

UNITED STATES OF AMERICA
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)
)
)

MEMORANDUM IN SUPPORT OF SUFFOLK COUNTY MOTION TO COMPEL
RESPONSES TO DISCOVERY REQUESTS RELATING TO NON-LILCO
SUPPORT ORGANIZATIONS

Suffolk County's Motion to Compel arises from LILCO's refusal to respond to certain of the County's discovery requests concerning non-LILCO organizations, entities and individuals, such as school districts, hospitals, ambulance companies, fire departments, volunteer groups, and bus companies, on which LILCO may rely for implementation of the LILCO Transition Plan. Under the LILCO Plan such entities are expected to play key roles in the implementation of protective actions. (See, e.g., Plan, Section 2.2) Consequently, discovery designed to ascertain the identity of the organizations being considered by LILCO to fill such roles, their capabilities, and their responses to contacts made by LILCO is both relevant and, indeed, essential.

The information sought by the County is relevant to several admitted contentions. In particular, see Contentions 15.A, 15.C, 24, 25, 26E, 27, 34, 39, 67, 70, 71, 72, and 73. In addition, the information the County seeks is not protected by any privilege. Accordingly, LILCO should be compelled to respond to the County's discovery requests.

DISCUSSION

The County's informal discovery requests (dated July 18, 1983) to which this Motion applies and LILCO's responses to those requests (dated August 5, 1983) are set forth below:

Suffolk County Request 6

Identify the name and address of every company, organization, group, entity, institution, and individual, not employed by LILCO, who are expected to perform emergency services of any type in the event of a radiological emergency at Shoreham, under the LILCO Transition Plan. With respect to each organization identified, identify the person or persons affiliated with that organization who are knowledgeable concerning that organization's participation in the emergency response.

LILCO Response

To the extent that Suffolk County's Request 6 seeks information concerning negotiations between LILCO and non-LILCO organizations prior to such non-LILCO organizations executing letters of agreement to perform or to assist in the performance of emergency services, LILCO objects to Suffolk County's Request 6 on the grounds that provision of such information would frustrate LILCO's negotiations with non-LILCO organizations. To the extent that LILCO has reached agreements with non-LILCO organizations to perform or to assist in the performance of emergency

services, Letters of Agreement with such organizations have been included in the Plan as pages APP-B-1 through APP-B-9; if additional agreements are reached in the future they will be included in the Plan.

Without waiving its objection, LILCO states that, in LILCO's July 29, 1983, Response to Suffolk County Request 1 of July 18, 1983, Elaine D. Robinson has been designated as a LILCO witness on the subject of non-LILCO support groups.

Suffolk County Request 7

Provide copies of all correspondence, questionnaires, surveys, polls, or information sent by or on behalf of LILCO to the organizations or individuals identified in response to the previous question. Also provide copies of all responses or other correspondence or information received from such organizations or individuals, and any analyses, summaries, or reports relating thereto.

LILCO Response

See LILCO's Response to Suffolk County Request 6 above.^{1/}

Suffolk County Request 9

Identify the name and title of the person or persons who are "pursuing" on behalf of LILCO agreements for "certain LERO functions" "with appropriate organizations." (See your June 20 Responses.)^{2/} Identify the "LERO functions"

^{1/} In response to the County's objection to LILCO's refusal to respond to Request 7, LILCO provided (on August 16, 1983) copies of documents sent to or received from organizations with which LILCO has a letter of agreement -- these documents consisted of a form letter from LILCO's Chairman of the Board, an information packet entitled "For Your Information . . . Shoreham Nuclear Power Station," and the so-called letters of agreement which have been incorporated into the Plan.

^{2/} On June 14, 1983, shortly after having received a copy of the Transition Plan, the County asked the following

(Footnote cont'd next page)

and the names and addresses of the "appropriate organizations" referred to. Provide copies of all correspondence, or other documentation, relating to this effort.

