

LILCO, February 9, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3
	)	(Emergency Planning
(Shoreham Nuclear Power Station,	)	Proceeding)
Unit 1)	)	

LILCO'S OPPOSITION TO SUFFOLK COUNTY'S  
MOTION TO CHANGE SCHEDULE

LILCO opposes Suffolk County's February 8, 1984 "Motion to Change Schedule." The County cites two basic reasons for its change: the latest delay in FEMA's proposed completion date for its RAC review and, consequently, in filing its testimony, and an undefined notion of "fundamental fairness" that requires, in the County's view, that all parties file their testimony at the same time.

Neither argument supports the County's requested relief. FEMA's latest estimated date for completion of the RAC review is exactly that: at least the third, and perhaps the fourth, estimated date in a review originally slated for completion last December 1. Experience also shows that FEMA's estimates may change on short notice: the current estimate, delivered by letter on February 1, altered the previous target date for

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completion (February 7) by three weeks, less than one week from the then-estimated target date, and less than a week after FEMA had affirmed the February 7 target date on the record (Tr. 3639, January 27, 1984). This is not to criticize FEMA for taking as long as it realistically needs in order to finish its work. It is merely to say that there can be no guarantee now, any more than there was last fall, that March 1 is a firm date.

Similar uncertainty surrounds any estimate of the filing date of FEMA's testimony. Suffolk County's counsel alleges that, on the basis of telephone conversations with FEMA's counsel, FEMA could have its testimony prepared two weeks after a March 1 RAC review completion. FEMA's on-the-record position has always been that it would require three weeks to prepare its own direct testimony after completion of the RAC review. There is thus uncertainty about how long FEMA will need to prepare its testimony piled on top of the uncertainty of the completion date for the RAC review. To predicate a definite schedule slippage, as the County now proposes, on the twin assumptions of (1) completion of the RAC review by a date certain and (2) a truncated, off-the-record estimate by FEMA of its testimony completion date, is to assume certainty on the timing of two events which the course of this proceeding to date has repeatedly demonstrated to be uncertain.

The County's argument is, in essence, that this proceeding should be paced by the FEMA review. LILCO has never accepted

this premise; nor, to its knowledge, has any party other than Suffolk County. Nor has the Board. Its October 26, 1983 Order reflected the specific proposition that the pace of the proceedings would not be determined by the pace of the RAC review. Order Establishing Revised Schedule, October 26, 1983, at 2. Then nearly a month later, when the completion date of the RAC review had slipped from December 1 to February 1, the Board stated:

The impact of this extension upon the schedule for this case is uncertain. The Board wishes to hear the views of all parties concerning the NRC Staff action granting to FEMA the 60 day delay requested. However, the parties are advised that if they intend to request a delay in the scheduling of Group II issues, they must be prepared to show why each particular contention cannot be heard on the present schedule absent the FEMA RAC review. [Emphasis supplied].

Order Establishing Supplemental Agenda for Conference of Counsel, November 18, 1983, at 5. The parties have been on notice of this standard ever since. The County, however, has made no attempt to meet this standard, asserting nothing more specific than that "the FEMA witnesses will contribute the bulk of the Staff's testimony on Group II issues" (Motion at 3) and that if it is not able to rebut the FEMA filings in direct testimony it will have to seek leave to do so in supplemental or rebuttal testimony (Motion at 4, note 4). Nowhere does the County allege that the pendency of the RAC review damages its ability to

file testimony on the Shoreham Emergency Plan in accordance with the propositions set forth in its contentions. Still less does the County less itemize any contentions as to which that ability is impaired. In short, the County has failed to support its argument for a FEMA-related delay on the grounds that this Board has made clear are required. The motion should be denied for that reason alone.

