

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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)

MEMORANDUM SUPPORTING APPLICATION FOR  
ISSUANCE OF SUBPOENA

This Memorandum is filed pursuant to the Board's request during the conference telephone call on August 18, 1982 with counsel for LILCO and Suffolk County. The Board suggested that counsel, by telephone or in meetings, attempt informally to reach agreement on supplying the documents set forth in the Subpoena Duces Tecum ("Subpoena") requested by the County's Application for Issuance of Subpoena, dated August 13, 1982 ("Application"). Those documents as to which no agreement could be reached were to be noted to the Board on Monday, August 23, 1982; oral argument on the Application is to be held on Tuesday, August 24, 1982.

Counsel for Suffolk County was asked to comment upon (1) whether the documents listed in the Subpoena could be narrowed and stated with greater particularity, and (2) why such documents were not requested during the discovery period for the QA/QC contentions of Suffolk County. An oppor-

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tunity was given to both parties to state in writing their further arguments in support of or in opposition to the Application.

I. The Subpoena Has Been Revised and Narrowed.

In response to the concerns expressed by the Board, Suffolk County has prepared the revised subpoena attached hereto as Attachment 1 ("Revised Subpoena"), which narrows and reduces the categories of documents and states with more particularity the documents which are required to prepare for the cross-examination of LILCO's witnesses. A copy of the Revised Subpoena was telecopied to counsel for LILCO under cover of letter dated August 20, 1982 (Attachment 2 hereto). Those documents which LILCO has voluntarily agreed to furnish Suffolk County in a timely manner are indicated as deleted from the Revised Subpoena. The bases for these agreements are shown in the letter dated August 20, 1982 from LILCO's counsel (Attachment 3, with paragraphs renumbered to conform to those of the Revised Subpoena) and in the memorandum attached as Attachment 4. The Revised Subpoena supersedes the Subpoena, and all reference in the Application to the Subpoena shall be deemed to reference the Revised Subpoena.

II. Why the Documents Listed in the Subpoena Were Not Requested During Discovery

The documents listed in Part A of the Subpoena are referred to in LILCO's letter dated June 21, 1982 (SNRC-716), which responds to the SALP report forwarded to LILCO on May 19, 1982. Clearly the documents in paragraphs 1, 2, and 4, and some of those listed in

paragraph 3, of the Revised Subpoena did not exist during discovery, since their reference dates in SNRC-716 are after discovery closed. Accordingly, such documents could not have been requested during discovery.

Further, since discovery had been closed by the time the referenced letters were written, Suffolk County could not have then known the importance attached by LILCO to any quarterly and monthly surveillances (referred to in paragraph 3 of the Revised Subpoena) which existed at the time of discovery. SNRC-716 indicates that if such surveillances did then exist, they may not have been effective to prevent the discrepancies noted. For these reasons, the results of such surveillances, which did not seem significant during discovery, now appear to be important. Because the documents listed in Part A of the Revised Subpoena are cited by LILCO in an attempt to answer NRC Staff concerns, they impact directly upon the QA/QC issue and are plainly relevant. Relevancy is the only test for the issuance of a subpoena under 10 C.F.R. § 2.720.

The documents listed in Part B of the Subpoena are either specifically referred to in written testimony of witnesses for LILCO dated June 29, 1982 ("LILCO Testimony"), or are referred to and relied upon by implication in the LILCO Testimony. Suffolk County could not

have known during discovery that LILCO witnesses would refer and rely upon these documents in their testimony. Suffolk County cannot adequately prepare to cross-examine the witnesses for LILCO without examining the documents that are cited, directly or by implication, as supporting the conclusions in written testimony. Such documents are clearly relevant.

The foregoing information should not be regarded as affecting Suffolk County's legal position, discussed in Part IV of this Memorandum, that the right to subpoena documents after discovery is not affected by the fact that such documents were not requested during discovery.

III. The Subpoena of Documents Is Particularly Appropriate Here

As noted above, the documents listed in Part B of the Revised Subpoena may be viewed as falling into two main categories: specifically referenced documents; and some documents which are not expressly mentioned, but which may be inferred by the testimony to exist and to be relied upon. An example of this second category is paragraph 5 of the Revised Subpoena, which requests the latest documents identifying individuals in the LILCO QA Department, their resumes, job descriptions, and documents describing their training, and any training manuals used by LILCO for that training.

Pages 5 to 7 of the LILCO Testimony refer to the number of individuals in the LILCO QA Department and contain broad

but impressive statements about their "165 man-years of experience in engineering and quality assurance" and their being "provided with whatever training may be warranted ...."

Clearly there must be documents regarding these matters. Such documents are necessary to permit counsel for Suffolk County to prepare for cross-examination, and no doubt would be required by LILCO witnesses to respond to questions. However, waiting until during cross-examination to request production of such documents or to learn, if such is the case, that the witnesses have no personal knowledge of the details concerning these matters, would delay the hearing or result in less efficient cross-examination than would otherwise be possible.

