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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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OFFICE OF THE SECRETARY
NUCLEAR REGULATORY COMMISSION

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

SUFFOLK COUNTY'S NOTICE TO BOARD
REGARDING SCHEDULE FOR HEARING THE STRIKE ISSUES

On July 10, 1984, LILCO's union employees, who comprise the substantial majority of all LERO personnel, initiated a strike and withdrew from LERO. The strike has not yet been settled. After seeking the parties' views of the implications of the strike on LILCO's ability to implement its emergency response plan,^{1/} the Board on July 24, 1984 issued a Memorandum And Order Determining That A Serious Safety Matter Exists (hereinafter, "Memorandum And Order"). The Board acknowledged in its Memorandum and Order that the current strike, as well as the LERO workers' ability to strike in the future, raised "a serious question affecting the public health and safety." Id., at 3. Thus, the Board admitted sua sponte the following three issues:

^{1/} A discussion of the matter took place on July 19, 1984 during the course of the hearings.

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1. Whether LILCO's ability to implement its offsite emergency preparedness plan would be impaired by a strike involving the majority of its LERO workers.
2. Whether LILCO should be required to place the reactor in cold shutdown in the event of a strike by LERO workers.
3. Whether placing the reactor in cold shutdown during a strike by LERO workers, after the reactor has operated at full power, would give "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."

The Board's Memorandum and Order establishes a schedule which gives the parties three weeks (from July 24 to August 14) to conduct all discovery, with the parties expected to give "an oral report on the status of this matter" on August 14. Id., at 3. The schedule further calls for the strike issues to be heard during the hearing week commencing on August 28, 1984. Id., at 4. Pursuant to the Board's Memorandum and Order, each party's

direct case will be presented orally through its witnesses, rather than by the usual NRC practice of submitting written testimony. Id.

The County fully supports the Board's decision to hear the three strike issues it has raised. Quite clearly, the LILCO strike and the right of LERO personnel to strike in the future highlights even further LILCO's inability to implement its emergency plan. Indeed, the strike issues go to the heart of one of the key questions underlying this litigation -- this is, whether a private organization can command, control and implement an emergency response that can protect the public health and safety. NRC regulations (see, e.g., 10 CFR §§2.714, 2.718, 2.743 and 2.760a) and fundamental fairness require a full and true airing of the facts underlying these issues. Accordingly, each party must be given an adequate opportunity to discover, develop, and present those facts to the Board. Only then can the Board attempt to determine whether the "reasonable assurance" standard of 10 CFR §50.47(a) has been met.

In light of the importance of these issues to the Board's decision-making process, the County wishes to bring to the Board's attention the existence of circumstances which may deny the parties their right to a full and fair hearing of the issues and which may preclude the development of a useful record under the Board's current schedule. The issues raised by the Board in

its Memorandum and Order are not simplistic and have not previously been focused upon by the Board or the parties. The facts to be developed and the expertise required to present the County's case span a wide range of disciplines. By its Memorandum and Order, the Board has effectively established a three-week period (July 24-August 14) within which the parties must locate and obtain expert witnesses, conduct discovery, and develop a direct case. The Board has also established a schedule for hearing the strike issues, commencing on August 28, without consulting the parties. The County may be unable to comply with this schedule for several reasons.

First, since the issuance of the Board's Memorandum and Order on July 24, the County has undertaken a diligent search for experts. Of course, this search could not have commenced prior to July 24 since the parties had no notice of the Board's intentions or the issues it intended to admit prior to that date.^{2/} Obviously, the task of locating and obtaining experts is not one that can be accomplished instantaneously. Rather, substantial time and effort are required. This is especially true since the Board has scheduled discovery and the hearing of the strike issues for the middle of summer, when many people are unreachable or have made plans to be out of town. The County has already

^{2/} The County is not criticizing the Board for any lack of notice since the decision to raise strike issues was fostered by very recent events. The County is merely noting that under the circumstances, it could not have commenced its search for witnesses prior to the Board's July 24 ruling.

experienced extreme difficulty in attempting to reach some of its experts and potential witnesses who left for vacation without notice of the Board's intentions to hear the strike issues. Thus, the County cannot guarantee that it will be able to obtain its witnesses and make them available for discovery by August 14.

In addition, even if the County were able to obtain witnesses immediately, it is questionable whether the County could develop its case properly in the short amount of time allotted by the Board. As mentioned earlier, locating expert witnesses takes time and the unique nature of the strike issues makes it necessary for the County to seek some experts who have not previously appeared before this Board. It is not simply a matter of recontacting former witnesses. Moreover, once the witnesses have been obtained, they must be brought up to date with the facts, given time to develop opinions, and made available for deposition -- again, all within the three weeks allotted by the Board. Circumstances would appear to indicate that the Board's expectations in this regard are unrealistic. Some of the County's experts made commitments prior to last week's Memorandum and Order which bar them from devoting substantial time to case preparation and discovery within the next three weeks. Likewise, counsel for the County themselves made non-Shoreham-related commitments prior to the Board's ruling of last week, and in reliance on adherence to the usual schedule, which must be honored. Even more compelling, however, is the fact that the three-week period of July 24-August

14 is concurrent with a scheduled break between trial sessions in the ongoing emergency planning proceeding.^{3/} As this Board knows, such breaks from trial invariably require counsel for the parties to this proceeding to prepare pleadings, testimony and cross-examination for the next trial session. This break has been no exception. Indeed, prior to the issuance of the Board's Memorandum and Order, the emergency planning hearing schedule had already placed heavy demands upon the time of the County's counsel over the very three-week period during which the County is expected to prepare its case on the strike issues. For example, items already on the agenda which require County counsel's attention over the three-week break include:

1. Review of Revision 4 of the LILCO Plan to evaluate its impact on contentions and previously-filed contentions;
2. Preparation of the County's Offer of Proof and Motion For Reconsideration of the Board's Order Limiting the County's Cross-Examination of the FEMA panel (scheduled Tr. 13,069);
3. Preparation of the County's testimony on Contention 16.E (scheduled Tr. 13,028-32);

^{3/} The County recognizes that the break was extended by one week due to the shortening of July's trial session by one week. Nevertheless, the extra week had to be devoted to the review of Revision 4 of the LILCO Plan which was issued without adequate notice to the parties on July 3 -- one week before the resumption of trial -- and which could not be reviewed by counsel during the course of the trial. Thus, counsel for the County could not begin review of Revision 4 (a document of approximately 800 pages) until last week.

