

LILCO, August 6, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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 ANSWER
OPPOSING SUFFOLK COUNTY'S
"MOTION TO COMPEL LILCO TO PRODUCE
FRANK M. RASBURY, A LILCO WITNESS, FOR DEPOSITION"

By its "Motion to Compel LILCO to Produce Frank M. Rasbury, a LILCO Witness, for Deposition" of August 3, 1984, Suffolk County asks that Mr. Rasbury, the Executive Director of the Nassau County Chapter of the American Red Cross, be made available for deposition. LILCO opposes the motion, for the reasons recited below.

In response to the County's motion, LILCO has three observations to make, two of them specific to this situation involving relocation center testimony and the third a more general one. First, LILCO too will have to cross-examine on this issue without the benefit of depositions. On June 26, 1984, the County produced, not surprise witnesses, but surprise hearsay evidence consisting of letters from Messrs. Cipriani and Hines, New York State officials on whose words the County

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intends to rely. After attempting to reach agreement on discovery of these witnesses, and being faced with the County and State's flat refusal to produce them, LILCO asked the Board to order discovery and was turned down as untimely. LILCO believes that the solution to the County's problem is to afford it the same relief that LILCO has been given, which is the right to cross-examine the new witnesses at the hearing.

Second, the reason for designating a new witness at this late date is simply that both times LILCO has submitted testimony on relocation centers in the past, the State and County have met it with letters newly drafted for the occasion by employees of the State and County saying that they will not make their facilities available to help members of the public in an emergency. LILCO has then had to adjust its plan to solve the problems created by the State and County. Thus the present situation of a new witness being produced shortly before hearing is of the County's own making.

Third, the County does not, as it seems to believe, have an absolute right to depose every LILCO witness. The County obviously thinks it does have an absolute right, because it makes no attempt to justify its need for a deposition,^{1/} and

^{1/} Section § 2.740(b)(1) of 10 C.F.R. says that "in such a proceeding, no discovery shall be had after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown." The County has not shown "good cause" unless the designation of a new witness, in response to another party's obstructionist tactics, is automatically good cause.


the legal authority it cites on pages 5 and 6 of its motion is unpersuasive, standing for the simple proposition that the purpose of discovery is to enable each party prior to hearing to become aware of the positions of each adversary party on the various issues in controversy. But that is the purpose of pre-filed written testimony as well, and Suffolk County has LILCO's prefiled written testimony. Likewise, Suffolk County's resort to "the practice in this proceeding" is misplaced, since witnesses on both sides have been produced at hearing without having been deposed first. Mr. Rasbury sponsors, by himself or in combination with other witnesses, about six and a half pages of testimony all told, and there appears to be no compelling reason why Suffolk County cannot develop the facts it needs at hearing.

For the above reasons, LILCO opposes Suffolk County's motion to compel the production of Mr. Rasbury. The County's alternate proposal, that Mr. Rasbury be stricken from the witness panel, is extreme, to say the least.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

BY


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DATED: Augst 6, 1984

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S ANSWER OPPOSING SUFFOLK COUNTY'S "MOTION TO COMPEL LILCO TO PRODUCE FRANK M. RASBURY, A LILCO WITNESS, FOR DEPOSITION" were served this date upon the following by first-class mail, postage prepaid or, as indicated by an asterisk, by Federal Express, or, as indicated by two asterisks, by telecopier:

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