

LILCO, 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)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322 (OL)
)	
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO'S REVISED POSITION ON SUFFOLK COUNTY
APPLICATION FOR SUBPOENA DUCES TECUM FOR QA DOCUMENTS

This pleading constitutes LILCO's report to the Board and statement of position on Suffolk County's latest request for documents allegedly bearing on the QA contentions in this proceeding.

On August 13, 1982, Suffolk County filed its Application for Issuance of Subpoena listing 49 categories of documents. On August 17 LILCO filed its Motion for Protective Order or, in the Alternative, to Quash Subpoena. In a conference call on August 18 the Board called for oral argument on the request for documents, to be held the morning of August 24, and directed the parties to negotiate and try to narrow the areas of disagreement before then. By noon on August 23 the parties were to advise the Board how much progress had been made in narrowing the areas of disagreement.

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Counsel for LILCO and the County spoke on the afternoon of August 18, and counsel for LILCO spent most of the day on Long Island August 19 working on answering the document production request. On August 20 LILCO telecopied a list of the documents that it was willing to produce, if producing them would satisfy the County's request in full. At about the same time, the County transmitted a revised subpoena, this one with a list of 47 categories of documents, many of the categories being narrowed from the August 13 subpoena.

Counsel for LILCO and the County spoke by phone the evening of August 20, the morning of August 21, and the afternoon of August 22. Also, counsel for LILCO arranged a conference call with counsel for General Electric and counsel for the County on the afternoon of August 20. Further discussions are being held the morning of August 23.

Despite these discussions, LILCO and the County have not been able to settle the matter of document protection entirely. Because LILCO's August 20 letter with its offer of documents was conditioned on settlement of the request in full, and because that has not occurred, LILCO is in this present pleading offering to produce only those documents that it thinks the Board might find the County to be fairly entitled to, in light of how the documents are related to topics in LILCO's written testimony. We have indicated "no dispute" in those cases where (1) the documents have already been provided

to the County or (2) LILCO is willing to produce the documents because they are referenced or relied on in the testimony or (3) no documents responsive to the request exist.

LILCO still holds the views expressed in its Motion for Protective Order of August 17. We would add that the Clinton case, on which the County relies in its request for subpoena, involved documents that were requested only after a witness had been unable to answer specific questions. Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 31 (1976). (And in any event the subpoena requested in Clinton was not issued.) In this Shoreham proceeding, on the other hand, the County seeks to use a subpoena to enforce a request for documents that looks indistinguishable from the type of pretrial discovery that is ordinarily done at a much earlier stage.

The status on each of the 47 categories of documents is as follows:

Part A

1-4. LILCO does not believe the County is entitled to request any of these documents at this late stage of the proceeding. At least until today, the County has made no attempt to relate any of the four items to the LILCO testimony.

The subject of Request No. 1, the Shoreham Plant Configuration Review (SPCR), is, it is true, addressed at pages 122-24 of the LILCO testimony, but that topic is covered by

Request No. 28, which asks for all "Configuration Discrepancy Reports." Moreover, since the SPCR program has been ongoing for quite some time, there appears no reason the County could not have asked for the Plant Configuration Reports during the discovery that took place in March 1982.

Request No. 4 looks particularly unmeritorious. The present status of the I&E open items seems to be of very little probative value, since the open items that are still open will be closed in time. Presumably what the County wants is to investigate the substance of all open items to see if any of them offer ammunition for cross-examination; this appears to LILCO to be in the nature of a "fishing expedition."

Part B

5. LILCO does not believe the County is entitled to the documents on the qualifications, training, and job descriptions of the LILCO QA department. In the first place, none of these documents is referenced in the LILCO testimony at pages 5 and 6. And while it may be appropriate to probe the qualifications of the QA personnel, that can be done on cross-examination without reopening document production. In the second place, the County could have asked for the qualifications of the QA people in March.

6. The same response as for No. 5 above. The County asks for the qualifications of the Operational QA organization. In the first place, no such documents are referenced at page 6 of

the LILCO testimony. In the second place, the County could have asked for this information in March.

