UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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 RECONSIDERATION OF MEMORANDUM AND ORDER ESTABLISHING FORMAT AND SCHEDULE OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

On July 27, 1984, the Board issued a Memorandum And Order Establishing Format And Schedule Of Proposed Findings Of Fact And Conclusion Of Law (hereinafter "Memorandum and Order") which established, inter alia, a schedule under which Suffolk County, New York State and any other Intervenor wishing to be heard must file consolidated findings of fact and conclusions of law no later than October 19, 1984. Memorandum and Order at 3, 7. Assuming, as the Board does, that the Shoreham emergency planning hearings will conclude by August 31, 1984 (see Memorandum and Order at 6), the schedule thus allows only 49 days for tne Intervenors to prepare and consolidate their filings and submit them to the Board. The Memorandum and Order also

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limits the parties' findings of fact and conclusions of law to 500 pages each.

Suffolk County submits that the filing schedule and page limitation imposed by the Board's Memorandum and Order are arbitrary and unreasonable and will deny the County a meaningful opportunity to present its proposed findings of fact and conclusions of law to the Board. Indeed, in light of the large record and complexity of evidence in this proceeding, the Board's Memorandum and Order establishes a wholly unrealistic approach to exposing the merits of the public safety issues here at stake. The County therefore moves for reconsideration of the schedule and page limitations imposed by its Memorandum and Order, for the Board to grant the County and other Intervenors 120 days to file its findings of fact and conclusion of law, and for the Board to lift the 500-page limitation.

Discussion

A. The Unique Nature Of This Case Has Led To The Development Of One Of The Most Extensive Evidentiary Records In NRC History

This case is unique in the history of NRC ligitation. For the very first time, a Licensing Board is being asked to consider whether an offsite emergency plan prepared by, and to be implemented by, a private utility without State or local

governmental participation, meets NRC regulations. The unique nature of this case and the very large number of issues admitted by the Board for litigation have led to the development of one of the largest records in NRC history.

The Plan in issue -- the LILCO Transition Plan (or "Plan") -- relies for its implementation on the so-called Local Emergency Response Organization ("LERO"). LERO consists on paper of approximately 1800 workers, the vast majority of whom are LILCO employees. In theory, LERO would be mobilized during a radiological emergency.

According to the LILCO Plan, the LERO workers are expected to direct evacuation traffic, notify institutions and people requiring special notification, drive buses to evacuate people without access to automobiles, conduct radiation monitoring and decontamination, locate and remove obstacles from the roadways, and to perform dozens of other emergency functions during a radiological emergency at Shoreham. The Plan further anticipates that members of LILCO management will assume command and control of the emergency response, performing such tasks as notifying the public of an emergency, directing the public to take certain protective actions, and coordinating the entire emergency response. LERO is, in effect, expected to act as,

and hold itself out as, a substitute government during a radiological emergency.

In short, the LILCO Plan is founded on the premise that LILCO can organize, train, equip, and field an offsite emergency response organization of about 1800 individuals drawn largely from LILCO's employees (such as meter readers, clerical workers, etc.) and that this new organization, LERO, can successfully implement the Plan in a manner offering reasonable assurance that public health and safety will be protected. This premise, however, is flawed.

The Suffolk County government's extensive inquiry into the question of developing a radiological emergency response plan for Shoreham[1/] has identified many social, psychological, geographical, demographical and meterological conditions existing on Long Island which make it impossible to protect the public health and safety in the event of a radiological accident at Shoreham. As a result of the knowledge gained through the

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1/ The details of the County's extensive and serious inquiry into the development of a radiological emergency response plan for Shoreham as described in the Supplemental Brief Of Suffolk County In Support Of The County's Motion To Terminate The Shoreham Operating License Proceeding And The County's Motion For Certification, filed with the predecessor to this Board (chaired by Judge Brenner) on March 4, 1983.

