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LILCO, June 4, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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)	Docket No. 50-322-OL-3
)	(Emergency Planning Proceeding)
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO'S MOTION TO FILE SURREBUTTAL
TESTIMONY ON PHASE II EMERGENCY
PLANNING CONTENTION 67

Pursuant to 10 C.F.R. § 2.743(a) and this Board's Orders of February 27 and March 16, 1984, LILCO hereby moves to file surrebuttal testimony on Contention 67 for good cause as shown below. The purpose of this surrebuttal testimony is to address a single issue raised for the first time in surrebuttal testimony by Professor Herr on May 8, 1984. In filing this motion, LILCO is mindful of this Board's Order of March 16 which stated that the Board did not expect to entertain written motions to submit rebuttal testimony. However, given the circumstances of the litigation of Contention 67 and the nature of this testimony, it could not have been submitted orally following Professor Herr's surrebuttal testimony,^{1/} LILCO believes that this written motion and the filing

^{1/} Following Professor Herr's testimony, counsel for LILCO expressly reserved the right to file responsive testimony, upon a showing of good cause following review of the census information used by Professor Herr in his surrebuttal testimony. Tr. 8532-33 (Irwin).

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of written surrebuttal testimony is the most expedient means of closing the record on Contention 67.

The testimony on Contention 67 has included direct testimony by LILCO, Suffolk County and the State of New York, rebuttal testimony by LILCO, and surrebuttal testimony by Suffolk County. This testimony and the accompanying procession of witnesses has aided in the focusing and narrowing of issues on the transportation of transit-dependent individuals within the EPZ. For example, the surrebuttal testimony of Professor Herr was limited to two issues: (1) the number of transit-dependent individuals, and more specifically, the distributions of travel times for workers and of commuters not expected to return home, and (2) the two reduction factors used by the New York State witnesses to estimate bus capacities. LILCO's surrebuttal testimony seeks only to address one part of the first of these two issues raised by Professor Herr, namely the distribution of travel times for workers.^{2/} LILCO believes it is important to address this aspect of Professor Herr's testimony since it represents the first time in either his oral or written testimony that Professor Herr has

^{2/} The issues of the distribution of commuters who will not return home and of the New York State witnesses' use of two reduction factors to calculate bus capacities have already been the subject of extensive discussions on cross examination. Further discussion of these issues would be based primarily on factual information that has already been presented. Accordingly, LILCO does not seek to address these issues in its proffered surrebuttal testimony.

suggested that the census data for the distribution of commuting times are substantially different from the data from the NCTR survey. See Tr. 8486 (Herr). The proffered testimony demonstrates that this conclusion is without factual basis. Professor Herr has drawn his conclusion, that travel times are revealed by the census data to be "very much higher" than those reported by LILCO, from a direct comparison of data sets that are different in scope and are reported in terms of different time intervals and are, accordingly, not comparable. If the census data are properly compared to the NCTR data using identical data sets and time intervals, then no statistical distinction can be drawn between the two sets of data; and contrary to Professor Herr's assertions, see Tr. 8483-87, the choice between these sets of data has no effect on the results of the calculation of transit-dependent persons within the EPZ.

In judging the admissibility of rebuttal testimony, this Board has set out a test of "good cause". Board Order of February 28, 1984 at 7. This test has required four showings:

1. The testimony is relevant to an important point in the direct testimony;
2. it is arguably relevant to an issue of decisional importance in this proceeding;
3. it is not cumulative with any other testimony in the record; and
4. it was incapable of being filed in a more timely fashion.

Id. LILCO's proffered surrebuttal testimony meets each of these showings.

First, the proffered testimony is directly relevant to the issue of the number of commuters who will not return home should an evacuation of the EPZ be ordered. As all parties have agreed, non-returning commuters have a direct impact on the number of transit-dependent individuals, and hence, the number of buses required during an evacuation. Professor Herr has testified that the number of transit-dependent persons is "probably more sensitive to [commuter traveling times] than to any other [figure] in the whole analysis." Tr. 8486 (Herr). Thus, the proffered testimony meets the first showing of relevance to an important point in the direct testimony.

Second, if Mr. Herr is correct in his conclusion that the distribution of commuting times is the most sensitive variable in determining the number of transit-dependent persons, then the proffered testimony meets the showing of arguable relevance to an issue of decisional importance in this proceeding.

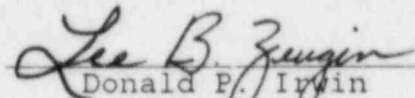
Third, the proffered testimony is not cumulative of any other testimony in the record. The factual evidence presently in the record includes distributions of worker travel times from both the NCTR survey and the census data. However, these distributions are not reported on the basis of the same time intervals, and hence a direct comparison of these data cannot be made. The proffered

testimony places both sets of data in the same terms, thus permitting the type of direct comparison that Professor Herr has attempted to make. Therefore, it is not cumulative of other testimony in the record.

Finally, the proffered testimony could not have been filed at an earlier time. Professor Herr did not express concerns about the accuracy of the distribution of commuting times obtained from the NCTR survey until his surrebuttal testimony. In fact, Professor Herr accepted the NCTR results in the calculations contained in this direct testimony and expressed no doubts about their validity at that time. See, e.g., Direct Testimony of Philip B. Herr and Captain Edwin J. Michel on Contentions 67 and 24.I at 16, Table 6, col. 2. Further, it could not have been foreseen that the census data, which were available at the time direct testimony was filed on Contention 67, would have been used to make the improper comparisons that Professor Herr has made. Indeed, as the proffered testimony demonstrates, the differences between the NCTR survey results and detailed census data on commuting times are not statistically significant. LILCO has filed this testimony as soon as possible following the acquisition of the detailed census information needed to respond to the assertions made by the first time by Professor Herr in his surrebuttal testimony. Accordingly, this testimony could not have been filed at an earlier time.

For the foregoing reasons, LILCO believes that good cause exists for permitting the filing of the attached Surrebuttal Testimony and moves that the Board accepts it.

Respectfully submitted,
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Dated: June 4, 1984