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June 14, 1984

RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUN 21 P4:42

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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BRANCH

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station,)
Unit 1))

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

NRC STAFF RESPONSE TO "LILCO'S MOTION
TO FILE SURREBUTTAL TESTIMONY ON
PHASE II EMERGENCY PLANNING CONTENTION 67"

I. INTRODUCTION

On June 4, 1984, LILCO filed a motion to file surrebuttal testimony in response to surrebuttal testimony presented by Suffolk County's witness, Professor Herr, during the hearing May 8, 1984 on Contention 67 (Evacuation of Persons without Access to Automobiles). Set out below is the NRC staff's response to LILCO's Motion.

II. DISCUSSION

By its Order of February 28, 1984 at page 7, this Board set out the standards by which the appropriateness of rebuttal testimony is to be measured. The Board established a test of "good cause" requiring a showing that the proffered testimony is:

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

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Certified By AW
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The proffered testimony seeks to address a very discrete point in assessing the data base for calculating the number of transit dependent population in the EPZ: that is, whether the distribution of travel times for workers and commuters who will not return home is substantially different if US Census data is used rather than data from the National Center for Telephone Research (NCTR) survey. The number of commuters who will not return home is a function of travel time for workers. This has a direct impact upon the number of persons who will be without access to automobiles and the number of buses that would be required to effect an evacuation of them from the EPZ. The direct testimony dealt with the number of people who will be without access to automobiles in commuter households and the number of buses required for them. The proffered surrebuttal testimony thus appears relevant to the direct testimony and the issues involved in this contention on people without access to automobiles. Thus the first two factors to be considered in applying the "good cause" test seem to be satisfied.

However, with regard to the third factor, the proffered testimony is clearly cumulative to the extent that data from both the US Census and the NCTR survey, along with LILCO's interpretation and analysis of both, is already in the record. In fact, LILCO first raised the issue of the proper interpretation of the census data in its testimony at the hearing on May 3, 1984 (Tr. 8015-8022; 8124-8128; Lieberman). When Suffolk County's witness, Professor Herr, questioned LILCO's analysis in his testimony on May 4, 1984 (Tr. 8223-8230; 8240-8247; 8251-8262; Herr),

LILCO subsequently presented rebuttal testimony on this issue on May 4, 1984 offering further interpretation and analysis of the data from the census, indicating it was confirmatory of the NCTR data. (Tr. 8367-8383; Lieberman).

While the County then presented surrebuttal testimony again questioning LILCO's analysis of the census data on May 8, 1984, a further iteration now of essentially the same information is cumulative and unduly burdens an already exhaustive record on this issue. LILCO should not be given a third opportunity to again compare the two data bases.

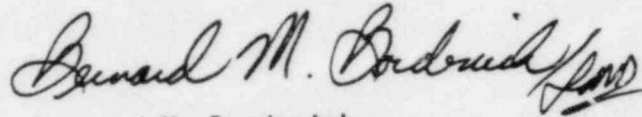
Similarly, LILCO has not shown that this testimony is timely filed in that LILCO was thoroughly capable of presenting its analysis and interpretation of the census data and NCTR data (as it has, in fact), and did not have to await Professor Heir's surrebuttal testimony offering a different interpretation to perform the statistical manipulations presented in the proffered surrebuttal testimony now at hand. Hence, it cannot be said to be timely filed.

III. CONCLUSION

Thus, though the issue of the proper data base to use in calculating the number of commuters who will not return home and hence the number of transit dependent population in the EPZ is relevant to the testimony originally filed on this contention, the continued analysis and re-analysis of essentially the same data is cumulative and untimely and

weighs against admitting the testimony. Therefore, LILCO's motion should be denied and the testimony not admitted.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Bernard M. Bordenick". The signature is written in dark ink and is positioned above the typed name.

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of June, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LILCO'S MOTION TO FILE SURREBUTTAL TESTIMONY ON PHASE II EMERGENCY PLANNING CONTENTION 67" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 14th day of June, 1984.

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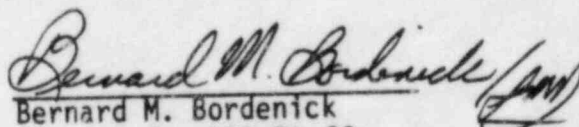
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