Indeed, the present situation falls squarely within the principles of the Clinton case, Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), Docket Nos. 50-461 and 50-462, ALAB-340, 4 NRC 27 (1976). However, Suffolk County's Application attempts to avoid the factual situation that resulted in the denial of the subpoena in that case. In Clinton, as in this case, a party (the intervenors) sought to subpoena documents relied upon by a witness for the utility. The intervenors had not requested the documents and other materials during discovery, or even after having received the witness's written testimony. The subpoena was sought only after the witness was unable to answer questions during cross-examination without the documents.

Clinton held that a subpoena for production of documents after the close of discovery may not be denied on the grounds that the party seeking issuance of the subpoena did not request the documents during discovery. Nevertheless, the Appeal Board upheld the denial of the intervenors' request for documents because (i) since the request was not made until during the hearing and after cross-examination, granting the request would delay the hearing; and (ii) this delay should not be countenanced because the material requested "was far more extensive than necessary to provide answers to the questions" the witness was unable to answer, and "the particular information bearing upon such answers would have been of too little potential worth to justify holding up the evidentiary hearing to await its receipt and analysis." Clinton, at page 33.

The subpoena of the documents in Parts A and B of the Revised Subpoena is intended to avoid any delay of the hearing. Because the written testimony of LILCO's witnesses refers either directly or by implication to the documents listed in Part B of the Revised Subpoena, counsel for Suffolk County knows now that preparation of effective cross-examination of those witnesses will require analysis of those documents. Denial of Suffolk County's Application as to any document would force counsel to request that document during the hearing, thereby causing a delay and creating grounds

for denial of the request. Accordingly, the subpoena of the documents in the Revised Subpoena is particularly appropriate, since it would eliminate delay of the hearing and an unfair burden of risk on Suffolk County.

IV. LILCO's Arguments Against the Issuance of the Subpoena Are Without Merit

On August 17, 1982, LILCO filed a Motion for Protective Order Or, In The Alternative, To Quash Subpoena ("Motion"). The Motion first attempts to transmute Suffolk County's effort to obtain documents, referred to by LILCO and its witnesses, for trial preparation, into a discovery request. This approach fundamentally misconceives the current posture of the quality assurance portion of this proceeding. Discovery has, of course, been terminated, and therefore the methods of discovery authorized by the Commission's Rules of Practice (i.e., 10 C.F.R. § 2.740) are now inappropriate. A subpoena is the proper method for obtaining documents after discovery. Accordingly, the Application of Suffolk County must be judged by the standards applicable to a subpoena, and not by discovery standards.

A. A Subpoena is the Proper Procedure for Production of the Requested Documents

LILCO's basic argument is that Suffolk County can only obtain documents under the discovery rules, 10 C.F.R.

§2.740 et seq., but that because the time for discovery has ended, Suffolk County is not entitled to production of any documents. This position is not only contrary to the purposes of the discovery and pre-hearing preparation process, but also seriously misinterprets the subpoena rule, 10 C.F.R. § 2.720.

In the first place, Clinton completely refutes LILCO's argument that Suffolk County may only obtain production of documents through discovery procedures. See discussion of Clinton at pages 5-6 above. Indeed, LILCO's Motion itself cites Clinton for the proposition that

a subpoena for the production of documents at trial may not be denied simply because the requesting party had not earlier sought the same document during discovery. Motion, at page 9.

A footnote at page 9 of the LILCO Motion then argues that the principles of Clinton are inapplicable to Suffolk County because, under the facts of Clinton, the subpoena denial was upheld "where the request for documents was 'extensive' ... and would have caused delay." This footnote is misleading and incorrect, because it fails to disclose that in Clinton, (i) the delay would result not because the documents requested were "extensive", but because they were not requested until after cross-examination

during the hearing, and (ii) the request for documents was not rejected because it was "extensive", but rather the delay was not countenanced because the documents <sup>1/</sup> were more extensive than necessary to answer cross-examination questions. Clinton, at page 33. See Also discussion of Clinton at page 6 above.

Second, there is no basis for LILCO's assertion that a subpoena for the production of documents is only appropriate for use against non-parties. Section 2.720 is a broad right, stating that "[o]n application of any party, the designated presiding officer ... will issue subpoenas requiring ... the production of evidence." 10 C.F.R. §2.720(a). By its terms, it imposes no limit either on the time when a subpoena may be requested or to whom it may be directed. <sup>2/</sup>

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<sup>1/</sup> The "documents" included "source checks, data checks, computer programs and documentation" on which computer models were based. Clinton, at page 34.

<sup>2/</sup> LILCO cites Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683 (1979), to support its argument. But that case merely states that a subpoena for discovery purposes may appropriately be directed at a non-party, who is not subject to the discovery rules. It is thus of no relevance to the present case, in which a party is seeking to subpoena documents, some of which did not exist during discovery, from another party after the close of discovery for the purpose of preparing for cross-examination at trial.

The requested subpoena is the appropriate means for obtaining information during this post-discovery, pre-hearing phase of this proceeding. It will permit Suffolk County to obtain documents necessary for cross-examining LILCO's witnesses and prevent delay after the hearing has begun.