7. No dispute. LILCO believes there is no dispute over this item, because what the County wants does not exist. No single document or small group of documents exists that will tell the County how non-safety-related items are controlled in accordance with the importance of their overall functions or purpose. If, contrary to our expectations, it appears from the County's filing today that a dispute does exist, then LILCO believes no document production should be ordered because this information could as well have been asked for in March.

8. No dispute. The Stone & Webster audit reports requested, based on page 25 of the LILCO testimony, were provided the County in March.

9(i). No dispute. The documents were provided in March.

(ii). No dispute. The documents were provided in March.

(iii). Stone & Webster's audits of other organizations performing engineering services (pages 28 and 29 of the LILCO testimony) involve a number of documents some of which may contain information on Stone & Webster clients other than LILCO; such information would have to be deleted before the documents were produced. More important, LILCO believes this request could have been made in March, and therefore should not be allowed now.

As of this morning, August 23, LILCO counsel is still exploring with Stone & Webster counsel how big a problem it would be to have Stone & Webster produce the requested documents.

10. This request is for General Electric audit reports which are proprietary to GE, large in number, and stored in California. Discussions with GE indicate that GE will produce them, though reluctantly because of the lateness of the request, if the County will execute a suitable nondisclosure agreement. GE will also argue strongly that any hearing on these documents must be held in camera.

LILCO believes, however, that the County is not entitled to these documents. The County did not request GE documents in March, when discovery was open, and it is hard to maintain that it was LILCO's written testimony that first apprised the County that GE had a QA role in the Shoreham proceeding.

11. No dispute. LILCO will provide the monthly and quarterly reports requested.

12. No dispute. The reports mentioned in the LILCO testimony are oral, not written; there are no documents responsive to this request.

13. The basis for the statement on page 41 of the LILCO testimony that Shoreham's performance is better than other BWR's is an NRC document called "Power Reactor Summary for Deviation/Severities for [Year]" and is available in the NRC's

public document room. There also exists a document that constitutes the analysis, derived from the NRC document, on which the statement in the testimony is based. LILCO is willing to produce this document. There may therefore be "no dispute" over this document request no. 13.

14. LILCO will provide the following Torrey Pines documents: the scoping document (program plan) and all reports issued to LILCO to date.

15. Request No. 15 asks for Stone & Webster's Problem Reports. These documents are likely to be proprietary to Stone & Webster, and as of the time of this filing discussions with Stone & Webster are still taking place.

16. There are many indexes of design documents, and it would be difficult or impossible to identify the "latest available" one. Also, it is hard to discern much probative value in the contents of the indexes.

17. No dispute. Since page 93 of LILCO's testimony does reference "specific Project procedures," "LILCO will make the procedures available.

18. No dispute. This document has already been provided to the County. It is Attachment 4 to the LILCO testimony.

19. Request No. 19 asks for the first and last Notes of Conference of the over 850 Project meetings and every 50th note chronologically between the first and the last. Although LILCO's testimony at page 96 does mention the Notes of

Conference, the testimony at that point does not rely on the contents of the Notes of Conference but rather makes the point that LILCO's participation in design review has been extensive, as revealed by the large number of meetings at which LILCO has been in attendance. The point of mentioning the Notes of Conference is simply to cite the tangible evidence of the number of meetings.

The fact that the County wants an unbiased sample of these notes, drawing every fiftieth one from the population, indicates to LILCO that this request is simply a fishing expedition. We understand that the County, on the other hand, believes that a "fishing expedition" would be one in which the County requested all of the Notes, not just some of them. Our understanding of a fishing expedition is different. If the County wanted specific Notes to establish specific facts or gain specific information its request might be justifiable, but instead the County simply wants to explore the Notes of Conference to see what turns up. Consequently, the information sought is far more extensive than necessary and appears to be of relatively little potential worth. See Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 33 (1976).

20. Request No. 20 asks for documents about the Change Control Forms (CCF's) and has several parts. First, it asks for the procedure that describes the "program of packaging."

This is a Stone & Webster procedure, and as of this morning LILCO is still discussing it with Stone & Webster.

Second, the request asks for the CCF's. LILCO is willing to produce these, which also encompass the "overall scoping documents."

Third, Request No. 20 asks for the "reviews" of the Change Control Forms. The reviews are documented in the form of cover sheets that simply approve or disapprove the CCF's. Accordingly, the production of the cover sheets would seem to have little probative value.

