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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

In the Matter of	
LONG ISLAND LIGHTING COMPANY	Docket No. 50-322-OL-3 (Emergency Planning Proceeding)
(Shoreham Nuclear Power Station, Unit 1)	June 29, 1984

RESPONSE OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE STATE OF NEW YORK, IN OPPOSITION TO "LILCO'S MOTION TO ADMIT LILCO'S SUPPLEMENTAL TESTIMONY ON CONTENTION 24.R (LETTER OF AGREEMENT WITH CONNECTICUT)"

The State of New York hereby opposes the LILCO motion identified above.

LILCO's motion should be denied for several reasons, the most important of which is that LILCO's proposed supplemental testimony is unduly repetitious. LILCO's motion makes no attempt to show that the proposed supplemental testimony is not cumulative with any other testimony in the record concerning Contention 24.R. LILCO's proposed supplemental testimony, which seeks to discuss the meaning of a letter of June 14, 1984 from the State of Connecticut, merely duplicates the contents of LILCO's direct testimony concerning Contention 24.R.

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The standard of 10 C.F.R. §2.743(c) should be applied to LILCO's motion: "Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted." (Emphasis added). In addition, any other type of proffered evidence, especially evidence that is repetitious or cumulative, may be stricken. 10 C.F.R. §2.757(b). With respect to a showing of "good cause," this Board also has required that the movant adequately show that proffered testimony is "not cumulative with any other testimony in the record." Board order of February 28, 1984 at 7. As shown below, LILCO's motion fails to meet these standards.

Besides the proffered letter of June 14, 1984 from the State of Connecticut, there are three other letters which need to be discussed within the context of testimony in the record concerning Contention 24.R. Mr. Mancuso, of the State of Connecticut's Office of Civil Preparedness, sent the first letter in this matter to the State of New York on December 15, 1983. LILCO incorporated that letter into its testimony concerning Contention 24.R., and labeled that letter "Attachment 28." Dr. Axelrod, on behalf of the State of New York, responded to the statements in the December 15, 1983 letter in a letter of March 30, 1984. The Board received the

March 30, 1984 letter into evidence and labeled it N.Y. Ex. EP-3, ff. Tr. 6598. Incidentally, LILCO inaccurately refers to Dr. Axelrod's letter of March 30, 1984 as "Mr. Davidoff's letter." LILCO motion at 2, line 8. Mr. Mancuso sent the third letter in this matter to the State of New York on April 18, 1984. The April 18, 1984 letter purported to be a response to Dr. Axelrod's letter of March 30, 1984. Despite objections by the State and the County, the Board received the April 18, 1984 letter into evidence and labeled it LILCO Ex. EP-48, ff. Tr. 9945. Now, LILCO proposes to introduce the instant letter of June 14, 1984, along with the accompanying proposed supplemental testimony, into evidence. It must be noted that the June 14, 1984 letter is the fourth letter in this series and merely is a response to a solicitation by LILCO.

LILCO's motion asserts on page 3 that good cause exists for the admission of the June 14, 1984 letter, and the accompanying proposed supplemental testimony, into evidence. However, a thorough analysis of the June 14, 1984 letter, and the accompanying proposed supplemental testimony, reveals that good cause does not exist because the proffered documents are cumulative and repetitious of evidence already in the record.

For example, LILCO's motion asserts that the June 14, 1984 letter stands for the following proposition:

> [T]he State of Connecticut has agreed to implement protective actions for the portion of the Shoreham 50-mile ingestion exposure pathway EPZ within Connecticut.

LILCO motion at 3, lines 6-8.

Interestingly, LILCO's motion also asserts that the December 15, 1983 letter stands for the same proposition:

> [T]he State of Connecticut has agreed to assume responsibility for implementing protective actions for the portion of the Shoreham 50-mile ingestion exposure pathway EPZ within Connecticut.

LILCO motion at 1, last 4 lines. LILCO's proposed supplemental testimony at 2, lines 17-20, is in accord.

A comparison of the letter of June 14, 1984 to the letter of December 15, 1983 reveals that the letters are duplicative. The substance of the June 14, 1984 letter is in the third paragraph. That paragraph conveys the same message as the second sentence of the second paragraph, and the first sentence of the third paragraph, of the December 15, 1983 letter.

Such repetition is not surprising since LILCO wrote to the State of Connecticut to "confirm" LILCO's understanding of the December 15, 1983 letter. LILCO motion at 2, lines 12-14; LILCO

proposed supplemental testimony at 3, lines 1-3. The letter which Mr. Renz wrote to Mr. Mancuso to solicit such a "confirmation" even states:

> Although I believe your letter of December 15, 1984 [sic] states this position clearly, I would be grateful if you would send us a letter reconfirming this information.

(Emphasis added); LILCO proposed supplemental testimony, att. 1, at 2, lines 3-6. Clearly, LILCO solicited and received a repetition of the December 15, 1983 letter.

When the Board explained the basis of its ruling concerning the admission of the April 18, 1984 letter, the Board cited the fact that the letter was written in response to Dr. Axelrod's letter of March 30, 1984. Tr. 10,028, lines 1-3 and lines 23-25. It should be noted that that circumstance does not pertain to the case of the June 14, 1984 letter. The June 14, 1984 letter does not respond to material already in evidence; it only responds to a solicitation by LILCO.

In addition, the Board stated that the reason for admitting the April 18, 1984 letter was "to complete the record." (Emphasis added); Tr. 10,027, lines 19, 20. LILCO's motion is inconsistent with the Board's ruling. The State submits that

once the record is deemed to be complete, the record should be complete. No further "reconfirming" letters should be entertained by the Board.

LILCO's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the RESPONSE OF GOVERNOR MARIO M. CUOMO, REPRESENTING THE STATE OF NEW YORK, IN OPPOSITION TO "LILCO'S MOTION TO ADMIT LILCO'S SUPPLEMENTAL TESTIMONY ON CONTENTION 24.R (LETTER OF AGREEMENT WITH CONNECTICUT)" has been served to each of the following this 29th day of June 1984 by U. S. Mail, first class, except as otherwise noted:

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