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August 2, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DUCKETED

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'84 100-6 P406

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

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

OFFICE OF SECRETARY  
REGULATORY SERVICES

NRC STAFF'S RESPONSE TO "SUFFOLK COUNTY'S  
OFFER OF PROOF AND REQUEST FOR RECONSIDERATION  
OF THE BOARD'S LIMITATIONS ON SUFFOLK COUNTY'S  
CROSS-EXAMINATION OF THE FEMA WITNESS PANEL"

I. INTRODUCTION

Pursuant to a verbal ruling made by the Licensing Board on July 10, 1984 (Tr. 12,146), Intervenor Suffolk County filed a timely "Offer of Proof and Request for Reconsideration of the Board's Limitations on Suffolk County's Cross-Examination of the Federal Emergency Management Agency (FEMA) Witness Panel" ("Request"), on July 23, 1984. The County complains that the approximately two and a half days of cross-examination allowed by the Board,<sup>1/</sup> as compared to the County's 4 to 5 day estimate for completion of cross-examination of the FEMA witness panel,<sup>2/</sup> was arbitrary, and it seeks reconsideration of that ruling. For the reasons

<sup>1/</sup> The County acknowledges that it has conducted in excess of 2 days of cross-examination (i.e., "less than 2½ days") (Request, at 3).

<sup>2/</sup> The County's 4 to 5 day estimate was contained in a letter to the Board dated July 3, 1984, submitted together with a 50 page cross-examination plan.

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noted below, the Staff submits that 1) the Board did not abuse its discretion in setting a two day time limit for the County's cross-examination, and 2) the County has failed to demonstrate that additional time should be allotted for it to cross-examine the FEMA witnesses.

## II. DISCUSSION

The bases for the Board's time limitation was fully detailed by the Board on July 10 and need not be repeated here. (See Tr. 12,142-146). The Staff is of the view that the citations relied upon by the Board, as detailed in the above-referenced transcript pages, together with the Board's review of the County's cross-examination plan and the FEMA testimony, provides ample grounds to support the Board's exercise of its discretion in limiting the County's cross-examination.

The Commission's regulations do not afford a party the right to conduct unlimited cross-examination, independent of time considerations. On the contrary, 10 C.F.R. § 2.718(e) authorizes the presiding officer (here, the Licensing Board Chairman) to regulate the course of the proceeding and the conduct of the participants. 10 C.F.R. § 2.757 expressly provides that the presiding officer, in order to prevent unnecessary delays or an unnecessarily large record, may ". . . (c) Take necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination." Further, 10 C.F.R. § 2.757(d) authorizes the presiding officer to "impose such time limitations on arguments as he determines appropriate . . . ." 10 C.F.R. § 2.743(a) does not afford a party the right to conduct unlimited cross-examination, but only such cross-examination "as may be required for full and true disclosure

of the facts." This principle has been upheld and applied in numerous Commission proceedings. See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 869 n.16 (1974), and ALAB-252, 8 AEC 1175, 1180 (1974) aff'd, CLI-75-1, 1 NRC 1 (1975). Thus the determination of the proper extent of cross-examination to be afforded a party in particular circumstances, in order to permit a "full and true disclosure of the facts," is a matter within the discretion of the Board. See, e.g., Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978); Prairie Island, supra, ALAB-244, 8 AEC at 869 n.16.

The time allotted by the Board for the County's cross-examination of the FEMA witnesses was ample and reasonable, given the facts and history of this proceeding. The Board did not abuse its discretion by limiting the County's time to cross-examine the FEMA witnesses. The County's offer of proof does not demonstrate that additional relevant and material facts would be elicited by the grant of additional time to the County to pursue further cross-examination of the FEMA witness panel.<sup>3/</sup> The County's offer of proof (at pages 3-8 of its Request), fails to explain why the County did not to allocate its time for conducting cross-examination so as to include the subject areas it now claims it was precluded from pursuing. An examination of July 11, 12, and 13, 1984, transcripts discloses that much of the County's cross-examination was repetitive, argumentative or

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<sup>3/</sup> The FEMA panel is presently scheduled to return on August 14-17 to be cross-examined on other areas not included in the July 10-13 appearance.

unfocused. See e.g. Tr. 12,220-21, 12,436-38, 12,531-32. In contrast, these transcripts illustrate that the FEMA witnesses were cooperative and that they attempted to provide concise answers to the questions posed by the County. See e.g. Tr. 12,474-76. The County has failed to show that the limitation on cross-examination prejudiced it, in a way it could not have avoided, in the conduct of cross-examination. In similar circumstances the Appeal Board has upheld the limitation of cross-examination. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-367, 5 NRC 92, 115-16 (1977).

Nor does the fact that the Board announced the two-day time limitation on the County's cross-examination of the FEMA witness panel on July 10, 1984, aid the County's cause. The Board did not receive the County's cross-examination plan and time estimate until July 3, 1984, just before the July 4th holiday. The Board then had but three work days to review the County's 50 page cross-examination plan as well as the cross-examination plans filed by the State of New York and LILCO, prior to the commencement of the hearing.<sup>4/</sup> No unwarranted delay is shown in the issuance of the ruling in the length of cross-examination on July 10. Suffolk County had sufficient time on the evening of July 10 and the morning of July 11, when other matters were before the Board -- as well as during the course of its cross-examination -- to sharpen and revise

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<sup>4/</sup> The Staff notes that the Board generally has been quite liberal during this long and complex hearing in allowing time for the County and other parties to complete cross-examination. In only one other instance, not involving FEMA witnesses, was a time limit set by the Board.

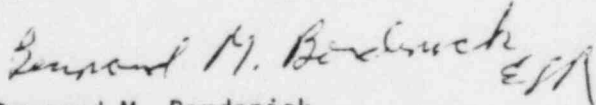
its cross-examination plans to accommodate the Board's ruling. The County offers no explanation as to why it did not use the time available to it to revise its plans to allow for cross-examination within the time set by the Board.

No proper basis is provided to have the Board reconsider its order which provided for 2 days for the cross-examination of the FEMA panel by Suffolk County.

### III. CONCLUSION

For the reasons noted above, the Staff believes that the Board did not abuse its discretion in limiting the County's cross-examination of the FEMA witness panel to two and a half days. The County has failed to show that it should be granted additional time to cross-examine this panel.

Respectfully submitted,

  
Bernard M. Bordenick  
Counsel for NRC Staff

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO 'SUFFOLK COUNTY'S OFFER OF PROOF AND REQUEST FOR RECONSIDERATION OF THE BOARD'S LIMITATIONS ON SUFFOLK COUNTY'S CROSS-EXAMINATION OF THE FEMA WITNESS PANEL'" 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 August, 1984:

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