LILCO Response

See LILCO's Response to Suffolk County Request 6 above. Without waiving its objection, LILCO states that, in LILCO's July 29 Response to Suffolk County Request 1 of July 18, Elaine D. Robinson has been designated as a LILCO witness on the subject of non-LILCO support groups.

Suffolk County Request 10

Provide copies of all correspondence, questionnaires, surveys, polls, or any other inquiries, documents or information sent by or on behalf of LILCO to any of the following with respect to radiological emergency planning:

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questions of LILCO:

- "Does LILCO have agreements with any fire departments and/or ambulance services with respect to providing offsite radiological emergency response services in the event of an accident at Shoreham? Please provide copies."
- "Does LILCO presently have contracts with any bus companies, school districts or other entities to provide high occupancy vehicles to LILCO for use in the event of a radiological emergency at Shoreham? Please provide copies."
- "Does LILCO have an agreement with the Long Island Railroad to implement emergency evacuation procedures in the event of a radiological emergency at Shoreham? Please provide copies."

LILCO's response to these three questions was:

- "No. LILCO is pursuing agreements for certain LERO functions, however, with appropriate organizations. Final agreements may include the organizations you have listed."

- a. Private, parochial, public and nursery schools
- b. Nursing/adult homes
- c. Hospitals, and other medical or health care facilities
- d. Bus companies or other entities capable of providing evacuation transportation, vehicles, or personnel
- e. Ambulance services or other entities capable of providing ambulance or rescue vehicles and personnel
- f. Fire districts, fire departments
- g. Law enforcement agencies
- h. School districts
- i. Local governmental authorities, other than Suffolk County
- j. The American Red Cross
- k. The Salvation Army
- l. The Long Island Railroad

Provide copies of all correspondence, responses or other information received by or on behalf of LILCO from the entities listed. In addition, provide all analyses, summaries, reports or any other documents relating to the participation or involvement of any of the entities in or during a radiological emergency at Shoreham.

LILCO Response

See LILCO's Response to Suffolk County's Request 6 above.^{3/}

^{3/} In response to the County's objection to the responses to Questions 6-10, on August 16 LILCO provided copies of school emergency disaster plans from those schools or districts which had provided their plans to LILCO, and two memoranda from the New York State Education Department to

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In addition, during several discussions among counsel concerning discovery problems, LILCO's counsel has informed us that although Elaine D. Robinson is the LILCO witness designated to testify "on the subject of non-LILCO support groups," counsel will instruct Ms. Robinson not to answer questions posed during her deposition concerning any non-LILCO organizations or individuals other than those with which LILCO has already consummated formal agreements. 3a/

The only reason provided to the County for LILCO's position on this matter -- as applied to both document and deposition discovery -- is that such discovery "is inappropriate" because providing the requested information would supposedly "frustrate LILCO's negotiations" with non-LILCO entities. LILCO asserts this position by characterizing the County's discovery requests, listed above, as attempts to discover LILCO's "ongoing negotiations." While responses to the requests would presumably include information relating to such negotiations, neither that fact, nor LILCO's unsupported assertion that the requested discovery is, in its opinion, "inappropriate,"

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District Superintendants, Superintendants of Schools, and the New York City Board of Education, regarding disaster preparedness.

3a/ Because this instruction has also been given to other LILCO witnesses with respect to such questions, the County requests that any Board order granting this motion be applicable not just to Ms. Robinson but also to the testimony of all LILCO deposition witnesses.

constitute a proper basis for objection to a legitimate discovery request.

In discussions of this matter among counsel, LILCO's counsel has stated that LILCO has taken this position because it believes efforts have been made, by certain unidentified persons, to impede or obstruct LILCO's attempts to persuade non-LILCO organizations to cooperate in implementing the LILCO Plan. However, LILCO's counsel also has expressly conceded that LILCO has no evidence, nor does it mean to suggest, that Suffolk County or any County representatives have been involved in any way in the referenced efforts allegedly directed toward "frustrating" LILCO's negotiations. Furthermore, in discussions among counsel, the County has stated that it does not seek the requested information for the purpose of obstructing LILCO's negotiation efforts, or for any improper purpose.

