

September 27, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY'S REPORT TO BOARD REGARDING
MOTION TO COMPEL ONGOING DISCOVERY
CONCERNING DIESEL CRANKSHAFT FAILURES

I. Introduction

This report is filed pursuant to a request by Judge Brenner communicated to the parties' counsel by Judge Brenner's secretary in a telephone conference call on Friday, September 23, 1983. Because no member or other representative of the Board was involved in the call, no explanation or elaboration of the request could be obtained by counsel for Suffolk County.

On August 26, 1983, Suffolk County filed a Motion to Compel Discovery, with regard to the County's August 18, 1983 Request for Discovery, on an ongoing basis, of matters concerning the emergency diesel crankshaft failures and the attempt to determine the cause(s) of the failures. On September 12, 1983, LILCO filed a Response to Suffolk County's Motion to Compel (the "LILCO Response"), opposing the County's Motion to Compel

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Discovery but agreeing to certain limited and narrowly defined discovery. During the September 23 conference call, Judge Brenner's secretary requested the parties to file a joint statement to the effect that this discovery dispute has been resolved, presumably by the LILCO Response. Counsel for the County expressed shock and surprise at this request. Even a cursory reading of the County's Motion and the LILCO Response clearly shows a broad gulf between the County's requested discovery and LILCO's agreement to provide narrow and limited discovery.

After counsel for Suffolk County protested that the LILCO Response would not provide adequate discovery, Judge Brenner's secretary stated, as we understand, that the County should file a report showing why the LILCO Response did not satisfy the County's Motion to Compel Discovery, and explaining why the discovery requested by the County and denied by LILCO is necessary.

This report is filed in response to that request. However, the County must register a protest over the manner selected by the Board to deal with this discovery dispute.

First, it is clear from the County's August 18 Request for Discovery and its August 26 Motion to Compel Discovery that as prompt as possible attention by the Board to this discovery dispute was warranted. The discovery sought by the County is obviously intended to permit the County's diesel experts to monitor and observe the ongoing efforts to determine the cause(s) of the crankshaft failures, which both the County and the NRC

Staff believe may be related to, and thus relevant to, the County's diesel contentions. LILCO's September 21 Diesel Generator Status Report (received by the County on September 22) indicates that many tests, examinations and analyses which the County sought to witness have already been completed. Thus, the Board's delay in addressing the discovery dispute has had the de facto effect of denying portions of the County's request.

Second, the County's Motion to Compel Discovery is entitled to more serious and judicious consideration by the Board than an erroneous assumption that a clearly inadequate discovery agreement by LILCO was an acceptable substitute for the discovery requested by the County.

Third, the second-hand request for this report through Judge Brenner's secretary is apparently for information already contained in the County's Motion to Compel Discovery and the LILCO Response, and could not be explained to counsel. If the Board needs further explanation or argument of the Motion to Compel Discovery, it would seem more useful to the Board and the parties, as in the past, to have a conference among the parties and the Board in person or by telephone. Of course, we recognize and do not challenge the Board's right to adopt whatever procedures it chooses in deciding upon a motion. But we have some concern over the significance of the departure in this case from past practices.

Fourth, the test for discovery is relevancy, a test clearly met by the County's discovery request. The Board now

appears to require the County to meet another test -- that the discovery is necessary. Such a test is not required by the regulations or case law.

II. Discussion

The differences between the discovery requests of Suffolk County and the limited discovery agreement by LILCO, and why the latter is inadequate and the former appropriate and necessary, are summarized hereafter.

A. Documents

County's Request:

That LILCO promptly provide the County with copies of all documents (as defined in the County's Request), whether preliminary or final, as and when they come into LILCO's possession or under its control, pertaining to the crankshaft failure[s] or the attempt to determine the cause(s) of the failure[s]. See County's August 18, 1983 Request for Discovery, ¶3.

LILCO Agreement:

- a. Diesel Generator Master Plan (which has already been provided) and the revisions to the plan, if any.
- b. Failure Analysis Associates' (FAA's) interim report on the results of the metallurgical examinations of the diesel generator 102 crankshaft.
- c. Any other technical interim reports on the crankshaft failure issued by FAA.