County's inquiry, it is the County's view LILCO's Plan cannot overcome, nor in most cases does it even address these conditions. In light of the conditions known to the County to exist on Long Island, and based further on the novelty of LILCO's Plan, Suffolk County and the other Intervenors in this case have submitted during the course of this proceeding approximately one hundred contentions, covering a vast array of issues and contesting the Plan's adequacy.2/ A substantial majority of the Intervenors' contentions have been admitted by this Board, either in whole or in part.3/

The LILCO Plan was submitted to the NRC on May 26, 1983.4/ Following the parties' review of the Plan, submission of

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2/ See, e.g., Proposed Emergency Planning Contentions Modified To Reflect Revision 3 of the LILCO Plan (January 12, 1984). The Intervenors' initial contentions were filed on July 26, 1983. Because of subsequent extensive revisions to the Plan, the Intervenors filed modified contentions to reflect those revisions on January 12, 1984. Subsequent to the Intervenors' January 12 filing, the Board admitted some further contentions on the training issues.

3/ See id., which indicates which contentions were admitted by the Board, but which does not include the County's revised training contentions.

4/ LILCO's Plan is comprised of four main volumes consisting of many hundreds of pages. Since the May 26 filing, the Plan has undergone four revisions of several hundred pages each.

contentions, discovery and the filing of written testimony, the emergency planning hearings began on December 6, 1983. The hearings have not yet concluded. Understandably, the extensive scope and complex nature of the issues have produced a huge hearing record the size of which is massive by any standards. In order to cope with the size and complexity of the litigation, the hearing has been split into three groups, each containing a significant number of issues (Groups I, IIA and IIB). To date, the parties have filed 7,000 pages of written direct testimony and attachments on all three groups.5/ Cross-examination of the parties' witnesses has so far consumed 61 hearing days,6/ with three weeks of trial (12 hearing days) yet to be heard, under the present schedule. Memorandum and Order Determining That A Serious Safety Matter Exists at 3 (July 24, 1984). So far, 168 exhibits have been marked. The hearing transcript presently consists of 14,000 pages, with 3,000 pages more expected to be added before the close of the hearing.

5/ Testimony of Brian R. McCaffrey on Behalf of Long Island Lighting Company (filed in the low power proceeding) at 27 (July 16, 1984).

6/ Early in the proceeding, the Board extended the usual hearing day 1 1/4 hours by eliminating part of the luncheon recess and moving the evening adjournment time from 5:00 p.m. to 6:00 p.m. This action by the Board, of course, lengthened the transcript of each day's session.

Memorandum and Order at 2. Therefore, by the end of the hearings the number of transcript pages will be approximately 17,000.

On July 19, 1984, the Board sought the views of the parties on several issues pertaining to the filing of the parties' findings of fact and conclusions of law, including filing dates and the imposition of page limitations. On the issue of filing dates, the County requested 120 days within which to prepare findings. Tr. 13,808. The State concurred and informed the Board that the County and State would be filing consolidated findings. Tr. 13,808, 13,813. Counsel explained to the Board that the requested 120 days was necessary due to several factors, including the extensive nature of the record, the need to coordinate the findings of the County and the State, the need to include adequate time to incorporate responses to LILCO's initial filing, and the fact that counsel for the County is also appearing before two other NRC licensing boards in this case which are hearing the low power and diesel issues. Tr. 13,807-08, 13,813, 13,816. In addition, the County, the State, and LILCO all took the position that while they all intended to be as concise as possible, the establishment of arbitrary page limitations would not aid in the development of a useful record. Tr. 13,799-800, 13,805, 13,808.

Five days later, on July 24, 1984, the Board issued its Memorandum and Order, establishing a hearing schedule which allows the County, State and other Intervenors 49 days to file findings of fact and conclusions of law, and which further imposes a 500-page limitation on each parties' filing. The Board's Memorandum and Order admonished the parties to submit findings which are "complete, accurate, balanced and supported by the evidentiary record. . . ." Memorandum and Order at 1. To achieve this end, the parties are expected to discuss and evaluate in their findings not only their own written testimony, but also the written testimony and cross-examination of the other side's witnesses. Id. The Board also explicitly directed the parties "to state and justify their reasons for a proposed finding that a particular fact should be adopted rather than a contrary fact proposed by another party." Id. at 2.

