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FILE NO.

DIRECT DIAL NO. 202 955

March 19, 1985

BY HAND

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Shoreham Nuclear Power Station  
Docket No. 50-322 (OL)

Dear Judges:

By letter dated March 15, 1985, LILCO, by counsel, advised the Board that 80 pages would be an adequate page limit for remaining findings relating to the TDI diesel generator hearing. This letter supplements that LILCO position by pointing out that the Board should distinguish between the page limitations applicable to LILCO on the one hand and those applicable to Suffolk County and the Staff on the other.

LILCO agrees with the concept of page limitations and further agrees that the page limitations set by the Board should be set so as to ensure that the findings submitted are sharply focused and not burdened with tangential and extraneous information. It was with this general principle in mind that LILCO suggested a general page limitation of 80 pages for both initial and reply findings. LILCO also believes, however, that if LILCO is to be limited to 80 pages for both initial and reply findings, Suffolk County and the Staff should be limited to 60 pages for their findings. The justification for this distinction is that LILCO has the burden in this proceeding and cannot, at the outset, predict where Suffolk County or the Staff will choose to focus their specific arguments nor how

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they may choose to use the record in this respect. By contrast, Suffolk County and the Staff will have an opportunity to see how LILCO views the record before fashioning their findings.

This rationale is well established and observed in federal court practice. For example, Rule 28(g), Federal Rules of Appellate Procedure, provides that except by permission of the court, principal briefs, that is briefs of the appellant and appellee, shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of the table of contents, table of citations and any addendum. Thus federal circuit courts of appeal recognize the principle that the total page limitation applicable to the appellant is greater than that applicable to the appellee by virtue of the right of reply.

Supreme Court practice is to the same effect. Rule 34 provides that a brief on the merits by the appellant and respondent shall not exceed 50 pages in length and the appellant's reply brief shall not exceed 20 pages in length. In sum, federal court practice recognizes the principle that the page limitations applicable to the party with the burden and the right of reply should be greater than the page limitation applicable to the respondent or appellee. The difference is the length of the allowed reply brief. This principle embodied in Supreme Court practice should also apply here given the Board's indication that these findings reflect the parties' arguments and positions as well as the facts testified to in the record.

Accordingly, LILCO respectfully requests that in the event the Board accepts LILCO's suggested limit of 80 pages for initial and reply findings, the Board should then limit Suffolk County and the Staff to 60 pages thereby allowing LILCO 20 pages by way of reply. In the alternative, should the Board set some other page limitation, LILCO respectfully requests that consistent with federal court practice, the page limitation for initial findings by LILCO be equal to that page limitation applicable to the other parties and that LILCO be permitted an additional reply in proportion to the limitation applicable to the initial findings.

Further, I do not recall whether the Board indicated whether the findings should include a procedural history,

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including recitation of motions to strike and the like. If so, LILCO respectfully suggests that in lieu of including a procedural history within the parties' findings, the Board permit the parties to file an agreed statement of the contentions and the procedural history of the hearing in a separate document not to be counted in the parties' page limitations.

Respectfully,

*J. S. Ellis, III*  
T. S. Ellis, III *TS*

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cc: Service List