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RELATED CORRESPONDENCE

LILCO, July 17, 1984

DOCKETED
USNRC
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-OL-4
(Shoreham Nuclear Power Station,) (Low Power)
Unit 1))

LILCO RESPONSES TO
SUFFOLK COUNTY REQUEST FOR CLARIFICATION

LILCO objects to the County's request for additional cross-examination of the LILCO witnesses that appeared during the hearings in this proceeding on April 24-25. The reasons are as follows:

1. Contrary to the County's assertion, cross-examination of LILCO's witnesses had been completed when the hearing was suspended. County counsel, assisted by a technical consultant, had been given the opportunity to examine each of LILCO witnesses. See Tr. 259 (SC has no further questions of Messrs. Rao, Eckert, Dawe and Kascsak); 470 (SC has no further questions of Messrs. Schiffmacher and Gunther); 542 (SC has no further questions of Mr. Museler). The record demonstrates that the County was not "preparing to commence examination of Mr. Museler when the hearing was halted." Request for

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add.
J. Gorn
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Clarification at 1. The County had, in fact, completed its questioning. Tr. 542. Mr. Museler was excused by the Board subject to recall. Tr. 552. Messrs. Rao, Eckert, Dawe and Kascsak were excused not subject to recall, Tr. 262-63, and Messrs. Schiffmacher and Gunther were excused subject to recall on one specific matter.^{1/} Tr. 469, 477. In no instance had the County's cross-examination been curtailed by the Board. Thus, the County had full and fair opportunity to probe the testimony of LILCO's witnesses. The County's suggestion that the Temporary Restraining Order supports their position that further cross-examination is justified is without merit. Indeed, in the face of pleadings filed by LILCO and the NRC demonstrating that a preliminary injunction should not issue, the County dismissed the action. At that time, the NRC had only agreed to hear argument on the matter; it had not revised the schedule.

2. LILCO does not intend to offer any additional testimony from Messrs. Rao, Eckert, Dawe and Kascsak. The County did not seek to depose these or any of LILCO's original witnesses during the re-opened discovery period. And none of the

^{1/} In fact, presentation of and cross-examination on LILCO's case was complete. The only remaining issue was to determine whether LILCO would present an additional witness to clarify some previous testimony. Tr. 579. During a short recess to consider the matter, counsel for LILCO and the County agreed that an additional witness would be unnecessary. That agreement, however, was not communicated to the Board because notice of the temporary restraining order intervened. Tr. 580.

County's consultants have expressed any opinions or the intent to express any opinions on the subject matters addressed by these LILCO witnesses. Thus, the County has shown no good reason to recall them.^{2/} To do so would be burdensome to LILCO. Most notably, Messrs. Rao and Eckert of General Electric would have to travel from California.^{3/}

3. LILCO also does not intend to offer any additional testimony from Mr. Museler. Although he was excused subject to recall, the County has made no specific showing on why he should be recalled. The Board apparently contemplated that there would have to be "some development" to justify recall. See Tr. 552.

4. New York State's support of the County's request lends no weight to the arguments. The suggestion that the State "rightfully did not cross-examine any of the witnesses presented" is patently absurd. The State had ample opportunity to cross-examine LILCO's witnesses and made absolutely no effort to do so. Indeed, counsel for the State chose to leave the proceeding at the luncheon recess on April 24 never to return.

^{2/} The County's vague assertion that the Commission's May 16, 1984, Order injected new matters pertinent to the testimony of LILCO's prior witnesses is insufficient to justify recalling them. In fact, the County can only point to the standard set by the Commission for judging LILCO's application. The standard, however, is for the Board to apply to the facts presented by the witnesses. The County has failed to give any reason to revisit the facts presented April 24-25.

^{3/} At a minimum, if these witnesses are recalled, the County should pay for their travel expenses and the time they are required to be at the hearings.

5. LILCO will offer supplemental testimony sponsored by Messrs. Gunther and Schiffmacher and make these witnesses available for cross-examination. To the extent this supplemental testimony bears upon matters already in evidence, the County will undoubtedly be permitted to cross-examine on it. LILCO will urge the Board, however, to limit cross-examination to new material that could not have been inquired into during the original proceeding.

Conclusion

The County's request for additional cross-examination of LILCO's original low power witness panels is but another in a long line of attempts to delay this proceeding. SC has failed to point to any specific facts or opinions about which it could not have inquired at the April 24-25 hearing. Therefore, for the reasons stated above, cross-examination of LILCO's witnesses should be limited to any new or supplemental testimony submitted on July 16 when the low power proceeding resumes on July 30.

Respectfully submitted,

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DATED: July 17, 1984

LILCO, July 17, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-4
(Low Power)

I hereby certify that copies of LILCO'S RESPONSES TO
SUFFOLK COUNTY REQUEST FOR CLARIFICATION were served this date
upon the following by first-class mail, postage prepaid, or by
telecopier, as indicated by an asterisk:

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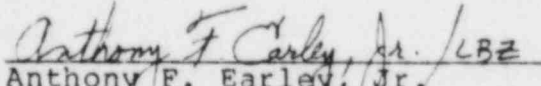
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