4. Revision of the County's testimony on Contentions 85 and 88 and modification of Contention 88 to reflect Revision 4 of the LILCO Plan, including preparation of the County's Motion to admit such testimony and the proposed modified Contention (scheduled Tr. 13,310);
5. Review of LILCO's new testimony on relocation centers (scheduled Tr. 12,829-34);
6. Deposition of LILCO's new witness on the relocation center issues;
7. Review of the FEMA training testimony to be received on August 6 (scheduled Tr. 13,028-32);
8. Deposition of the four FEMA witnesses on their training testimony (scheduled Tr. 13,028-32);
9. Development among parties of a joint agreement on the scheduling of remaining emergency planning issues (scheduled Tr. 13,819);
10. Discussions among the parties about, and development of, a joint table of contents for the parties' findings briefs (scheduled Tr. 13,816);
11. Preparation for cross examination of the FEMA witnesses, presently scheduled to commence on August 14;
12. Preparation of cross-examination plans for the FEMA panel;
13. Preparation of oral motions to strike LILCO's Contention 16.E testimony;
14. Preparation of the County's witnesses on Contention 16.E for cross-examination; and,

15. Preparation for cross-examination of the LILCO witnesses on Contention 16.E, now scheduled for August 14.

The County is also engaged in an appeal to the Appeal Board of this Board's July 10 oral Order denying, inter alia, the production of certain FEMA documents. That action necessitated the filing of one brief last week. Further, pursuant to the Appeal Board's July 27 Order, the County must prepare and file an additional brief tomorrow.

The Board should also recognize that the two weeks between August 14 and August 28 afford the County little or no opportunity to prepare its case on the strike issues. As the Board knows, the emergency planning hearings resume on August 14. At this time, it appears that the trial of the contentions presently remaining before the Board will take the full two weeks from August 14-August 28. The only counsel for the County who are knowledgeable about and available to participate in that hearing will thus be unable to devote any meaningful time to preparation of the County's case on the strike issues.^{4/}

^{4/} The Shoreham litigation presently involves three trials before three separate panels of the Atomic Safety and Licensing Board. Besides the instant proceeding, attorneys for the County are currently appearing before the Miller Board on the low power issue (trial began on July 30, 1984) and before the Brenner Board on the diesel issues (testimony was filed today with trial scheduled to commence on September 5, 1984). In addition, there are related actions pending in both state and federal courts. As the County has already informed the Board on the record, the extent and intensity of the present litigation precludes assignment of more attorneys to represent the County before this Board on the emergency planning issues.

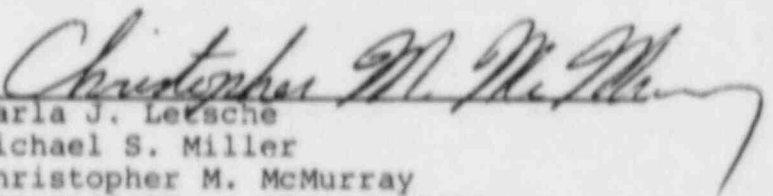
Finally, by establishing an August 28 hearing date (now only four weeks away) without prior consultation with the parties, the Board has put the County in a difficult position. The hearing week chosen by the Board immediately precedes the Labor Day weekend. Some of the County's experts have made unbreakable professional and/or personal commitments for that week. Indeed, at least two of the County's experts have indicated that while they can provide useful testimony on the strike issues, they have made previous professional commitments which make their appearance during the week of August 28 impossible. Other witnesses have indicated that personal plans made prior to last week's Memorandum and Order also preclude their attendance during the August 28 week. In short, it appears that the Board has established a schedule under which the County may be precluded from presenting an effective case.

All of the above circumstances lead the County to conclude that the schedule established by the Board may be too rigorous for the parties to meet and that a truly full and fair hearing of the important safety matters recognized by the Board may require a more realistic schedule. The requirements of due process should not be subordinated to any desire to finish these hearings by an arbitrary date, such as August 31.

The County will continue to keep the Board advised on the circumstances surrounding the strike issues and the County's ability to prepare and present its case as the County becomes aware of any relevant information not made known to the Board in this Notice. In any event, the County will be prepared to report on circumstances regarding the Board's admission of the strike issues more fully on August 14, 1984, as ordered by the Board.

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Dated: July 31, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S NOTICE TO BOARD REGARDING SCHEDULE FOR HEARING THE STRIKE ISSUES dated July 31, 1984, have been served to the following this 31st day of July 1984 by U.S. mail, first class, except as otherwise noted.

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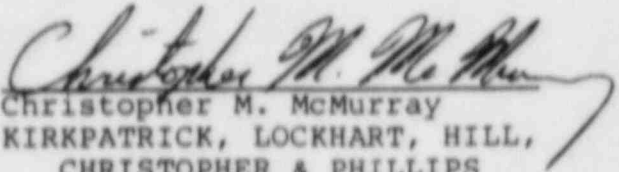
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Dated: July 31, 1984

* By Hand
By Federal Express