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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

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

SUFFOLK COUNTY MOTION FOR STAY  
OF EMERGENCY PLANNING HEARINGS IN  
LIGHT OF LILCO'S SUBMISSION OF  
REVISION 4 OF LILCO TRANSITION PLAN

On July 3, 1984, counsel for Suffolk County received one copy of Revision 4 of the LILCO Transition Plan. Accompanying the Revision was a letter, dated June 29, 1984, from LILCO Vice President John D. Leonard, Jr. to Harold R. Denton, requesting that the NRC Staff ask FEMA to review Revision 4, and noting that copies of Revision 4 had been sent by LILCO directly to members of the FEMA Regional Assistance Committee ("RAC").

Suffolk County hereby renews its Motion for Stay of Emergency Planning Hearings, which was filed on May 29, 1984, and was denied by the Board as "speculative" on May 31, 1984. Tr. 9373. For the reasons set forth below, Suffolk County submits that an immediate stay of these proceedings is the only reasonable course of action.

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1. LILCO's Submission of Revision 4 Requires a Review of Admitted Contentions and Pre-filed Testimony to Determine Whether and How They Should Be Revised.

The County has not yet had an opportunity to review in any detail the contents of Revision 4, since it was just received. However, even a brief and cursory review of the document and of LILCO's July 5 requests to withdraw, revise and supplement its prefiled testimony reveal that the changes contained therein are relevant to several of the issues that have already been litigated as well as some of those that have not yet come up in the hearings. For example, Revision 4 contains provisions for the participation of the Suffolk County Police Department in traffic control functions contemplated in the LILCO Plan. See Revision 4, OPIP 3.6.3, Attachment 14, and Plan at 3.6-6. Clearly, this completely new LILCO proposal, that is contrary to every other version of the Plan and contrary to all the previously filed testimony in this proceeding, must be reviewed and analyzed so that its impact upon the existing contentions and previously filed testimony concerning LILCO's proposed methods of traffic control can be evaluated and appropriately addressed.

Revision 4 also appears to contain much new information concerning proposed methods of deriving and making protective action recommendations and the assignment of responsibilities relating to such recommendations. Although no final determination can be made until all of Revision 4 has been reviewed in depth, it appears that the addition of a totally new procedure

(OPIP 3.10.2 -- "Total Population Dose") as well as other Plan revisions concerning the means and procedures relating to protective action recommendations (see e.g., OPIPs 3.6.1, 3.5.1, 3.5.2) could have a substantial impact upon the issues addressed in Contentions 60, 61, 63, and 69-73.

Furthermore, as noted by LILCO's counsel in the cover letter transmitting Revision 4 to the Board, the new version of LILCO's Plan includes substantial changes concerning relocation centers. Although LILCO recently submitted supplemental testimony on Contentions 74 and 75 that identified different relocation centers from those identified in Revision 3, the newly released Revision 4 contains much additional information, beyond that set forth in LILCO's supplemental testimony, concerning how the new and old relocation centers will be operated, what will be done at different types of relocation centers, and who will perform such functions. In addition, LILCO's counsel states in footnote 1 of the July 2 letter to the Board, that additional Plan revisions, potentially including more changes in the identities of relocation centers, may be forthcoming. The impact of the changes in Revision 4 upon the admitted contentions and filed testimony cannot be determined without a thorough review of Revision 4. Clearly, it is impossible to determine the impact of any additional future revisions.

Similarly, Revision 4 appears to contain much additional and/or revised information concerning LILCO's proposed protective

actions for the ingestion pathway, and recovery and reentry procedures. The full impact upon the contentions and the testimony related to those subjects cannot be determined without a complete review and analysis of Revision 4. It is significant, however, that the County received on July 5 LILCO Motions to admit supplemental and revised testimony on Contentions 85 and 88 (dealing with recovery and reentry procedures). The need for the proposed LILCO supplemental and revised testimony is based solely upon the changed contents of the Plan as reflected in Revision 4, which make LILCO's prefiled testimony "no longer . . . an accurate representation of the recovery and reentry provisions of the LILCO Plan." LILCO's Motion to Admit LILCO's Revised Testimony on Contention 88 (Dose Criteria and Cost Benefit Analysis for Reentry) at 3.