B. Suffolk County is Entitled to a Subpoena for the Requested Documents

1. The "General Relevance" Requirement Is Clearly Satisfied In This Case

Under the Commission rule governing issuance of subpoenas, 10 C.F.R. §2.720, the requesting party need only show the "general relevance" of the desired documents to issues in the proceeding. In practice, this requirement is satisfied, and the subpoena should be issued, unless "the evidence sought can have no possible bearing upon the issues." Commonwealth Edison Company, (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 462 (1974) ("Zion") (emphasis added), quoting Hercules Powder Co. v. Rohm & Haas Co., 3 F.R.D. 302, 304 (D. Del. 1943).

The documents sought by Suffolk County unquestionably bear upon the issues in this proceeding. The documents referenced in Part A of the Revised Subpoena all relate to LILCO's responses to QA concerns of the NRC Staff regarding the Shoreham plant. The documents listed in Part B

of the Revised Subpoena are all referenced, directly or by implication, to support testimony presented by witnesses for LILCO.

2. LILCO Has Failed To Show That  
The Application Is Unreasonable

Given the relevance of the documents listed in the Revised Subpoena, it may be quashed only if it is "unreasonable." 10 C.F.R. §2.720(f)(1). To quash the Subpoena, LILCO must bear "a particularly heavy burden." Zion, at page 463. "Absent such a substantial showing, a motion to quash should be denied." Id.

LILCO has only argued that the subpoena is unreasonable because it provides too little time in which to produce the desired documents. Motion at pages 6-7. That position is in reality only an argument that the production is burdensome, and LILCO has conceded that "Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683 (1979) ["Stanislaus"] ... makes it fairly difficult to have a subpoena quashed on the ground of burdensomeness." Motion at page 9. LILCO's reading of Stanislaus is correct.

The Appeal Board found the requested subpoena broad in scope, but appropriate to the issues being litigated. It found that compliance costs as high as \$400,000 would be reasonable and suggested that in any case the subpoenaed party would have to prove its costs. Likewise,

that party would have to establish that compliance would "unduly disrupt or seriously hinder its normal operation." Id. at page 697. (Emphasis in original). That the document production would entail significant employee time and expense would not make the request unduly burdensome. Id. LILCO has not attempted to show in what manner the subpoena would be an undue burden to it.

Likewise, even a subpoena broad in scope will not for that reason be found unduly burdensome and thus unreasonable. In Zion it was argued that "the broad and sweeping categories of 'all' documents specified in the subpoena are unreasonable on their face." Id. at page 470. LILCO has made essentially the same argument. The Appeal Board rejected that argument in Zion:

The intervenor asserts that the "all documents" formulation is a "necessary technique where the lawyer requesting documents does not know what documents the person has." We agree, at least in the situation where, as here, the formulation is further limited by a reasonably defined subject matter category. The requested documents, viewed in the context of the intervenors' contention, were sufficiently defined so as to be ascertainable. Id.

The "all documents" formulation, to the extent used in the original Subpoena, was similarly reasonably defined. Contrary to the assertion that Suffolk County requested "all documents relevant" to a subject (Motion at page 2), the Subpoena only used a formulation of "all documents

constituting, describing, or commenting upon" a reference in the LILCO Testimony. In any case, the Revised Subpoena has been further narrowed and particularized, and is a fortiori reasonable in scope.<sup>3/</sup>

C. The Relief Sought by LILCO is Inappropriate

As has been established above, LILCO is not entitled to have the Revised Subpoena quashed. There is no basis for the Board to treat the Application as a discovery motion under 10 C.F.R. §2.740, and the two alternative "protective orders" sought by LILCO (Motion at page 10) are unwarranted and unsupported by the Board's prior decisions.

The first alternative requiring Suffolk County to provide detailed justifications concerning the precise need for the documents and their "significant probative value" would place restrictions on the issuance of subpoenas not found in 10 C.F.R. §2.720, which provides that a party has a right to subpoena documents if they are relevant. In any case, Parts II and III of this Memorandum explain why Suffolk County requires the production of documents. LILCO's comment that paragraphs 19 and 20 of the Subpoena show that Suffolk County is on a "fishing

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<sup>3/</sup> Even if the Board were to find some document categories too broad, quashing the subpoena would be inappropriate; rather the Board should take "steps to narrow the request to documents relevant to the particular contention under consideration." Zion at page 471.

expedition" is erroneous; demands for every 30th or 20th of a specified group of documents relied upon in the LILCO Testimony are intended to reduce, not increase, the number of documents required by producing an unbiased sampling.

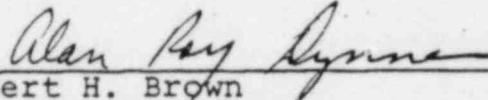
LILCO's second proposed alternative is also unwarranted and should be rejected. LILCO requests that it not be required to produce the documents in Part B of the Subpoena until September 27, which could well be after the QA/QC hearings begin. LILCO gives no reason why it cannot produce the documents promptly. Clearly this "alternative" request would either deprive Suffolk County of the opportunity to use the documents in preparation for cross-examination, or require that the hearing be delayed.