In addition, there are two fundamental difficulties with the premise that the pace of this proceeding should be tied in lock step to the FEMA review. First, there is no certainty to the completion date of FEMA's review, for the reasons already stated. Second, to make FEMA's review the centerpiece of this proceeding is to distort its function. The FEMA/RAC review is an important input to the proceeding; but it is, after all, the Shoreham Emergency Plan which is being appraised here, not FEMA's review of it. The County's contentions, and presumably its direct testimony, are focused on the LILCO plan; and the County has never claimed an inability to file testimony with respect to those contentions by March 2. The RAC review must come into evidence when it is completed, and its observations on the Shoreham Emergency Plan will be subject to question and criticism just as will any other party's comments on the Plan. If that eventually requires either a hiatus in the proceeding or the filing of supplemental testimony on issues within the scope of existing contentions that are specifically raised for

the first time by the RAC review, so be it; there is always an opportunity for rebuttal testimony in NRC proceedings for good cause shown. That course, if the need arises and justification can be shown, is far preferable than reflexively holding up the entire proceeding, time and time again, until completion of the RAC review.<sup>1/</sup>

The County's "fundamental fairness" argument is thus nothing more than an indirect way of claiming an automatic right of rebuttal to the testimony of FEMA, since that testimony will presumably be predicated on the RAC review. As noted above, the County's premise is faulty: there is no automatic right of rebuttal in NRC proceedings except for good cause shown. An

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<sup>1/</sup> The possibility of further FEMA review delay is, indeed, enhanced by various actions outside the formal context of this proceeding recently undertaken by Suffolk County. On or about January 13, counsel for and other representatives of Suffolk County met with the FEMA Regional Director, the Chairman of the RAC, and other FEMA personnel without notice to LILCO or invitations to either LILCO or the NRC to attend; and, to the best of LILCO's information, discussed or endeavored to discuss substantive issues being considered by the RAC in its review. On January 30, Suffolk County's counsel wrote to the General Counsel of FEMA, seeking information on how to "contribute" to the record of the RAC review, and requesting his advice as to the intra-agency and federal-court appealability of RAC findings. On February 3, counsel for Suffolk County sent a letter to a RAC member advocating use of a 20-mile EPZ at Shoreham and enclosing materials supportive of that argument, without acknowledging that that issue has been rejected by this Board. LILCO is not here suggesting that any of these efforts by the County violated any provision of law, though they are unquestionably inconsistent with the request of FEMA's counsel, in a November 7, 1983 letter to NRC counsel, that the RAC process be kept nonadversarial. All we suggest here is that if FEMA is influenced by the County's efforts, the completion of the RAC review might be delayed well past March 1.

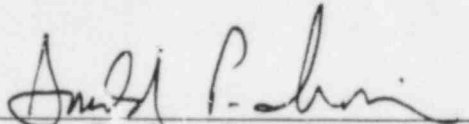


argument for rebuttal, if it is valid under the circumstances, will be at least as readily available if testimony is filed now as if it is forced to await issuance of the RAC review.

LILCO believes that the Board should deny the County's motion for the reasons stated above, and that it should do so promptly, lest any parties develop a reliance interest, however unjustified, in yet further schedule uncertainty. All testimony other than that part of the Government's case being filed by FEMA should be filed on March 2, and hearings proceed as currently scheduled. If it is advisable to schedule FEMA witnesses as a group on their entire range of issues after the testimony of the others have been questioned, they should be scheduled in that fashion. If any party can show good cause, after the end of questioning on the direct testimony, for filing supplemental or rebuttal testimony, and can include within that showing issues raised by the FEMA/RAC review, that would be the logical course.

Respectfully submitted,

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DATED: February 9, 1984

CERTIFICATE OF SERVICE

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station, Unit 1)  
(Emergency Planning Proceeding)  
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO'S OPPOSITION TO SUFFOLK COUNTY'S MOTION TO CHANGE SCHEDULE were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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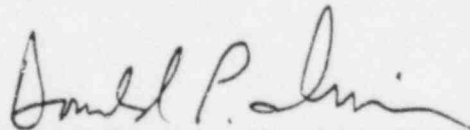
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