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RELATED CORRESPONDENCE

LILCO, August 7, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board 84-160-9 A11:15

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket No. 50-322-OL

LILCO'S MOTION TO COMPEL THE IDENTIFICATION OF WITNESSES
OFFERING SPECIFIC ELEMENTS OF TESTIMONY REGARDING
SUFFOLK COUNTY'S EMERGENCY DIESEL GENERATOR CONTENTIONS

Pursuant to 10 C.F.R. §§ 2.743(a) and (c), the Long Island Lighting Company ("LILCO") moves the Board for an Order compelling Suffolk County to specify the identity of the witness (or witnesses) sponsoring each response included in the testimony it filed on July 31, 1984. Unless such specifications are provided, LILCO will be unable to challenge effectively the qualifications of witnesses to offer a particular item of testimony and will be hindered in its cross-examination of witnesses concerning specific evidentiary points.

Almost nowhere in 184 pages of its testimony concerning the Shoreham emergency diesel generators does Suffolk County specify the identity of the witness or witnesses offering a particular response. LILCO cannot determine the source (or sources) of any element of the wide-ranging testimony the

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County has offered. Consequently, LILCO is unable to evaluate the qualifications of the proponent of any response to testify as an expert to the matters alleged.^{1/} LILCO thus has been precluded from advancing all the grounds for striking Suffolk County's testimony that may be available. This result is contrary to the spirit of the Commission's rules on the admission of evidence in licensing proceedings^{2/} and is, moreover, inconsistent with the Federal Rules of Civil Procedure governing the use of expert testimony in civil actions.^{3/}

The County's failure to provide the identity of the proponent of each element of the Joint Testimony will also unduly complicate LILCO's task in cross-examining the County's witnesses. Without knowing the identity of the proponent of testimony it wishes to challenge, LILCO will be required to

^{1/} Indeed, LILCO has been able to raise such challenges only where it is clear that none of the County's witnesses possess the necessary qualifications.

^{2/} Cf. 10 C.F.R. § 2.743(c) (only relevant, material and reliable evidence which is not unduly repetitious will be admitted) (emphasis added).

^{3/} Fed. R. Civ. P. 26(b)(4)(A)(i) (a party may require any other party to identify each expert witness to be called, to state the subject matter on which the expert will testify and to state the substance of the facts and opinions to which the expert will testify). See Clark v. General Motors Corp., 20 Fed. R. Serv. 2d (Callaghan) 679, 683-84 (D. Mass. 1975) (ordering responses to interrogatories asking for the identity and qualifications of experts), citing United States v. Meyer, 398 F.2d 66, 72 (9th Cir. 1968).

consume substantial time in attempting to test a particular assertion, opinion or conclusion. As a result, the progress of the hearing will be substantially slowed. Indeed, the confusion resulting from the County's failure to associate individual witnesses with specific testimony could effectively deprive LILCO of its right to "conduct such cross-examination as may be required for full and true disclosure of the facts." 10 C.F.R. § 2.743(a). Cf. Fed. R. Civ. P. 26(b)(4)(A)(i).

In these circumstances, the Board should direct Suffolk County to identify the witness (or witnesses) responsible for each element of the testimony it filed on July 31, 1984. Cf., e.g., Rupp v. Vock & Weiderhold, Inc., 52 F.R.D. 111, 113-14 (E.D. Ohio 1971) (directing plaintiffs to identify expert witnesses and to state more precisely the subject matter upon which each is to testify). In order to afford LILCO adequate time to plan its cross-examination, the Board should direct Suffolk County to serve the requested identification of witnesses by August 24, 1984 (four days prior to the date on which cross-examination plans are due).^{4/}

^{4/} Upon receiving the County's specification of witnesses, LILCO may seek leave to supplement its motion to strike portions of the County's direct testimony to include additional challenges to the competence of witnesses to offer specific testimony.

CONCLUSION

For the reasons stated above, the Board should direct Suffolk County to specify by August 24, 1984 the identity of the witness or witnesses sponsoring each response contained in the testimony it filed on July 31, 1984.

Respectfully Submitted,
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I hereby certify that copies of LILCO'S MOTION TO STRIKE PORTIONS OF THE JOINT DIRECT TESTIMONY OF DR. ROBERT N. ANDERSON, PROFESSOR STANLEY G. CHRISTENSEN, G. DENNIS ELEY, ANEESH BAKSHI, DALE G. BRIDENAUGH AND RICHARD B. HUBBARD AND LILCO'S MOTION TO COMPEL THE IDENTIFICATION OF WITNESSES KOFFERING SPECIFIC ELEMENTS OF TESTIMONY REGARDING SUFFOLK COUNTY'S EMERGENCY DIESEL GENERATOR CONTENTIONS were served this date upon the following by first-class mail, postage pre-paid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisk) by Federal Express.

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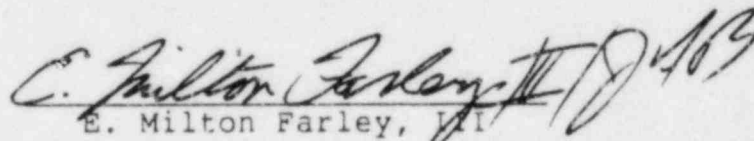
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