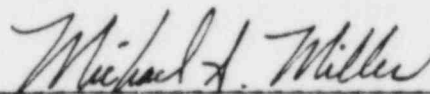
For the reasons stated above, Suffolk County requests that the Board admit the County's revised testimony on Contentions 85 and 88, which is attached to this Motion. If the revised testimony is admitted, the County also moves to withdraw the testimony it filed on Contentions 85 and 88 on March 21, 1984.

Suffolk County also requests that the Board admit proposed Contention 88, as modified to reflect Revision 4 of the LILCO Plan, in substitution of the Contention 88 previously admitted by the Board. In the event that any party objects to the admission of the proposed modification and the Board sustains such objection, then the County will withdraw the proposed objected-to modification and will rely upon existing Contention 88.

Respectfully submitted,

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