V. Conclusion

For the foregoing reasons, Suffolk County's Application for Issuance of Subpoena should be granted and LILCO's Motion for Protective Order, or, in the Alternative, to Quash Subpoena should be denied.

Respectfully submitted,

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August 23, 1982

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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LONG ISLAND LIGHTING COMPANY )  
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(Shoreham Nuclear Power Station, )  
Unit 1) )  
)

Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Memorandum Supporting Application For Issuance of Subpoena" was sent on August 23, 1982 by first class mail, except where otherwise noted, to the following:

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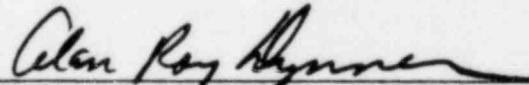
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)

LONG ISLAND LIGHTING COMPANY )

Docket No. 50-322 O.L.

(Shoreham Nuclear Power Station, )  
Unit 1) )  
)

SUBPOENA DUCES TECUM

To: Long Island Lighting Company  
c/o James N. Christman, Esq.  
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Richmond, Virginia 23212

Copy also delivered to:

Brian R. McCaffrey  
Regulatory Supervisor  
Long Island Lighting Company  
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Hicksville, New York 11801

You are hereby directed to produce, no later than August 23,  
1982, the documents specified below:

PART A

Documents referred to in letter SNRC-716 of Long Island  
Lighting Company ("LILCO") dated June 21, 1982 ("SNRC-716").

1. ~~All "Plant Configuration Reports" under the Shoreham Plant Configuration Review Program, referred to in SNRC-716, p. 2, ¶ 2, and existing to date (also referred to at page 124 of the LILCO Testimony).~~
2. ~~The results of LILCO's field survey of the location of containment isolation valves, referred to in SNRC-716, p. 3, ¶ 5.~~

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3. ~~The results of LILCO's Operating QA quarterly surveillances of the Startup Manuals and the results of the monthly surveillances of the "program," referred to in SNRC-716, p. 5, ¶ 1.~~
4. ~~The latest status report of open items that have not been closed by the NRC's I&E review, as well as any documents describing the current status of open items, as referred to in SNRC-716, p. 5, ¶ 2.~~

PART B

Documents referred to in testimony of witnesses for LILCO, dated June 29, 1982 ("LILCO Testimony").

5. ~~The latest (i) documents identifying the individuals in the LILCO QA Department, referred to at pages 5 and 6 of the LILCO Testimony, (ii) resumes describing the background, experience and qualifications of each such individual, (iii) job descriptions describing the position, duties, and responsibilities of each such individual, (iv) documents which describe the training provided to each of the LILCO QA personnel, referred to at page 6 of the LILCO Testimony, and (v) the training manuals or similar documents, if any, prepared or used by LILCO in training QA personnel.~~
6. ~~The documents stated in paragraph 5 above for each of the eight LILCO personnel and fifteen contract personnel constituting the "Operational Quality Assurance organization" referred to at page 7 of the LILCO Testimony, who is not an individual in the QA Department referred to at page 6 of the LILCO Testimony.~~
7. ~~Any documents prepared by LILCO: (i) identifying "items and services not considered 'safety-related'," referred to at page 15 of the LILCO Testimony, (ii) setting forth the quality assurance/quality control standards applicable to such items and services, and (iii) identifying and/or commenting upon "the overall function or purpose to be performed" by each such item or service, or rating the relative "importance" of each.~~
8. ~~Audit reports showing the results of the following Stone and Webster Engineering Corporation ("SWEC") audits referred to at page 25 of the LILCO Testimony, and not previously provided to Suffolk County: (i) quarterly audits of construction site activities~~

(SWEC Field QC activities and construction activities)  
(ii) annual audits of site contractors' activities,  
(iii) annual audits of ASME III activities, and (iv)  
annual program audits.

9. Audit reports showing the results of Stone and Webster Engineering Assurance Division's: ~~(i) quarterly audits of the Shoreham Project activities, (ii) semi-annual audits of the Site Engineering Office, and (iii) audits of other organizations performing engineering services, as referred to at pages 28 and 29 of the LILCO Testimony, and not previously provided to Suffolk County.~~
10. ~~Audit reports issued during the period General Electric Company ("GE") was procuring, designing or fabricating equipment for the Shoreham project and relevant to the Shoreham project, showing the results of (i) internal QA audits conducted by GE NEBO division-level organizations, and (ii) internal QA audits conducted by NEP & QAO of department-level GE NEBO organizations, all as referred to at page 30 of the LILCO Testimony.~~
11. ~~Those portions of the monthly reports to LILCO management containing "highlights of the QA program," and all quarterly reports of LILCO audit programs provided to the Vice Presidents of Engineering and of Nuclear and responsible department managers, in all cases only with respect to the Shoreham project, all as referred to at page 31 of the LILCO Testimony.~~
12. ~~The documents, if any, by which "specific items" have been "promptly brought to the attention of corporate management by the Quality Assurance Manager," regarding the Shoreham project, as referred to at pages 31 to 32 of the LILCO Testimony.~~
13. ~~The documents relied upon to support the contention at page 41 of the LILCO Testimony that "Shoreham's performance is better than other DWR plants," including documents prepared in the review conducted by the LILCO QA Department Manager.~~
14. ~~Documents describing the results, interim and/or final, of the audit by Torrey Pines Technology, referred to at pages 57 to 58 of the LILCO Testimony, including descriptions of the scope of the audit, methodology, reporting, and all internal and other reports, memoranda, and correspondence.~~