B. The Board's Filing Schedule Denies The Intervenors Their Constitutional And Statutory Right To A Fair Opportunity To Present Their Cases

Pursuant to 10 CFR §2.754, any party to an NRC proceeding has a right to file proposed findings of fact and conclusions of law for consideration by the Board. The purpose of proposed findings of fact and conclusions of law is to give each party an opportunity to distill the record of the case into a precise

summary of its case, bringing to the Board's attention the facts supporting that case and the legal conclusions it should draw from the facts. See Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897, 906-907 (1982); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 332-333 (1973). While 10 CFR § 2.754(a)(2) calls for intervenors to file findings of fact and conclusions of law within forty days after the record is closed, the Board has the power to limit or enlarge that time, depending on the circumstances of the case. 10 CFR §2.754(a).

In the present case, the Board is confronted with circumstances which compel a very substantial enlargement of the usual 40 day period. The Board, however, has ignored these compelling circumstances. Rather, for reasons left unclear and unstated by its Memorandum and Order, the Board has granted a mere nine additional days for the County, State and other Intervenors to distill what no one can deny is a record of monstrous proportions into concise findings of fact. The Board's Memorandum and Order is in total disregard of the Intervenors' right to due process and a fair hearing. Forty-nine days may be appropriate for the ordinary case, but it is grossly inadequate for a case of this extraordinary size and complexity. By establishing this schedule, the Board has denied the County and

other Intervenors their right to file meaningful findings of fact and conclusion of law.

The County's July 19 request for 120 days was not made lightly. Rather, it was based on the County's careful consideration of all of the tasks required to produce findings of fact and conclusions of law that would be useful to the Board, and on the County's extensive experience and knowledge gained from preparing such filings in the past. A period of 120 days to file findings is also compelled by the Board's own standards for findings as explained in its Memorandum and Order. The Board has directed that findings are to be "complete, accurate, balanced and supported by the evidentiary record," and that the parties must discuss and evaluate the testimony on all sides of each issue. Memorandum and Order at 1. In essence, therefore, the Board's Memorandum and Order requires that the process of developing findings of facts and conclusions of law requires the parties' review, evaluation and distillation of the entire record of this proceeding which, as explained above, is massive.

The County has no quarrel with the Board's ruling on the form it expects the parties' findings of fact and conclusions of law to take. Indeed, the County has always intended to

submit findings which are complete, accurate, balanced and supported by the record. Nevertheless, the schedule set forth by the Board falls far short of permitting the County, the State, and the other Intervenors to prepare findings of fact and conclusion of law which fairly present their case and which can meet the Board's standards. The Board's Memorandum and Order establishes a mere 49-day time frame within which the County is expected to review 17,000 pages of transcript, 7,000 pages of written testimony, and hundreds of exhibits, distill from these pages the important facts to be brought to the Board's attention, write findings which fairly represent the case presented by both sides, write conclusions of law which are supported by the findings, consolidate these findings of fact and conclusions of law with New York State and any other Intervenor desiring to put forth its case, review LILCO's initial filing and prepare responses to it, and from these efforts produce a complete, concise and accurate brief for submission to the Board. Any fair and reasonable observer must conclude that, given the extent of the present record, these tasks cannot be completed in 49 days, or any time frame close to that.

While the Board stated in its Memorandum and Order at 6 that it had taken into account the size of the record in establishing a filing schedule, the County is at a loss to

understand how the Board could have done so and concluded that the Intervenor require only 49 days to file findings of fact and conclusions of law which meet the Board's standards. A record of 17,000 transcript pages, 7,000 pages of written testimony, plus hundreds of pages of exhibits can scarcely be read in the time allotted by the Board, must less distilled into cogent findings of fact and conclusions of law. It is thus apparent that the Board is not aware of, or does not appreciate, the immensity of the task confronting the parties. That task cannot be performed in 49 days. Certainly, no findings which are complete, accurate, balanced and evaluate all sides of an issue can be prepared under the Board's schedule. Therefore, any findings compelled by the Board to be produced within 49 days will be lacking in quality.

