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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)
(Shoreham Nuclear Power Station,)
Unit 1))

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

NRC STAFF RESPONSE TO "LILCO'S MOTION
TO ADMIT LILCO'S SUPPLEMENTAL TESTIMONY ON
CONTENTION 24.R (LETTER OF AGREEMENT WITH CONNECTICUT)"

I. INTRODUCTION

On June 20, 1984, Long Island Lighting Company (LILCO) filed a motion to admit further supplemental testimony on Contention 24.R regarding a letter of agreement with the State of Connecticut.^{1/} For the reasons set out below, the NRC staff supports LILCO's motion.

II. BACKGROUND

The events leading to LILCO's motion to admit supplemental testimony may be summarized as follows:

^{1/} "LILCO's Motion to Admit LILCO's Supplemental Testimony on Contention 24.R" (Letter of Agreement with Connecticut).

DESIGNATED ORIGINAL

Certified By [Signature]

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LILCO on March 2, 1984, prefiled written testimony on Contention 24.R which included, inter alia, a letter attachment dated December 15, 1984 from Mr. Frank Mancuso, State Director of the Office of Civil Preparedness in Connecticut to Dr. Don DeVito, New York State Director of the Office of Disaster Preparedness. This letter set forth the State of Connecticut's apparent willingness to provide support and radiological assistance in that part of the 50 mile ingestion pathway which lies within the State of Connecticut in the event of a radiological emergency at Shoreham. (Tr. April 6, 1984, Vol. II, Attachment 28).

Subsequently, during cross-examination of the LILCO panel on April 24, 1984 by New York State, the State offered in evidence a letter dated March 30, 1984 to Mr. Mancuso from Dr. David Axelrod, Commissioner of Health and Chairman of the New York State Disaster Preparedness Commission. Dr. Axelrod's letter responded to the December 15, 1983 letter from Mr. Mancuso. This letter disavowed any "agreement" between New York State and the State of Connecticut to "exchange information in the event of a nuclear accident at Shoreham." (New York State Ex. 3, ff. Tr. 6598). The Board received this second letter in evidence on April 24, 1984, Tr. 6598.

Following the introduction of New York Ex. 3 in the record, and in response to a discovery request by LILCO to New York State, a further (third) letter from Mr. Mancuso to Dr. Axelrod, dated April 18, 1984, responding to the March 30, 1984 letter and clarifying the December 15 letter, stated that while there is no "agreement" between New York State and Connecticut with regard to the Shoreham Nuclear Power Station, the

State of Connecticut was, nonetheless, "meeting the requirements of NUREG-0654 FEMA REP-1." The letter, pursuant to a motion filed by LILCO,^{2/} was received in evidence by the Board on June 5, 1984, Tr. 9945. (LILCO Ex. EP-48, ff. Tr. 9945).

LILCO now seeks admission of a further (fourth) letter from Mr. Frank Mancuso, State Director of the Office of Civil Preparedness in the State of Connecticut. This fourth letter dated May 22, 1984, is addressed directly to William Renz, Offsite Emergency Preparedness Coordinator for LILCO. The letter sets forth the State of Connecticut's commitment to "institute existing emergency plans and resources to protect the health and safety of the residents of Connecticut" whether notified "by LILCO or any other competent source."

III. DISCUSSION

The standard that has been applied in this proceeding for determining whether to admit supplemental or rebuttal testimony, is one of "good cause" as defined by a Board Order of February 28, 1984 at p. 7.

The letter which LILCO now seeks to admit as supplemental testimony is an explicit statement by the State of Connecticut, addressed to LILCO, that Connecticut will implement protective actions in that part of the

^{2/} LILCO's Motion to Submit Supplemental Exhibit or to Strike New York Ex. 3, May 22, 1984.

50 mile ingestion pathway EPZ within Connecticut in the event of a radiological emergency at the Shoreham Nuclear Power Station.

Thus, the letter is material, probative and relevant to the issue addressed in Contention 24.R.^{3/} Further, while the previous letters admitted in the record constitute correspondence between New York State and the State of Connecticut, the letter LILCO now seeks to add to the record is a letter from the State of Connecticut to LILCO which unequivocally clarifies the position of the State of Connecticut and states what actions Connecticut will take in response to an accident with specific regard to the Shoreham plant. Hence, it is not cumulative to the other letters already admitted as testimony regarding the contention in question.

Additionally, it is clear that LILCO had no knowledge of the correspondence between Dr. Axelrod and Mr. Mancuso repudiating the December 15, 1983 letter prior to the entry of New York Ex. 3 into the record on April 24, 1984 and the New York State response to LILCO's

3/ Contention 24.R states as follows:

The ingestion pathway EPZ includes portions of the State of Connecticut. LILCO has no agreement with the State of Connecticut under which the State agrees to plan for, recommend or implement protective actions for the portions of the ingestion exposure pathway EPZ that are in Connecticut. In the absence of such agreement, protective actions for the entire ingestion exposure pathway EPZ cannot and will not be implemented. Thus, there can be no finding of compliance with 10 C.F.R. 50.47(c)(2).

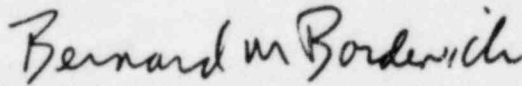
discovery request on May 17, 1984.^{4/} As the proposed supplemental testimony attached to LILCO's recent motion shows, LILCO moved promptly to clarify any ambiguity in these letters by contacting the State of Connecticut directly and promptly submitting its proposed supplemental testimony.

No party will be prejudiced by the admission of this additional exhibit since LILCO is also providing as a witness, Mr. William Renz, a principal in the exchange of correspondence between LILCO and the State of Connecticut, so that the parties may cross-examine him regarding the June 14, 1984 letter.

IV. CONCLUSION

For the reasons discussed above, the NRC staff supports LILCO's Motion to admit supplemental testimony. LILCO has demonstrated good cause for admission of the testimony in question.

Respectfully submitted,



Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of July, 1984

^{4/} LILCO Motion, supra May 22, 1984, at p. 2.

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LONG ISLAND LIGHTING COMPANY

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Unit 1)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO 'LILCO'S MOTION TO ADMIT LILCO'S SUPPLEMENTAL TESTIMONY ON CONTENTION 24.R (LETTER OF AGREEMENT WITH CONNECTICUT)'" 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 2nd day of July, 1984:

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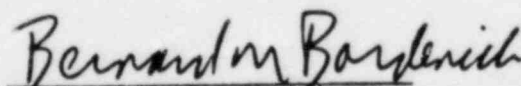
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