15. The documents by which the "58 potentially significant concerns" were reported to Engineering Assurance, as referred to at page 65 of the LILCO Testimony, all "Problem Reports" referred to at pages 65 and 66 of the LILCO Testimony, the documents which show the results of investigations undertaken as a result of such Problem Reports, and the documents by which "corrective/preventive action" was taken with respect to such Problem Reports.
16. The latest available index in the "up-to-date indexes of design documents" referred to in paragraph (d) at page 88 of the LILCO Testimony.
17. ~~The "specific Project procedures" implementing the design review and overall management direction," of LILCO, referred to in paragraph (3) at pages 93 to 94 of the LILCO Testimony.~~
18. ~~The LILCO "Corporate Quality Assurance Program" referred to at page 94 of the LILCO Testimony.~~
19. The ~~first and the last available~~ "Notes of Conference" of the over 850 project meetings, referred to at page 96 of the LILCO Testimony, and every 50th Note of Conference chronologically issued between the first and the last.
20. Documents describing the "program of 'packaging'" and the procedures followed in connection with the program, ~~documents identifying the number and nature of the "overall scoping documents," and, if different, the "Change Control Forms (CCF's)," the first and the last and every 20th scoping documents and CCF's chronologically, and the "reviews" of the corresponding CCF's, all as~~ referred to in paragraph (a) at page 101 of the LILCO Testimony.
21. ~~The original form of the "Checklist for Design Document Review," referred to in paragraph (3) at page 109 of the LILCO Testimony, all revisions of such form, identified by year of issue, and documents describing procedures or stating instructions for completing the Checklist.~~
22. Documents identifying the "QA personnel who are specifically trained for this task," referred to at page 110 of the LILCO Testimony, resumes describing the background, experience, and qualifications of each of such personnel, and documents describing the specific training given to each of such personnel for the task referred to.

23. Audit reports showing the results of the 53 audits referred to at page 117 of the LILCO Testimony, and not previously provided to Suffolk County.
24. Audit reports showing the results of the 48 audits conducted by NEP & QAO of the design control program applied to the Shoreham plant, as referred to in paragraph (b) at page 120 of the LILCO Testimony.
25. Audit reports showing the results of the 39 audits conducted by NREO of the design control program applicable to the Shoreham plant, as referred to in paragraph (d) at page 120 of the LILCO Testimony..
26. The analysis of the evaluations of results of customer audits over a 5-year period purporting to demonstrate that "there are no uniquely recurring deficiency areas," as referred to at page 121 of the LILCO Testimony.
27. The "checklist developed from a comprehensive survey," as referred to in paragraph a at page 122 of the LILCO Testimony.
28. All "Configuration Discrepancy Reports" with respect to the Shoreham plant, as referred to at page 123 of the LILCO Testimony.
29. The "issued procedures and instructions" referred to at page 127 of the LILCO Testimony, ~~any reports, summaries, or minutes of the engineering and design meetings~~ referred to at page 127 of the LILCO Testimony and not previously supplied to Suffolk County, the "final stress analysis evaluations" brought before the Shoreham Options Review Committee ("SORC"), and all reports, summaries or minutes of SORC meetings, all as referred to at page 127 of the LILCO Testimony.
30. Documents describing the "program . . . to assure that by the time of fuel load or shortly thereafter, the configuration of the plant will be accurately reflected by drawings," as referred to in paragraph (c) at page 127 of the LILCO Testimony, and the latest schedule for the completion of the program and/or progress reports describing portions of the program which have been completed.
31. Documents describing the results, interim and/or final, of the independent design review being performed by Teledyne Engineering Services, referred to at page 129 of the LILCO Testimony, including all internal and other reports (other than the Initial Status Report (TR-5633-2) dated July 9, 1982), all Reviewer

Report Forms, Request for Information Forms and responses thereto, Project Manager Resolution Forms, and Internal Committee Resolution Forms (all such forms as identified in § 3.8.2 of EP-1-017 of Teledyne in said Initial Status Report), and all documents concerning "open items" and their disposition.