- d. The final report of Failure Analysis Associates.
- e. FAA Report concerning the torsional stress tests on Emergency Diesel Generator 101.

See LILCO Response, ¶¶ a-e, pp. 3-4.

Comments:

Aside from the Master Plan, LILCO would restrict document discovery to certain interim and final reports of Failure Analysis Associates ("FAA"). This deprives the County of discovery of all original and background documents necessary to evaluate the FAA reports; for example, the procedures used to carry out tests, examinations and analyses; checklists, reports or memoranda showing all results of tests, examinations and analyses; and documents which may show what potential failure causes were suspected, and why they were rejected, or how they were pursued. In addition, according to the LILCO Master Plan, entities besides FAA, such as Transamerica Delaval, Stone & Webster, and LILCO itself, are involved in and have responsibility for the failure analysis process. LILCO objects to supplying any documents from those sources, yet such documents pertaining to the cause(s) of the crankshaft failures are clearly just as relevant as documents generated by FAA.

B. Notifications, Witnessing and Meeting Attendance

County's Requests:

- 1. That LILCO promptly notify the County of its plans (and any changes thereto) to determine the cause(s) of the crankshaft failure[s], including the kinds of examinations, tests

and analyses it will carry out, the schedules for them, and the identification of persons who will be involved in the failure analyses and their responsibilities.

2. That LILCO give the County reasonable advance notice of all examinations, tests and analyses to be carried out in connection with the attempt to determine the cause(s) of the crankshaft failure[s], including without limitation any diesel engine tear-down, and permit representatives and consultants of the County to witness such examinations, tests and analyses.

3. That LILCO give the County reasonable advance notice of all meetings concerning the crankshaft failure[s] which are to be attended by NRC Staff personnel, or to which such Staff personnel are invited, and that representatives and consultants of the County be invited to attend such meetings.

4. That LILCO promptly notify the County by telephone of any and all significant developments in the attempt to determine the cause(s) of the crankshaft failure[s]. See County's August 18, 1983 Request for Discovery, ¶¶ 1, 2, 4 and 5.

LILCO Agreement:

1. LILCO periodic status report every two to three weeks.

2. LILCO will permit the County to visually inspect and photograph the removed crankshafts on diesels 101 and 103 (diesel 102 crankshaft already visually inspected and photographed).

3. "LILCO will give the County access to the disassembled portions of Emergency Diesel Generator 102 and Emergency Diesel

Generators 101 and 103 once those engines are disassembled."

4. "LILCO will permit the County to attend meetings with the NRC Staff for which the Staff has issued a meeting notice." See LILCO Response, pp. 4-5.

Comments:

The LILCO status reports set forth only what LILCO chooses to tell the County, when it chooses to do so. They are thus no substitutes for the documents sought by the County, nor for notice of and witnessing tests, examinations and analyses to determine what is actually being done and how it is being done. For example, the September 21 LILCO Status Report, at page 3, states as to diesel 103 that

. . . analyses show there are no operating mechanisms which cause these cracks [in the base plate] to be of concern.

There is no description of exactly what analyses were performed, how, and what the bases are for the stated conclusion.

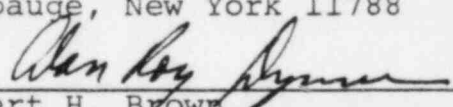
Another example is that no mention is made as to whether the cylinder heads on the diesels were examined, and if so, how, and what were the results.

A visual inspection of the broken and cracked crankshafts, while useful, is insufficient discovery. The County's diesel experts should be given the opportunity to witness the examinations and tests performed on the crankshafts, to determine exactly what is being done and how. Unfortunately, much of the testing of the diesel 102 crankshaft has apparently been completed or will shortly be completed (see LILCO Status Report at 1).

