

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

DOCKETING & SERVICE  
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In the Matter of )  
 )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Plant, )  
Unit 1) )  
\_\_\_\_\_ )

Docket No. 50-322-OL-3  
(Emergency Planning)

SUFFOLK COUNTY'S MOTION FOR LEAVE TO  
FILE REPLY TO LILCO'S ANSWER OPPOSING  
SUFFOLK COUNTY MOTION FOR LEAVE TO FILE  
REBUTTAL TESTIMONY ON CONTENTION 23

On February 1, 1984 Suffolk County (hereinafter "the County") filed a motion<sup>1/</sup> for leave to file rebuttal testimony by Drs. Stephen Cole and Andrea Tyree on Contention 23. The rebuttal testimony,<sup>2/</sup> which was submitted to the Board the next day, addresses one narrow issue. That issue is whether a paper co-authored by Dr. John Sorensen,<sup>3/</sup> a LILCO witness on Contention 23, supports LILCO's assertions in its Contention 23 direct testimony that pre-accident fear of radiation was not a significant cause of the well-documented evacuation of over 144,000 people at

<sup>1/</sup> Suffolk County Motion For Leave To File Rebuttal Testimony On Contention 23 (February 1, 1984).

<sup>2/</sup> Rebuttal Testimony Of Stephen Cole And Andrea Tyree On Behalf Of Suffolk County Regarding Contention 23 (Evacuation Shadow Phenomenon).

<sup>3/</sup> John Sorensen and Brad Richardson, Evacuation Behavior at TMI: Review and Reexamination (unpublished).

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TMI, but rather that the large overresponse at TMI was predominantly the result of poor emergency information. (LILCO Testimony at 52-55, 61). Dr. Cole's and Dr. Tyree's testimony demonstrates through the use of regression analyses that LILCO's witnesses have inappropriately relied upon Dr. Sorensen's paper in support of those assertions and that, in fact, the paper fully supports the County's position.

On February 6, 1984, LILCO filed its answer to the County's motion. The County's review of LILCO's answer reveals that LILCO has mischaracterized the County's arguments and the facts. Consequently, the County hereby moves this Board for leave to reply to LILCO's answer or, in the alternative, for a conference call during which the County will be given an opportunity to address LILCO's answer. The particular points in LILCO's answer that the County seeks leave to address are as follows:

1. LILCO's argument that the Rebuttal Testimony is improper because the County could have conducted its analysis solely from Cynthia Flynn's TMI data and without the benefit of Dr. Sorensen's paper. (LILCO Answer at 7). This argument entirely misses the point that the purpose of the rebuttal testimony is to rebut LILCO's inappropriate use of Dr. Sorensen's paper. The fact that Flynn's data were available for the County's

analysis has nothing to do with the fact that LILCO's witnesses have misrepresented the analysis of those data contained in Sorensen's article.

2. LILCO's assertion that the County was made aware of the Sorensen article in August of 1983. (LILCO Answer at 3). This assertion ignores the fact that the Sorensen article was one of 106 documents cited in response to a discovery request addressing a different issue than the one addressed in the Rebuttal testimony. Thus, the August 8 disclosure of the existence of the article in no way revealed LILCO's intention to mischaracterize the data contained in the article or to use the article to support its position concerning the non-significance of pre-accident fear. Thus, even though it could be argued that the County knew of the existence of the article by virtue of its appearance on a LILCO bibliography, there can be no dispute about the fact that prior to November 19 the County was not on notice of the use LILCO actually made of the Sorensen article in its direct testimony.
3. LILCO's suggestion that the County could have deposed Dr. Sorensen, with meaningful results, in the approximately two week period between his identification as a witness and the filing date for Group I testimony.

(LILCO Answer at 4). This is the same time period during which Group I testimony was being prepared. There was, literally, no time during that period during which a deposition could have been conducted.

4. LILCO's suggestion that the County's rebuttal testimony is untimely. (LILCO Answer at 5-6). This ignores the fact that the Board established a date for filing motions for leave to file rebuttal testimony -- a date which the County met. This also ignores the fact that Dr. Cole, one of the witnesses, was preparing for the January Group I hearings, and that he thus was unavailable to devote substantial effort to the rebuttal testimony until the last few days of January.
5. LILCO's argument that the County's rebuttal testimony will delay completion of Group I issues. (LILCO Answer at 6). The fact is that this short piece of rebuttal testimony will not cause any delay in these proceedings. Further, in raising this hollow "delay" argument, LILCO points to no prejudice which it suffers. Indeed, there can be no possible prejudice given the fact that the Shoreham plant will not be needed for at least 10 years and since the ever-increasing diesel problems preclude any operation for the foreseeable future.

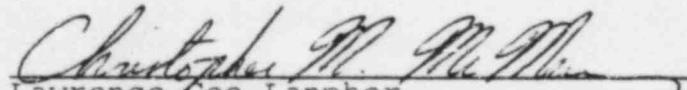
The County also seeks to address LILCO's motion in the alternative to file rebuttal testimony of its own.

Conclusion

For the reasons stated above, this Board should grant the County's motion for leave to file a reply to LILCO's Answer Opposing Suffolk County Motion For Leave To File Rebuttal Testimony On Contention 23, or in the alternative, the Board should convene a conference call to allow the County an opportunity to reply to LILCO's Answer.

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Dated:

*Feb 8, 1984*

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION FOR LEAVE TO FILE REPLY TO LILCO'S ANSWER OPPOSING SUFFOLK COUNTY MOTION TO LEAVE TO FILE REBUTTAL TESTIMONY ON CONTENTION 23 dated February 8, 1984, have been served to the following this 8th day of February 1984 by U.S. mail, first class, except as otherwise noted.

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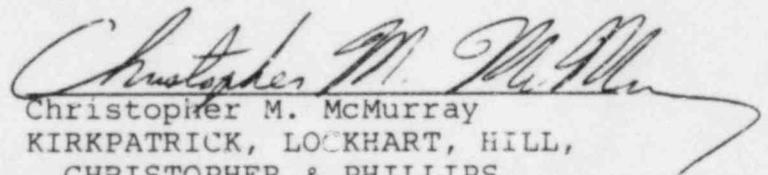
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DATE: February 8, 1984

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\* By Hand  
# By Federal Express