21. LILCO has already provided the checklist requested by County; it is included in a procedure (QAP 3.1) that was provided the County in March.

The crux of the dispute on No. 21 is that the County also wants the now outdated earlier versions of the same checklist. LILCO feels that (1) these are of questionable probative value and (2) they could have been requested in March when the procedure and current checklist were provided.

22. No dispute. These documents are the same as those requested in No. 5.

23. No dispute. LILCO has already provided 51 of the 53 audit reports and is willing to provide the other two.

24. The audit reports requested are General Electric documents. The same objections apply here as apply to Request No. 10 above. The County would be in a better position if it had

showed an interest in GE documents during discovery in March and April. The documents are in California, and GE would want a nondisclosure agreement and in camera hearings.

25. Same response as No. 24 above.

26. Same response as Nos. 24 and 25 above.

27. No dispute. LILCO is willing to make available the "checklist developed from a comprehensive survey" referred to at page 122 of the LILCO testimony.

28. "Configuration Discrepancy Reports" (CDR's) are attachments to the "Plant Configuration Reports" mentioned in the County's Request No. 1. The Plant Configuration Reports, with the attached CDR's, have been reviewed and issued for six plant systems. Plant Configuration Reports and CDR's for other systems are still under review. LILCO is willing to make available the six issued Plant Configuration Reports with their attached Configuration Discrepancy Reports, but not the ones that are still under review. LILCO believes (1) that these documents probably could have been requested in March and (2) that having to produce documents that are still being reviewed is unreasonable.

29. Page 127 of the LILCO testimony says "[a]s the final stress analysis evaluations [in the Engineering Input Reconciliation program] are completed, they are brought before the Shoreham Options Review Committee (SORC) before final disposition." First, the County has requested the "issued

procedures and instructions" for the Engineering Input Reconciliation program. These are Stone & Webster documents, and LILCO is still investigating the difficulty of producing them.

Second, the County has asked for minutes of the "engineering and design meetings." The reference to engineering and design meetings on page 127 of the LILCO testimony does not include a reference to any documents, and so here, once again, the County is simply requesting background information on the testimony.

Third, the County requests the final stress analysis evaluations brought before the SORC. The evaluations are presented orally to the SORC, and so there are no documents of the type the County seeks.

Finally, the County seeks all the minutes of the SORC meetings. No formal minutes of these meetings are recorded. Instead, the Committee's actions are documented as "recommendations." These recommendations are not referenced or relied on in the LILCO testimony. The substance of the testimony is that the program is effective, in part, because engineering and design meetings are held every two weeks to ensure that the status of the program and technical concerns are brought to the attention of technical and senior engineering management. This is, at best, a tenuous basis for a wholesale production of the SORC recommendations this late in the proceeding.

30. Request No. 30 asks for documents about the fuel load drawing update program. The County wants (1) a description of the program, (2) the latest schedule for the completion of the program, and (3) progress reports describing portions of the program that have been completed.

LILCO will make the appropriate Project procedure for the fuel load drawing update program available if it has not already been provided to the County.

There is no schedule for completion of the drawing update program as such, because the Company's schedule is to complete the drawings by fuel load, as the testimony indicates. There do exist "goals" in writing as to when the various tasks should be completed, but the probative value of these to the testimony or the QA contentions does not seem great.

Finally, progress reports for the program do exist, but they are not referenced at pages 127-28 of the LILCO testimony and therefore should not have to be produced at this late stage of the proceeding.

31. The County has already received the Teledyne Initial Status Report, and LILCO has received no other Teledyne reports. At the insistence of the NRC staff, Teledyne reports are given to LILCO no sooner than they are given to the NRC. Accordingly, there is nothing to produce under this request.

32. Request No. 32 requests the basis of the assertion that 250,000 manhours were expended by Stone & Webster. There is no document of this type referenced at page 145 of the testimony, and so the County is seeking, not a document relied on in the testimony, but rather the basis for a statement in the testimony, something which could be brought out on cross-examination without the help of further documents. Also, the County could as well have requested documents on manhours in March.

The second part of the request asks for documents breaking down the hours spent by items or class of items of equipment on which the time was spent. There is no document that provides this information, and it would require LILCO and Stone & Webster to do a very burdensome analysis of time cards to get the information.