Despite its promise to do so, LILCO has failed to give the County a reasonable opportunity to inspect the disassembled portions of diesels 102 and 103." LILCO did not notify the County of the status of those diesels or invite the County to inspect them while disassembled. On September 22 the County learned from the Status Report (at pp. 2 and 4) that diesels 102 and 103 were about to be reassembled, and immediately wrote by telecopier to LILCO's counsel requesting the right to inspect those diesels while disassembled, as LILCO had promised (a copy of that letter, dated September 22, 1983 is attached as Annex 1 hereto). In a telephone conversation with LILCO's counsel on September 23, the County's counsel learned that diesel 103 would have a new crankshaft installed and the engine block replaced by September 25, and that diesel 102 would be released for reassembly on September 23 or 24. Explaining that the County's chief diesel expert, Professor Christensen, was out of town until September 27, County's counsel requested that LILCO defer reassembly until his return and inspection, and LILCO refused.

Respectfully submitted,

David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788


Herbert H. Brown
Lawrence Coe Lanpher
Alan Roy Dynner
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W.
Washington, D.C. 20036

September 27, 1983

Attorneys for Suffolk County

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 452-7000
CABLE: KIPHI
TELEX 440209 KIPHI UI
WRITER'S DIRECT DIAL NUMBER
202/452-7044

IN PITTSBURGH
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
1600 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 855-6500

September 22, 1983

(By Telecopier)

Anthony F. Earley, Jr., Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Dear Tony:

We received today a copy of LILCO's Diesel Generator Status Report, dated September 21, 1983. I was surprised to note in the report that LILCO expects to begin re-assembling diesel generator 102 today, and that diesel generator 103 was to be released for reassembling on or soon after September 20, 1983.

In LILCO's Response to Suffolk County's Motion to Compel discovery, dated September 12, 1983, LILCO states:

LILCO will give the County access to the disassembled portions of Emergency Diesel Generator 102 and Emergency Diesel Generators 101 and 103 once those engines are disassembled. Such access will be scheduled to avoid interfering with diesel generator activities. (p. 5).

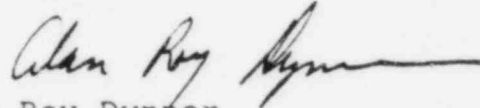
Until we received LILCO's Diesel Generator Status Report today, the County had no information concerning the state of disassembly of the diesels. We assume, in accordance with the position taken in your Response, that you will telephone me so that arrangements can be scheduled for

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

Anthony F. Earley, Jr., Esq.
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the County's representatives to inspect the disassembled diesels prior to the time that reassembly commences.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Alan Roy Dynner", with a long horizontal flourish extending to the right.

Alan Roy Dynner

ARD/dk

cc: Lawrence J. Brenner, Esq.
Dr. George A. Ferguson
Dr. Peter A. Morris
Richard J. Goddard, Esq.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Suffolk County's Report to Board Regarding Motion to Compel Ongoing Discovery Concerning Diesel Crankshaft Failures" were sent on September 27, 1983 by first class mail, except where otherwise noted, to the following:

Lawrence J. Brenner, Esq.*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. George A. Ferguson*
Administrative Judge
Atomic Safety and Licensing Board
School of Engineering
Howard University
2300 6th Street, N.W.
Washington, D.C. 20059

Dr. Peter A. Morris*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

Ralph Shapiro, Esq.
Cammer and Shapiro
9 East 40th Street
New York, New York 10016

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, New York 11801

W. Taylor Reveley III, Esq.**
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

By Hand *
Federal Express **

Mr. Brian McCaffrey
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

David J. Gilmartin, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.*
David A. Repka, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart Diamond
Environment/Energy Writer
NEWSDAY
Long Island, New York 11747

Stephen B. Latham, Esq.
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Mr. Jeff Smith
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

MEB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Hon. Peter Cohalan
Suffolk County Executive
H. Lee Dennison
Building
Veterans Memorial Highway
Hauppauge, New York 11788

Ezra I. Bialik, Esq.
Assistant Attorney General
Environmental Protection Bureau
New York State Department of
Law
2 World Trade Center
New York, New York 10047

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jonathan D. Feinberg, Esq.
Staff Counsel, New York
State Public Service Comm.
3 Rockefeller Plaza
Albany, New York 12223

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Michael S. Miller

Michael S. Miller
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

DATE: September 27, 1983