The four examples listed above are not intended to be a comprehensive listing of the matters at issue in this proceeding that are affected by Revision 4. At this point, Suffolk County is simply unable to provide such a listing since a thorough review and analysis of Revision 4 has not yet been possible. Indeed, such a review would require a substantial amount of time, given the volume of Revision 4. It is clear, nonetheless, that the contents of Revision 4 may have a substantial impact upon many of the contentions and much of the testimony that are involved in this proceeding. In the County's view, the only logical course of action at this point is to stay the proceedings

for a short time to permit the Board and the parties to determine the actual extent of such impact and to modify the schedule accordingly. The County believes there should be a period for review of Revision 4, followed by the parties' identification of the particular contentions and testimony that need to be revised or supplemented in light of Revision 4, followed by the setting of a schedule for the submission of such revised or supplemental contentions and testimony. It makes no sense to proceed with litigation of potentially inaccurate or obsolete contentions and testimony without first determining that such litigation would in fact be relevant, probative or material to the decision to be made by the Board.

2. It is Senseless to Cross-Examine the  
FEMA Witnesses Concerning their  
Opinions on Revision 3 of the LILCO  
Plan.

The FEMA witnesses are scheduled to be cross-examined during the week of July 10 on their prefiled testimony dated April 18, 1984. The FEMA testimony, which addresses many of the contentions at issue in this proceeding, is based upon the February 10, 1984 RAC Report which sets forth the RAC's evaluation of Revision 3 of the LILCO Plan. It is clear that the conclusions of the RAC and the opinions of the FEMA witnesses who are scheduled to testify in this proceeding, are, at least in some measure, about to become obsolete, since LILCO has now requested that the RAC perform a review of its new Revision 4.

The changes in Revision 4 are described by LILCO as being designed to respond to the comments of the RAC as set forth in the report on its review of Revision 3.<sup>\*/</sup> Thus, in the July 2, 1984 letter to the Board LILCO's counsel states:

Revision 4 has been designed to respond solely to the comments of the RAC from [sic] its review of Revision 3 to the LILCO Transition Plan. Specifically, Revision 4 contains changes that address the 32 inadequacies identified in the RAC's review and the 17 items that were graded adequate by the RAC provided certain revisions were made to the Plan and Procedures. . . .

In general, the Revision 4 changes add more detail to the Plan and Procedures in response to the RAC review.

LILCO apparently believes that the contents of its Revision 4 will change the RAC's evaluation of the LILCO Plan. Indeed, LILCO has formally requested that a new RAC review be performed, apparently so that the changed or modified RAC evaluation can be issued by FEMA and, presumably, submitted to this Board. Whether LILCO's beliefs concerning the effect of Revision 4 upon the RAC's evaluation of the LILCO Plan are correct cannot be determined at this time. However, it is obvious that it makes no sense to proceed with cross-examination of the FEMA witnesses concerning their current opinions and conclusions, as well as those contained in the RAC Report which is attached to their testimony, all of which are based solely on the contents of the now obsolete Revision 3 of the LILCO Plan.

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<sup>\*/</sup> This RAC Report is an attachment to and the basis of the FEMA witnesses' testimony.



Accordingly, Suffolk County submits that the scheduled cross-examination of the FEMA witness panel concerning their testimony and the RAC Report, based on Revision 3 of the LILCO Plan, be stayed pending the release by FEMA of its evaluation of Revision 4 of the LILCO Plan and the submission of amended or revised FEMA testimony concerning such review. To do otherwise would constitute an unjustified waste of resources by all parties and the Board.

3. In Light of the County's Need for Additional Discovery of FEMA, Cross-Examination of the FEMA Witnesses Could Not Go Forward on July 10 in Any Event.

In a separate pleading filed today, Suffolk County has requested a Board order compelling the production of documents by FEMA and the issuance of subpoenas for the deposition of RAC members, because the depositions of FEMA's designated witnesses did not provide the discovery concerning the bases for the RAC Report and the FEMA testimony to which both this Board and the Appeal Board recognized the County was entitled. The content of that pleading will not be repeated here; it is sufficient to note that a ruling on the County's motion and the necessary discovery could not be obtained or conducted prior to the scheduled July 10 cross-examination of the FEMA witnesses.\*

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\*/ Because, according to FEMA's counsel, the FEMA depositions could not be conducted on any dates except June 27 and 29, and the deposition transcripts were not available until early this week which included the July 4 holiday, the County's FEMA motion could not have been filed any earlier.

Furthermore, it is likely that further discovery will be necessary concerning the RAC findings following the RAC review of Revision 4 to the LILCO Plan, and concerning whatever supplemental or revised FEMA testimony may be submitted with respect to Revision 4. At the time of the FEMA depositions last week, none of the FEMA witnesses had received or reviewed Revision 4 of the LILCO Plan.