The Board's Memorandum and Order at 2 states that the Board has "experience in deciding cases of similar size and magnitude." Memorandum and Order at 2. The Board, however, has apparently not applied that experience in establishing the present filing schedule. The licensing proceeding pertaining to the Indian Point reactors (In the Matter of Consolidated Edison Company of New York and Power Authority of the State of New York (Indian Point, Unit Nos. 2 and 3) LBP-83-68, 18 NRC 811 (1983)) is one of the few hearings approaching this

proceeding in magnitude. There, the record consisted of over 15,000 pages of transcript, 3,000 pages of pre-filed written testimony and approximately 170 exhibits -- a smaller record than the record here. Id. at 842. While the Board in Indian Point initially allowed only four weeks for the parties to file, the sheer magnitude of the record and the need for Intervenors to file consolidated findings required the Board to grant the parties' requests for extensions and to extend the filing deadline by 6 1/2 weeks, for a total of 10 1/2 weeks. Id., at 842-844. The even larger record confronting the parties in the Shoreham case compels even more time to prepare meaningful findings of fact and conclusions of law. Thus, the County's request for 120 days is in line with prior NRC caselaw.

It is also apparent that the Board has not taken into account the amount of time required for the County and State (and perhaps other Intervenors) to consolidate their findings. The Board cannot assume that findings written by the County will be blindly accepted by the State, or vice versa. The County and State, though united in their opposition to the LILCO Plan, are different parties with potentially differing perspectives in the presentation of their viewpoints. Therefore, each must review the other's findings, or in some other way review the

other's position on each issue, in order to develop a single, consolidated document in which both parties join. This process takes time, consideration of which is noticeably lacking in the Board's schedule. Of course, if any other Intervenors wish to file findings, the Boards ruling that such findings must be incorporated into the County's and State's joint filing means that further time and effort must be spent in the consolidation process.

Finally, it bears noting that the schedule established by the Board begins to run on the first day of the Labor Day weekend. After three weeks of hearings in Hauppauge, most counsel in these proceedings will undoubtedly wish to spend that weekend with their families. Again, it is apparent that the Board, in its rush to end this proceeding, has not taken this fact into consideration.

In light of the above discussion, it is plain that the Board's Memorandum and Order imposes a schedule on the parties which is arbitrary and unreasonable, and which could not have been based upon fair consideration of all of the facts. The County, the State and the other Intervenors have an absolute right to submit findings of fact and conclusions of law that are of a quality commensurate with the seriousness of the

issues at bar, yet the Board's ruling has rendered that right a hollow one. By establishing a schedule for findings of fact and conclusions of law which cannot reasonably be met, the Board has effectively denied the Intervenors their right to submit such findings. The Board's action thus violates the County's and the other Intervenors' right to due process.

C. The Board's 500-Page Limitation Is Unreasonable and Unrealistic

The Board's July 27 Memorandum and Order also imposes a 500-page limitation on the parties' findings of fact and conclusion of law. Again, the Board's ruling is unrealistic and cannot be supported by a fair consideration of the record.

When the parties expressed their views to the Board on July 19, both LILCO and the County recognized the need for concise, yet complete, findings of fact and conclusions of law. Tr. 13,800, 13,806. Nevertheless, the County, the State and LILCO all rejected the Board's suggestion of a page limitation as a tool to achieve that end. Despite the opposition of the parties, however, the Board has imposed a page limitation which is unduly harsh and will deny the Intervenors their right to present complete and accurate findings of fact and conclusions of law.