32. The documents relied upon to support the assertion at page 145 of the LILCO Testimony that "about 250,000 manhours were expended by SWEC alone in the performance of procurement quality tasks for Shoreham," including the calculations utilized, and documents identifying the items or the class of items of equipment as to which such time or portion thereof was expended.
33. The latest: (i) documents identifying the "eighty QA personnel" of Courter and Company referred to at page 152 of the LILCO Testimony, (ii) resumes describing the background, experience and qualifications of each of such personnel, and (iii) job descriptions describing the position, duties, and responsibilities of each.
34. Documents constituting and/or containing schedules of the "Indoctrination Sessions" and of the "Tool Box Sessions" referred to in paragraph c. at page 158 of the LILCO Testimony, and documents describing the number of such sessions, where presented, how long each lasted, and/or the content thereof.
35. Documents showing "trends which were established and analyzed in order to maintain the uniform concrete strengths specified," as referred to at page 160 of the LILCO Testimony.
36. Documents showing "trends" resulting from the evaluation of N&D's by SWEC, referred to at page 166 of the LILCO Testimony, documents describing and/or commenting upon any "significant trends or abnormal quality" determined by an analysis of an independent sampling of N&D's referred to at pages 166 to 167 of the LILCO Testimony, and the "analysis" which purports to indicate that "the Shoreham N&D's are consistent with other sites' N&D's for similar activities," as referred to at page 167 of the LILCO Testimony.
37. Audit reports showing the results of the "thirty-seven audits of site activities" referred to at page 169 of the LILCO Testimony, not previously provided to Suffolk County, all documents describing "attributes" which were "noted as unsatisfactory during these audits."

~~referred to at page 169 of the LILCO Testimony, and all responses by LILCO to the reports noting such unsatisfactory attributes.~~

38. ~~The documented results of the "about 725 welding and mechanical surveillances and over 450 electrical and instrumentational surveillances" referred to at page 176 of the LILCO Testimony, and all documents describing corrective action taken for "discrepant conditions identified" by such surveillances.~~

39. All stop work orders issued by LILCO QA personnel, as referred to at page 177 of the LILCO Testimony.

40. The three most recent "computerized monthly reports . . . listing all outstanding E&DCRs that require verification," as referred to at pages 180 to 181 of the LILCO Testimony.

41. The three most recent reports issued in connection with the "LILCO/SWEC As-Built Piping Program" referred to at page 181 of the LILCO Testimony, unless already provided to Suffolk County.

42. The three most recent reports issued in connection with the "Conduit Qualification and Inspection Program" referred to in paragraph (1) at page 185 of the LILCO Testimony, unless already provided to Suffolk County.

43. The three most recent reports issued in connection with the "Conduit Support As-Built Program" referred to in paragraph (2) at page 186 of the LILCO Testimony, unless already provided to Suffolk County.

44. The three most recent reports issued in connection with the "Cable Tray Support Analysis Program" referred to in paragraph (3) at page 187 of the LILCO Testimony, unless already provided to Suffolk County.

45. The three most recent reports issued in connection with the "Final 'A' Release Program" referred to in paragraph d. at page 188 of the LILCO Testimony, unless already provided to Suffolk County.

46. The analyses of "safety-related non-compliance reports" and documents showing the "trends" resulting from such analyses, all as referred to at page 241 of the LILCO Testimony.

47. ~~The survey of "QA/QC manpower at operating single unit BWR's with comparable commitments to quality activities," as referred to in paragraph 10 at page 242 of the LILCO Testimony.~~

If you oppose this subpoena, you may move to quash or modify in accordance with 10 C.F.R. Section 2.720(f).

---

LAWRENCE J. BRENNER  
Presiding Judge

August , 1982

**KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS**

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

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WRITER'S DIRECT DIAL NUMBER  
202/452-7044

August 20, 1982

IN PITTSBURGH  
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON  
1600 OLIVER BUILDING  
PITTSBURGH, PENNSYLVANIA 15222  
(412) 356-6500

(BY TELECOPIER)

James N. Christman, Esq.  
Hunton & Williams  
707 East Main Street  
Richmond, Virginia 23212

Re: QA/QC Issues and Application  
for Subpoena

Dear Mr. Christman:

During the telephone conference call with the Atomic Safety and Licensing Board on Wednesday, August 18, the Board suggested that you and I discuss on the telephone or meet in person in an effort to agree to the documents listed in the Subpoena subject to the Application for Issuance of Subpoena dated August 13, 1982, which LILCO might agree to provide voluntarily. At that time, I said that I would be available to speak with you on the telephone at any time other than 4 p.m. on Wednesday and that I was at your disposal to meet with you. You telephoned me at 3:30 p.m. on Wednesday and we had a short conversation during which you indicated that LILCO might be prepared to voluntarily produce the documents listed in paragraph 1 of the Subpoena. We then reviewed and I explained and narrowed the scope of the documents identified in paragraphs 2 through 11 of the Subpoena. You stated that you would have to check with LILCO personnel as to whether you would be willing to provide those documents. At the close of our conversation, you said that you would telephone me on Thursday, August 19, to further discuss the production of documents.