Finally, FEMA apparently intends to submit testimony concerning training issues at some point in August. At the time of the depositions of the FEMA witnesses, however, none of those witnesses had yet begun any review of LILCO's training materials, and in fact had been instructed not to begin any such review until after their cross-examination during the week of July 10. See Kowieski deposition transcript, at 109. Thus, the County was unable to conduct any discovery concerning the opinions of the FEMA witnesses concerning LILCO's training program. Such discovery would be necessary prior to the County's conducting its cross-examination of any testimony on training issues which may ultimately be submitted by FEMA. See letter to Board dated June 28 regarding "Ground Rules for FEMA Witnesses."

Clearly, it makes sense to complete all necessary discovery of FEMA concerning all issues as to which the FEMA witnesses will testify, at one time. The County has the right to conduct such discovery prior to its cross-examination of those witnesses. A stay of the emergency planning hearings would permit the necessary discovery to be conducted in an orderly and logical fashion



and would eliminate the need for duplicative and wasteful appearances of witnesses for depositions and for cross-examination.

4. Conclusion

The contentions upon which this litigation is based, all the testimony submitted to date by all parties, and the RAC Report which, under 10 CFR § 50.47(a)(2) constitutes an important ingredient for judging the adequacy of LILCO's Plan, are all based upon Revision 3 of the LILCO Plan. Portions of that Revision have now been rendered obsolete by LILCO's issuance of Revision 4. Should this Board determine that it will consider in its licensing decision either LILCO's new version of its Plan -- i.e., Revision 4 -- or any FEMA review of that Revision as has been requested by LILCO, Intervenors are entitled to a hearing on the adequacy of Revision 4, with an opportunity to submit and challenge evidence concerning its adequacy. Should the Board determine that it will consider Revision 4 or a RAC review on Revision 4, the parties must have an opportunity to review that document and then to submit whatever revisions to contentions and/or testimony are appropriate in light of the changed contents of the Plan now proposed by LILCO to be the basis for the issuance of a license. Such a review, and the preparation and submission of contentions or testimony will take some time, and those tasks cannot be performed while the parties are in hearings. Additionally, it makes no sense to conduct cross-examination of the FEMA witnesses concerning their

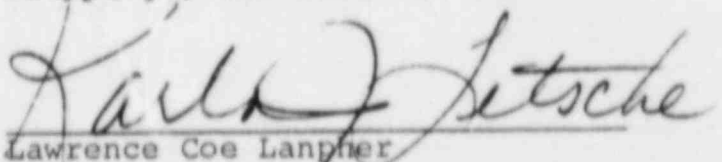
conclusions and the RAC Report which are based upon Revision 3 of the Plan, when LILCO has now requested that FEMA perform a review of Revision 4 that, presumably, would result in FEMA findings that would supercede the Revision 3 findings.

For all the above reasons, therefore, as well as those set forth in the May 29, 1984 Suffolk County Motion for Stay of Emergency Planning Hearings, a copy of which is attached hereto for convenience, the County submits that these proceedings should be stayed until such time as the parties have had an opportunity to review the contents of Revision 4, and contentions and testimony have been modified or supplemented as necessary.

The County believes this matter requires prompt resolution, since all parties, their counsel and witnesses, need to know what will be happening next week. Accordingly, the County proposes that a conference call be scheduled as soon as possible to discuss the matter.

Respectfully submitted,

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Dated: July 6, 1984

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5/29/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

SUFFOLK COUNTY MOTION FOR STAY  
OF EMERGENCY PLANNING HEARINGS

Suffolk County learned on May 23, 1984 that LILCO intends to issue a new version of the LILCO Transition Plan -- Revision 4 -- sometime in the near future.<sup>1/</sup> Among other things, this Revision is apparently intended to address the 32 deficiencies identified in the FEMA RAC Report (other than LILCO's lack of legal authority to implement the Plan, which was also identified by FEMA). Based on the speculation and predictions contained both in LILCO's prefiled written testimony and oral testimony on cross examination to date, it is clear that Revision 4 of the LILCO Plan likely will also contain many other substantive changes, additions, deletions, and modifications.

As the Board is aware, the hearing that is currently in progress is based upon prefiled testimony -- and contentions -- that deal with the proposals contained in Revision 3 of the LILCO

<sup>1/</sup> There has been no precise date announced, but according to a statement by LILCO counsel Mr. Irwin on May 23, Revision 4 will be issued "within a few weeks."

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Plan. In addition, the FEMA RAC Report, upon which the FEMA testimony and FEMA findings to be used by the Board under 10 C.F.R. § 50.47(a)(2) are based, is also based upon Revision 3 of the LILCO Plan.