The overriding fact which must govern this Board's ruling on this Motion is that the requested information is undeniably relevant to admitted contentions. It is, moreover, absolutely essential to the County's preparation for trial. Because the Plan itself fails to identify by name the various non-LILCO organizations and individuals which the Plan, on paper, indicates "will" provide certain emergency services, the County has no

choice but to use discovery to ascertain what LILCO has done, or intends to do in the future, to make what the Plan baldly asserts will happen, actually happen.

There is no more central issue in this proceeding than whether the LILCO Plan can be implemented. LILCO has admitted that it is attempting to obtain agreements, from various unidentified entities, to participate in implementation of the proposed LILCO Plan. Since such implementation will depend upon the capabilities of non-LILCO organizations as well as those of LILCO, the County is entitled to discovery concerning such capabilities. Clearly, a prerequisite to such discovery is the identification, by LILCO, of the organizations it is considering. Similarly, the information provided by LILCO to the organizations concerning what would be expected of them and their anticipated roles in an emergency should they agree to participate, as well as information from the organizations to LILCO concerning their willingness and abilities to perform such roles, is a prerequisite to any evaluation of whether the organizations' participation would make implementation of the LILCO Plan any more feasible.

Moreover, LILCO's implication that the County only needs to know such information with respect to the organizations with

which LILCO has already reached an agreement has no relevance to the discovery issue presented here.^{4/} LILCO argues that unless it has a written agreement from a non-LILCO entity, it cannot rely upon that entity, or "take credit" for its availability, in this licensing proceeding. Therefore, according to LILCO's reasoning, until such agreements are executed, the identity of the entity can properly be kept secret and the County cannot be heard to complain. This LILCO argument ignores the entire purpose of the discovery process. Without knowing in advance whom LILCO is contacting and the nature and results of such contacts, the County will be unprepared and unable to address in testimony the issues which will undoubtedly be raised when LILCO suddenly produces, sometime in the future, additional letters of agreement.

Moreover, carried to its logical extreme this LILCO argument would, in fact, bar all discovery because until testimony or evidence is finally submitted to the Board, a party cannot "take credit" for, or rely upon, any fact, for purposes of this proceeding. In addition, even under LILCO's own logic,

^{4/} We also note that aside from the Letters of Agreement that are in the Plan itself and the two items referenced in footnote 2 above, none of the information requested by the County in the above-cited discovery requests has been provided by LILCO with respect to the organizations with which it already has entered agreements.

the requested discovery is proper because the LILCO Plan -- which LILCO has submitted to this Board and upon which LILCO does rely -- explicitly states that various non-LILCO entities will participate in and are necessary to the implementation of the Plan. Most significantly, the requested information is directly relevant to admitted contentions. The County's discovery is proper and well within the scope permitted by 10 CFR §2.740.

Finally, were this Board to sanction this LILCO effort to withhold clearly relevant information from the County, the County would have no alternative but to seek the information through other means, such as through subpoenas of all the entities LILCO conceivably could be contacting, or through depositions of large numbers of non-LILCO representatives. Although a certain amount of such discovery may be necessary in any event, a large portion of it could be obviated were LILCO compelled to respond as required by the NRC regulations to the County's legitimate discovery requests.

Accordingly, for the reasons stated above, the County submits that its Motion to Compel should be granted.

Respectfully submitted,

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September 6, 1983

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion to Compel Responses to Discovery Requests Relating to Non-LILCO Support Organizations and Memorandum in support thereof have been sent to the following this 6th day of September, 1983 by U.S. mail, first class, except as otherwise noted:

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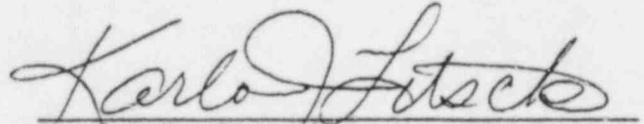
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