On Thursday I attempted to reach you by telephone at around noon at your office, but I was informed that you were on Long Island; your secretary could not tell my secretary how you could be reached. At 5 p.m. on Thursday you telephoned me to say that LILCO will provide many of the documents in the Subpoena, and you would be telecopying me a list of these documents sometime today, Friday, August 20. You indicated to me that you did not have the list available and did not wish to discuss it on the telephone prior to your telecopying it to me. I asked that you provide not only the list of the documents you would be furnishing, but also the dates by which the documents would be made available.

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

James N. Christman, Esq.  
August 20, 1982  
Page 2

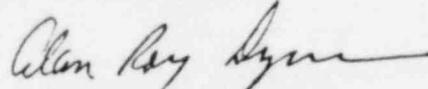
It is now 2 p.m. on Friday and I have not yet received your list of documents. Accordingly, time is now getting very short for the resolution of these matters prior to the Monday, August 23, noon filing time for disputed documents as ordered by the Board. As I mentioned to you in our telephone conversation yesterday, I have prepared a revised Subpoena Duces Tecum which, in response to concerns of the Board, narrows and more precisely particularizes the documents which are sought by Suffolk County. I am enclosing herewith a copy of the revised Subpoena.

I hope that we will receive by this evening the list of documents which LILCO is prepared to produce voluntarily. I will be prepared to discuss these documents on the telephone at any time this weekend. As you know, my home telephone number is (301) 983-0121. To the extent the documents which LILCO is prepared to provide voluntarily are consistent with the documents requested by the enclosed Subpoena, and will be provided in a timely manner, I will indicate our agreement by deleting the appropriate documents from the revised Subpoena.

Accordingly, it is my intention to file by noon on Monday, August 23, with the Board the revised Subpoena, edited as aforesaid, together with the memorandum which the Board requested from Suffolk County.

I urge you to contact me at your earliest convenience so that we can resolve the outstanding matters without needless recourse to the Board.

Very truly yours,



Alan Roy Dynner

ARD/dk  
Enclosure

ATTACHMENT 3

**HUNTON & WILLIAMS**

707 EAST MAIN STREET P.O. Box 1535

**RICHMOND, VIRGINIA 23212**

TELEPHONE 804-788-8200

August 20, 1982

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FILE NO.

DIRECT DIAL NO. 804 788-

BY TELECOPIER

Alan R. Dynner, Esq.  
Kirkpatrick, Lockhart, Hill,  
Christopher & Phillips  
1900 M Street, N.W.  
Washington, D.C. 20036

QA Documents Subpoena

Dear Alan:

In response to your subpoena with the list of 49 document categories, here is what LILCO is willing to produce, if producing them will fully satisfy your request for documents. The numbers below correspond to the numbered document categories in your subpoena.

PART A

1. LILCO will make available all the SPCR reports that have been issued, which means those covering the six systems you referred to. (Other systems are in various stages of review, and final reports have not been issued.)
2. LILCO will make available the tables showing the results of the containment isolation valve survey.
3. LILCO will make available the most recent quarterly surveillance report of the Startup Manuals and the most recent monthly surveillance report on the plant panels.
4. LILCO will generate a computer print-out showing which I&E items are still "open." (This will include those of the 219 that remain open, plus other open items that have been added to the list subsequent to the 219.) LILCO will also make available a graph that shows the number of open items over time.

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Alan R. Dynner, Esq.  
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### PART B

5. LILCO will make available the summary page of training records, which gives name, training, and qualifications.
6. Same response as for no. 5 above.
7. We do not propose to produce these documents. Items and services that are not safety-related are, obviously, everything in the plant that is not safety-related. What you are asking for is the specifications for every toilet, locker, etc. Since, as we said in our testimony, non-safety-related items are controlled in accordance with the importance of their overall functions or purpose, no single document can tell you how this is done.
8. The audit reports were provided on March 31, 1982. The County has copies.
9. (i) Already provided on March 31.  
(ii) Already provided on March 31.  
(iii) We don't propose to produce these audit reports. They may include information about other Stone & Webster clients, and it would take a time-consuming review to find out. Also, this request, like many of the 49, could as well have been made in March or April.
10. These are GE documents. I'm still checking on their availability, but I anticipate that they are proprietary to GE and cannot be produced.
11. LILCO will make available the monthly and quarterly reports.
12. No documents exist. The reports are oral.
13. The document (a lengthy computer print-out) that supports the statement on page 41 of the testimony is an NRC document ("Power Reactor Summary for Deviations/ Severities for [year]") and is available in the NRC's public document room.
14. I'm still checking on this.

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15. These are Stone & Webster proprietary documents and may, therefore, present problems. The documents reveal technical details and information about plants other than Shoreham, and for that reason Stone & Webster will object to their being made public.
16. We propose not to produce this. There are multiple indexes, and we question the relevance of their contents to the QA contentions.
17. LILCO will make available the procedures.
18. You already have this one. It's one of the attachments to the LILCO testimony.
19. We do not propose to produce "all" the documents, since this request has all the appearance of a fishing expedition. If you insist, LILCO can make available the first and last sets of notes so you can verify that there really were 850 meetings, since that is the gist of the testimony.
20. LILCO will make available the CCF's (which are the same as the "scoping documents").
21. The County already has the latest revision of the checklist form; it is included in a procedure (QAP 3.1) that was provided the County in March.
22. This is the same information asked for in nos. 5 and 6 above.
23. The County has already been provided 51 of the 53. LILCO will make available the other two, if you wish.
24. These are GE documents, and I believe they are proprietary. I will verify that for you.
25. Same as 24.
26. Same as 24 and 25.
27. LILCO will make available the checklists.
28. This is the same information as no. 1 above.