Under the current schedule, the Board and parties are about to continue hearings on Revision 3. When LILCO issues Revision 4 and if this Board decides to consider that document in this proceeding, the hearings potentially will be pointless, or, at a minimum, will be in need of supplementation. These hearings will be dealing with a document -- Revision 3 -- that is about to be withdrawn by LILCO, and that contains proposals that are about to be changed; LILCO's action in revising its Plan will, in fact, render obsolete, inaccurate, and/or incomplete many of the contentions upon which this entire proceeding is premised.

Clearly, contentions as well as testimony will have to be revised, supplemented, and modified following the appearance of LILCO's changed Plan. And, after Revision 4 appears, the issues that already have been heard concerning the Revision 3 version of the Plan may have to be reopened, and new hearings may have to be conducted upon revised and supplemental testimony, in order for the record to reflect the facts as they pertain to the proposals in Revision 4, rather than those in either Revision 3 or the speculation contained in LILCO's testimony.

Under the Atomic Energy Act and NRC regulations, if the Board intends to base its licensing decision on Revision 4 of the LILCO Plan, intervenors are entitled to a hearing on its ade-

quacy, with an opportunity to submit and challenge evidence on that subject. See Union of Concerned Scientists v. NRC, No. 82-2053, May 25, 1984, (D.C. Cir.) (slip op.).

In the County's view, the Board has only two options. On the one hand, it can decide now that it will not consider either LILCO's new version of its Plan (Revision 4), or any FEMA review of that Revision, but instead will base its licensing decision on Revision 3.<sup>2/</sup> If such a determination were made, the hearings could continue since the prefiled testimony and admitted contentions addressed in that testimony all deal with Revision 3.

On the other hand, the Board could determine that it will accept Revision 4 of the Plan when submitted by LILCO, and will consider that Revision in its licensing decision. Presumably, such a determination would also mean that the Board would consider FEMA findings relating to Revision 4 rather than, or in addition to, those relating to Revision 3. If the Board determines to consider Revision 4, then the proceedings should be stayed.

Suffolk County requests that if the Board determines that it will consider the forthcoming Revision 4, it should immediately stay the hearings on LILCO's Plan, pending (1) the issuance by LILCO of its Revision 4, and (2) the setting of an appropriate schedule for the submission of revised contentions and testimony,

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<sup>2/</sup> Such a decision would be inconsistent with the Board's rulings on Suffolk County's motions to strike LILCO testimony that purported to address unidentified "future revisions" or other speculation about Plan additions or modifications that may be made to change Revision 3.

as appropriate, given the contents of Revision 4. In addition, in the County's view, the Board must make the determination as to whether it intends to consider Revision 4 now. It would be an exercise in futility to proceed blindly with the scheduled hearings on a document that is about to be withdrawn by the Applicant, in the face of LILCO's stated intention to submit in the near future a new and different version of its Plan to FEMA for review and to the NRC and this Board for licensing. There are no provisions in the NRC regulations for the conduct of hearings on an emergency plan that is not part of the license application. Furthermore, a continuation of the hearings would be a useless waste of the parties' resources, and would only result in more issues that would have to be reopened later. Suffolk County would be severely prejudiced if it were required to expend its resources and those of its consultants twice, rather than once. Accordingly, the County submits that the current hearings should be stopped -- until such time as LILCO's Revision 4 has been made available to everyone, and contentions and testimony have been modified or supplemented as necessary.

Suffolk County submits that an immediate stay of the proceedings is the only appropriate response to LILCO's announced intention to submit a new version of its Plan to this Board and to FEMA.



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DATED: May 29, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| In the Matter of                 | ) |                          |
|                                  | ) |                          |
| LONG ISLAND LIGHTING COMPANY     | ) | Docket No. 50-322 (O.L.) |
|                                  | ) | (Emergency Planning)     |
| (Shoreham Nuclear Power Station, | ) |                          |
| Unit 1)                          | ) |                          |

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Motion for Stay of Emergency Planning Hearings in Light of LILCO's Submission of Revision 4 of LILCO Transition Plan have been served on the following this 6th day of July 1984, by U.S. mail, first class, except as otherwise noted:

- |                                                                                                                                     |                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
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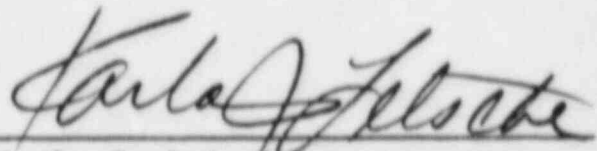
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