33. This request asks for the identification, resumes, and job descriptions of some 80 Courter personnel. This seems to LILCO burdensome. No such documents are referenced at page 152 of the LILCO testimony. Finally, the County could have requested the documents in March, when it requested other documents related to the Courter scope of work.

34. Documents regarding the schedules and content of the "indoctrination sessions" and "toolbox sessions" referred to on page 158 of the LILCO testimony are many and scattered, and it would be burdensome to produce them at this late date. Also,

the testimony does not refer to such documents, but merely states that training sessions are held. It may be appropriate to inquire on cross-examination about what the training consists of and how often training sessions are held, but subpoenaing the related documents at this late date is inappropriate, particularly since this sort of information could have been elicited in March.

35. No dispute. LILCO will make available the computer print-out that constitutes the analysis of trends established and analyzed in order to maintain the uniform concrete strengths specified (page 160 of the LILCO testimony).

36. Documents showing the trends resulting from the evaluation of N&D's by Stone & Webster referred to at page 166 of the LILCO testimony are Stone & Webster documents and may be proprietary documents, particularly insofar as they deal with facilities other than Shoreham. LILCO is discussing with Stone & Webster how easily they can be produced.

37. The 37 audit reports have already been provided to the County, and those reports describe the unsatisfactory attributes.

The second part of this request calls for any responses to those audit reports by LILCO. One type of document that details the corrective actions is subsequent audit reports, which contain follow-ups of findings in earlier reports. The other documents are responses to audits, which are in Stone &

Webster's possession. We are still discussing the possible production of these documents with Stone & Webster.

38. LILCO will make available the welding and mechanical surveillance reports and the electrical and instrumentation surveillance reports (page 176 of the LILCO testimony).

The County has also asked for the corrective action reports (CAR's). The County had access to these CAR's during the earlier discovery in March and made copies of some of them. Accordingly, there should be "no dispute" on this request.

39. No dispute. This asks for all stop work orders issued by LILCO QA personnel. LILCO will provide these.

40. No dispute. LILCO will provide the three requested reports.

41. No dispute. LILCO will produce the three documents.

42. No dispute. LILCO will produce the three documents.

43. No dispute. LILCO will produce the three documents.

44. No dispute. LILCO will produce the three documents.

45. No dispute. LILCO will produce the three documents.

46. LILCO will supply the nonconformance trends for operating QA, so there may be "no dispute" here.

47. No dispute. LILCO will produce the survey of QA/QC manpower.

In short, LILCO believes the areas of disagreement have been narrowed by establishing that there is no dispute over at least Request Nos. 7, 8, 9(i), 9(ii), 11, 12, 17, 18, 22, 23,

27, 35, 39, 40, 41, 42, 43, 44, 45, and 47. This amounts to 18 2/3 of the 47 requests, about 40% of them. The rest we believe should be denied for the reasons stated above, with the following qualification.

As the above responses will indicate, LILCO was not able to determine by the time this pleading was filed what difficulties would attend the production of several categories of Stone & Webster documents (Request Nos. 9(iii), 15, 20, 29, 36, and 37). Discussions of these documents are continuing today, and more information will, LILCO hopes, be available by the morning of August 24 when argument on the document requests is held.

As for the documents that the above responses indicate LILCO is willing to produce, they can be made available to the County for copying at the Shoreham Station by August 31.

Respectfully submitted,

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DATED: August 23, 1982

LILCO, August 23, 1982

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S REVISED POSITION ON SUFFOLK COUNTY APPLICATION FOR SUBPOENA DUCES TECUM FOR QA DOCUMENTS were served upon the following by first-class mail, postage prepaid, or by hand (as indicated by an asterisk), on August 23, 1982:

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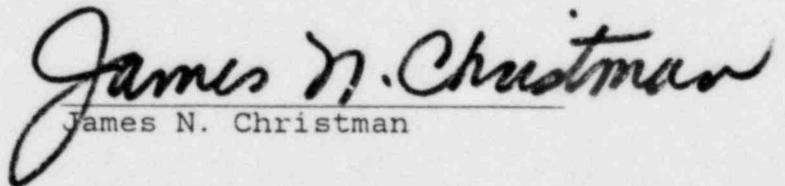
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