

LILCO, January 7, 1983

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

GROUP OF SECRETARY  
DOCKETING & SERVICE  
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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)	)	

MOTION FOR BOARD CONFERENCE TO  
IDENTIFY AND SPECIFY CROSS-EXAMINATION  
TOPICS FOR LILCO TORREY PINES PANEL

This Motion, inspired by experience and by Rule 16, Fed. R. Civ. P., seeks a conference with the Board for the purpose of narrowing, focusing and identifying with specificity the points or matters to be inquired into during cross-examination of the Torrey Pines panel.

Circumstances make unmistakably clear that failure to engage in a process to narrow and define precisely the issues to be litigated with respect to the Torrey Pines report may result in extended and wasted hearing time. In the first place, the Torrey Pines report is voluminous; it includes over 200 discrepancy reports and a smaller number of potential finding reports, observations and findings, hundreds of pages of technical detail, and numerous document references as well. Only

a small amount of this massive detail can be the legitimate focus of cross-examination.

Even as to that material, unless there is some pre-hearing identification and specification of the specific discrepancy reports, potential findings, findings or aspects of these to be used in cross-examination, the witnesses cannot reasonably be expected to be prepared to give prompt, informed answers. The result of a failure to require specification of the specific DR's, PFR's, findings, observations and indeed precise portions thereof will be wasted hearing time while witnesses search for information and a record that reflects less the facts of the report than the ability of counsel to surprise the witnesses.

Quite apart from the voluminous nature of the report, the experience of the depositions confirms the need for the conference sought in this Motion. Counsel for the County, allotted a full day with Mr. Novarro, LILCO's executive contact with Torrey Pines, and another full day with Mr. Johnson, the Torrey Pines project manager, spent almost all of each day exploring such matters as credentials, negotiations that led to LILCO's retention of Torrey Pines and Torrey Pines' independence. Little, if any, time was devoted to the real substance and conclusions of the report. Notwithstanding the time already spent on the preliminary topics in the depositions, it seems clear that counsel for the County considers that it has far from completed its questioning on these topics. Thus, unless a conference

with the Board succeeds in focusing and narrowing the issues to be explored in cross-examination, or unless the Board places a limit on the number of days for the County to cross-examine the LILCO panel, the result is likely to be that the hearing time expended in this matter will far exceed the time now allotted by the Board. At present, the contemplated schedule is two days for cross-examination of the LILCO Torrey Pines panel and two days for cross-examination of the County Torrey Pines panel. Given the ground covered in the Torrey Pines depositions, this contemplated schedule, absent restrictions, is likely to be several orders of magnitude off the mark.

The conference proposed in this Motion is, as noted, fully supported by judicial experience with Rule 16, Fed. R. Civ. P., in federal practice. Moreover, such a conference is specifically authorized by the NRC's Rules of Practice. 10 CFR § 2.752(a). Both Rule 16 and 10 CFR § 2.752(a) provide that the court or presiding officer may direct the attorneys for the parties to appear for a conference to consider, inter alia, the simplification of the issues. Decisions uniformly applaud Rule 16 conferences to specify and focus issues and prevent wasted trial time. Thus, Professor Moore, in his leading treatise, makes the following pertinent remarks:

One of the most important features of the pre-trial conference is the simplification of the issues. . . . The pre-trial conference enables the parties, under the mediation of the court, to crystalize these issues and eliminate those which are not really controverted or which use of

the deposition and discovery procedure has shown to be without merit. It thus serves a double purpose: on the one hand it eliminates surprise and assists the parties in preparing for trial; on the other hand, it avoids the necessity of preparing for trial upon nonexistent issues . . . .

. . . .

The value of pre-trial procedure in eliminating the necessity of preparation on uncontested issues was stressed by Judge Moscowitz: "If justice is to be speedy, efficient and inexpensive, justice requires that a party be relieved of the necessity of elaborate preparation upon non-existent issues. Merely because the law places the burden of proof upon one party with respect to a certain issue is not reason for concluding that the other party cannot be asked whether he seriously intends to raise the issue."