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Alan R. Dynner, Esq.  
August 20, 1982  
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~~29. This is the same information as no. 1 above.~~

29. ~~30.~~ LILCO will make available the recommendations from the SORC meetings.
30. ~~31.~~ LILCO will make available the drawing update reports.
31. ~~32.~~ You've indicated that you already have the Initial Status Report, and we cannot provide the other documents. Teledyne reports are given to LILCO at the same time they're given to the NRC.
32. ~~33.~~ We do not propose to produce these. You're asking for thousands of personnel time cards, and that seems to us unnecessary. It would require extensive analysis to give you the type of breakdown you want, and in fact LILCO might have to examine over a dozen types of documents. It would take months to do this analysis.
33. ~~34.~~ We do not propose to produce these. You are asking for hundreds of pages of personnel records. What is more, this request (like others of the 49) could as well have been made during the discovery period in March and April.
34. ~~35.~~ We do not propose to produce these. The documents are many and scattered.
35. ~~36.~~ LILCO will make available the computer print-out that constitutes the analysis of trends.
36. ~~37.~~ I'm still checking on these; I will know more on Monday.
37. ~~38.~~ The County has already received the 37 audit reports.
38. ~~39.~~ LILCO will make available the welding and mechanical surveillance reports and the electrical and instrumentational surveillance reports.
39. ~~40.~~ LILCO will make available the stop work orders.
40. ~~41.~~ The County has already been provided all but the one most recent monthly report. LILCO will make that one report available.
41. ~~42.~~ LILCO will make available the three reports.

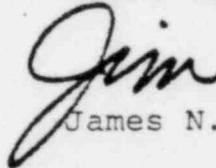
HUNTON & WILLIAMS

Alan R. Dynner, Esq.  
August 20, 1982  
Page 5

- 42.43. LILCO will make available the three reports.
- 43.44. LILCO will make available the three reports.
- 44.45. LILCO will make available the three reports.
- 45.46. No such reports exist. LILCO doesn't issue reports on the Final A Release Program.
- ~~47. LILCO will make available the design drawings of the record storage facilities.~~
- 46.48. I'm still checking on this.
- 47.49. LILCO will provide the survey of QA/QC manpower at other BWR's.

LILCO can make the documents available at the trailer at the Shoreham plant where discovery was conducted this past spring and can do so on August 31, 1982. I should think that the arrangements for copying documents and paying for the copies would be the same as for the earlier discovery.

Yours very truly,



James N. Christman

M E M O R A N D U M

August 23, 1982

From: Alan Roy Dynner

Re: Suffolk County: Revised Subpoena of Documents from LILCO

This memorandum summarizes the discussions between Jim Christman and me last Friday evening, Saturday and Sunday, concerning the Revised Subpoena and Jim's letter of August 20, 1982. All paragraph numbers refer to the Revised Subpoena.

The following documents do not exist: Paragraphs 7, 12 and "final stress analysis evaluations" referred to in Paragraph 29.

The following are the bases (other than, or in addition to, as stated in Jim's letter) on which demands for documents were deleted:

1. PCRs for other than 6 systems will be provided when completed.
3. All reports will be provided.
4. The computer printout references NRC documents in the possession of Suffolk County, by which particular open items can be identified.

5,6. Summary pages, detailed enough to show matters in clauses (i) through (iv) will be provided. LILCO has no training manuals, referenced in clause (v), but training materials will be provided.

10, 24, 25, 26. GE will make these documents available in San Jose, Cal., if proprietary agreement is signed and they are used only if in camera proceeding.

13. The LILCO "review" will be provided.

14. LILCO has no internal Torrey Pines documents, but will provide the program plan/scoping document and all reports in its possession.

20. The "reviews" are oral except for a document that only indicates if the CCF was approved or not.

21. Previous checklist forms will be provided. There are no documents describing procedures or instructions other than in manuals already provided to Suffolk County.

23. The two audit reports will be provided.

28. All completed reports are attached to PCRs referred to in paragraph 1. The only other reports have not yet been reviewed by LILCO.

29. Minutes of E&D meetings will be provided if they exist. The SORC recommendations to be provided are the only reports, summaries or minutes of SORC meetings.

30. All documents will be provided. If there is a schedule for completion, it is in the form of written goals.

31. LILCO has none of the documents except the interim report and service procurement order between LILCO and Teledyne.

32. A summary showing the calculation will be provided. There are no documents showing the items or class of equipment on which time was expended.

37. The "attributes" noted as unsatisfactory are shown in the audit reports.

46. These documents will be provided.