

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges
James A. Laurenson, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

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

Docket No. 50-322-OL-3
(Emergency Planning Proceeding)
August 7, 1984

STATEMENT OF GOVERNOR MARIO M. CUOMO,
REPRESENTING THE STATE OF NEW YORK, IN
SUPPORT OF THE COUNTY OF SUFFOLK'S
"MOTION TO COMPEL LILCO TO PRODUCE
FRANK M. RASBURY, A LILCO WITNESS,
FOR DEPOSITION"

The State of New York hereby supports the County of Suffolk's above-referenced motion, dated August 3, 1984.

The plain objective of the County's motion is to gain the right to depose a LILCO witness who has sponsored prefiled, direct testimony. Every witness in this proceeding who has submitted prefiled, direct testimony has been made available for deposition prior to cross-examination. If any such witness has not been deposed, it has been as a result of an election by the parties to not conduct a deposition. Never before has a party taken a stance, as LILCO is now taking, that a witness who has submitted prefiled, direct testimony may be declared unavailable for deposition. The County's

*add:
J. Gorn
OCA*

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reliance upon Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc. (County motion at p. 5) is well placed. Licensing proceedings should not be the setting for trial by surprise. LILCO should be ordered to make Mr. Rasbury available for deposition.

LILCO alleges in its answer to the County's motion, which answer is dated August 6, 1984, that the outcome of this dispute should be dictated by a previous decision of the Board. Recently, the Board denied LILCO's motion for additional time in which to pursue discovery concerning relocation centers because LILCO's motion was untimely and was lacking in good cause. Tr. 12,830. However, for the reasons stated in the County's motion and herein, it is evident that the County's motion to compel the deposition of Mr. Rasbury is timely and is supported by good cause. LILCO's answer never sets forth any reasoning to the contrary. In addition, it should be noted that Dr. Cipriani and Mr. Hines never sponsored any prefiled, direct testimony. Mr. Rasbury, on the other hand, certainly sponsored prefiled, direct testimony. LILCO's reliance upon the Board's previous decision is misplaced. The County has shown that good cause exists for the deposition, in a timely manner, of Mr. Rasbury concerning his prefiled, direct testimony.

If a problem is being created in this situation by the presentation of a new witness shortly before hearing, the

problem is not of the County's own making - the problem is of LILCO's own making. LILCO should have recognized two easy-to-understand facts of life long ago. First, LILCO should have known that it cannot and may not unilaterally force County and State facilities to participate in the implementation of LILCO's radiological emergency plan for Shoreham, especially when the County Executive, the County Legislature and the Governor have made their position known in ways that cannot be misunderstood. Second, LILCO should have incorporated the Red Cross into its emergency planning long before this late stage of the proceedings. During the last year, LILCO witnesses have testified consistently that relocation center arrangements were within the mystical aura of the Red Cross rather than LILCO. It was only in LILCO's third attempt at submitting relocation center testimony (dated July 30, 1980) that LILCO finally identified Mr. Rasbury as a Red Cross witness on behalf of LILCO. The main point of LILCO's testimony merely seemed to be that LILCO would designate in the future some phantom facilities which the Red Cross "might" use as relocation centers. See p. 15, lines 16-23 of the July 30, 1984 version of LILCO's relocation center testimony. If a problem is created by this situation,

it is of LILCO's own making. LILCO must abide by its own actions and must suffer the consequences it deserves.

Striking Mr. Rasbury from LILCO's witness panel would not be an "extreme" reaction to this situation caused by LILCO; it would, however, be a fair and just reaction to the failure of LILCO to make available for deposition a witness who sponsors indecisive, prefiled, direct testimony.

For the reasons stated above, the State supports the County's motion to compel the deposition of Mr. Rasbury, or to strike his testimony in its entirety.

Respectfully submitted,

MARIO CUOMO,
Governor of the State of New York

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BY:



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August 8, 1984

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that one copy of the Statement of Governor Mario M. Cuomo, representing the State of New York, in support of the County of Suffolk's "Motion to Compel LILCO to produce Frank M. Rasbury, a LILCO witness, for deposition"

has been served to each of the following this 8th day of August 1984 by U. S. Mail, first class, except as otherwise noted:

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*By Hand
**By Federal Express
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****By U.S. Express Mail first class mail on August 8, 1984

Albany, New York