3 Moore's Federal Practice ¶ 16.11, at 16-22 to -27 (1982) (emphasis added), quoting LaCanin v. Automobile Insurance Co., 41 F. Supp. 1021, 1022 (E.D.N.Y. 1941); accord, 6 C. Wright & A. Miller, Federal Practice and Procedure § 1522, at 566-74 (1971).

The Fifth Circuit also acknowledged the value of pre-trial conferences in terms very pertinent here.

Rule 16, Fed. R. Civ. P., establishes a mechanism whereby the trial court can expedite the just disposition of cases and reduce the costs of litigation. This mechanism consists of a pretrial conference and a resulting order. The pretrial conference is designed to restrict the scope of the trial by defining and therefore limiting the issues involved. And as a necessary adjunct to this function it may also provide for the limitation on the number, type, and admissibility of exhibits and testimony.

Hodges v. United States, 597 F.2d 1014, 1017 (5th Cir. 1979).\*

These well recognized principles in federal litigation are particularly applicable here. The cross-examination of LILCO's Torrey Pines panel should not involve lengthy fishing expeditions into areas of no particular significance to resolution of the QA contentions. Nor should witnesses be unfairly surprised and required to take hearing time to search for answers they should have been advised of earlier so that the record could be fully and fairly informed. The inordinate time already spent on the QA contentions -- a period now entering its fifth month -- demands that every effort be made to identify, narrow

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\* See also Perfection-Cobey Co. v. City Tank Corp., 597 F.2d 419, 420 (4th Cir. 1979):

Pretrial orders are designed to expedite litigation and eliminate surprise by framing the issues remaining for trial.

And Elder-Beerman Stores Corp. v. Federated Department Stores, Inc., 459 F.2d 138, 150-51 (6th Cir. 1972):

We are of the opinion that in protracted litigation . . . it would be advisable for the trial court to hold one or more formal pretrial conferences, as provided by Rule 16 . . . . It would appear that formal pretrial orders resulting from such conferences could have substantially reduced the time required to try the case and might well have eliminated some of the time-consuming testimony which was irrelevant to the issues properly before the court. The witnesses, including the plaintiff's expert witness . . . , could have been confined to the issues before the court and jury and could have been prevented from digressing at length in regard to matters unrelated to the issues, in response to questions both on direct examination and cross-examination.

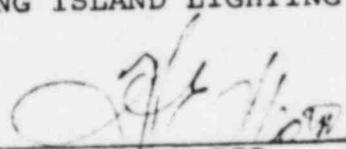
and focus the remaining issues to be litigated, including Torrey Pines.

Accordingly, LILCO respectfully requests that the Board convene (either on or off the record) a conference of counsel Monday, January 10, 1983, and to require counsel at that time to identify with substantial specificity the issues they propose to inquire into in cross-examination. That process may well result in elimination of some issues and substantial focusing of the remaining issues.

In the alternative, if the Board chooses not to convene a conference of counsel, LILCO respectfully requests that the examination of each Torrey Pines witness panel be limited to two days. Experience confirms that such limitations, firmly followed, promptly and sharply focus the issues. Dr. Johnson put it well many years ago when, in describing a man about to be hanged, he said the deadline "wonderfully concentrates the mind." J. Boswell, Life of Johnson (1934).

Respectfully submitted,

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DATED: January 7, 1983

CERTIFICATE OF SERVICE

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

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I hereby certify that copies of LILCO's MOTION FOR BOARD CONFERENCE TO IDENTIFY AND SPECIFY CROSS-EXAMINATION TOPICS FOR LILCO TORREY PINES PANEL were served upon the following by first-class mail, postage prepaid, by Federal Express (as indicated by an asterisk), or by hand (as indicated by two asterisks):

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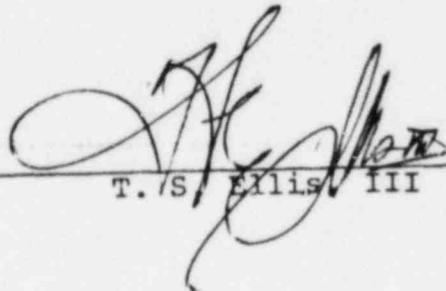
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