The reasons why the Board's page limitation is unfair are apparent from the record. With approximately 17,000 pages of transcript, 7,000 pages of written testimony and 168 exhibits (so far) covering about 60 contentions,7/ complete and accurate findings cannot be reduced to 500 pages, no matter how concise the parties are. Even taking into consideration only the transcript and written testimony, the Board has effectively ordered that the parties may produce only one page of findings for about every 50 pages in the record. This requirement is unrealistic and impossible to meet, particularly within the time frame established by the Board. Even if possible to meet, the process of reducing a record to findings of fact and conclusions of law is a time consuming one. To achieve the conciseness demanded by the Board's page limitation would require far more time than the Board has allotted to the parties.

Furthermore, the Board should keep in mind that its Memorandum and Order requires each party to set forth findings drawn not only from its own witnesses' written testimony, but also from the testimony and cross-examination of the other parties' witnesses. Thus, in order to be relied upon by the

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7/ This number of contentions does not include, of course, the ten admitted contentions on the legal authority issues (Contentions 1-10).

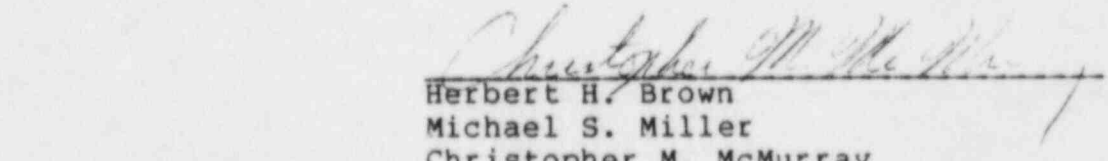
Board, each finding must evaluate and discuss the facts presented on all sides of each issue and provide reasons why one fact should be adopted over another. This is a reasonable requirement, but it cannot be done in 500 pages, given the size of the record and the number of issues the parties must address. The County therefore submits that this Board should lift its 500-page limitation and rely instead on the parties' representations that their findings will be a concise as is reasonably achievable.

Conclusion

For the reasons stated above, Suffolk County's Motion For Reconsideration of Memorandum and Order Establishing Format and Schedule of Proposed Findings of Fact and Conclusions of Law should be granted.

Respectfully submitted,

Martin Bradley Ashare
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Michael S. Miller
Christopher M. McMurray
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, NW
Washington, DC 20036

Attorneys for Suffolk County

Dated: August 6, 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-OL-3 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION FOR RECONSIDERATION OF MEMORANDUM AND ORDER ESTABLISHING FORMAT AND SCHEDULE OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW dated August 6, 1984, have been served to the following this 6th day of August 1984 by U.S. mail, first class, except as otherwise noted.

James A. Laurenson, Chairman *
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline *
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon *
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

W. Taylor Reveley, III, Esq.#
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Washington, D.C. 20472

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller Building
Empire State Plaza
Albany, New York 12223

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Bernard M. Bordenick, Esq. *
David A. Repka, Esq.
Edwin J. Reis, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Stephen B. Latham, Esq.
Twomey, Latham & Shea
P.O. Box 398
33 West Second Street
Riverhead, New York 11901

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Hon. Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

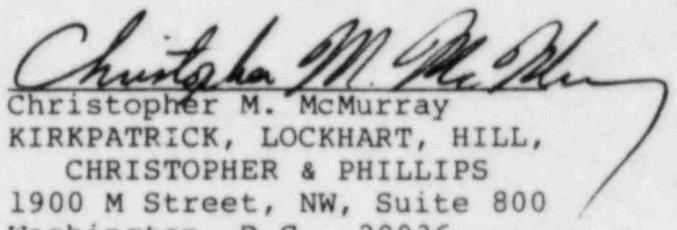
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jonathan D. Feinberg, Esq.
Staff Counsel
New York State Public Service Commission
3 Rockefeller Plaza
Albany, New York 12223

Stuart Diamond
Business/Financial
New York Times
229 W. 43rd Street
New York, New York 10036

Eleanor L. Frucci, Esq. *
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Fabian Palomino, Esq. #
Special Counsel to
the Governor
Executive Chamber, Room 229
State Capitol
Albany, New York 12224



Christopher M. McMurray
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, NW, Suite 800
Washington, D.C. 20036

Dated: August 6, 1984

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* By Hand
\# By Telecopier