385

LILCO, August 27, 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 Proceeding)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LILCO'S ANSWER TO MOTION OF
SUFFOLK COUNTY TO ADMIT NEW CONTENTION

On August 20, 1984, Suffolk County filed a motion seeking admission of a late-filed contention about the recent strike by unions representing LILCO employees ("Motion of Suffolk County to Admit New Contention," hereinafter "Motion"). For the reasons detailed below, Suffolk County has failed to establish good cause for the untimely filing pursuant to 10 CFR § 2.714. In addition, Suffolk County's proposed contention represents a thinly veiled attempt to reopen the record on issues that have already been litigated; as such, Suffolk County has failed to demonstrate that its proposed contention meets the appropriate standards for reopening. Accordingly, LILCO opposes the Motion.

add. from OCA

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I. Suffolk County Has Failed to Make the Requisite Showing for a Late-Filed Contention

As Suffolk County has noted, Motion at 7-8, the admissibility of late-filed contentions is judged on the basis of a balancing of five factors. These factors, which are contained in 10 CFR § 2.714(a)(1), are the following:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest will be protected;

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) The extent to which the petitioner's interest will be represented by existing parties; and

(v) The extent to which the petitioner's participation will broaden the issue or delay the proceeding.

LILCO believes that the balance of these factors weighs heavily against admission of Suffolk County's proposed contention. In fact, only the factor that no other party will litigate this proposed contention is arguably in Suffolk County's favor.

A. Good Cause for Untimeliness

First, Suffolk County argues that "good cause" exists for the filing of its proposed contention at this time. Motion at 8-9. This good cause showing is premised on an assertion that the proposed contention arises from largely unspecified "circumstances unforeseen prior to the LILCO strike," id. at 8.

These allegedly unforeseen circumstances are presumably the actual occurrence of a strike and the alleged en masse resignation of LERO workers. In addition, Suffolk County justifies its long delay in filing following these events by arguing that the Board's sua sponte decision to open issues about the effects of a strike precluded it from filing its proposed contention in a more timely manner. Id. at 8-9. Suffolk County's claims are baseless.

A closer examination of Suffolk County's motion and attached proposed contention reveals that Suffolk County has not premised its late-filed contention on events that are alleged to have occurred, presumably without warning, on July 10, 1984. Rather, Suffolk County bases its thesis that LERO workers feel "resentment" on a series of events that occurred significantly before July 10. These events include labor cutbacks caused by LILCO's austerity program on March 6, 1984[1]/ and bargaining positions taken during contract negotiations that were publicly reported as much as one month before the commencement of the strike. See the attached Affidavit of Robert X. Kelleher (hereinafter "Affidavit") ¶ 4.[2]/ Thus, Suffolk County could

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1/ The Board will recall that Suffolk County attached to its written testimony on Contentions 11 and 15 newspaper articles (dated March 8, 11, and 16, 1984) about the effects of LILCO's austerity measures on worker attitudes. See Attachment 4 to Testimony of Arthur H. Purcell, et al., ff. Tr. 10,727.

2/ Mr. Kelleher has executed the affidavit in New York. The logistics of getting the signed affidavit to Bethesda, however, force us to file an unsigned copy with this pleading. The executed affidavit, which says the same thing as the attached version, will be filed promptly.

have filed its proposed contention much earlier.

Indeed, the potential occurrence of a strike could, and should, have been foreseen by Suffolk County from the very outset of this proceeding. Suffolk County has long been aware that a majority of LERO is composed of union employees. It is also general public knowledge that electric utilities, like other industries, have commonly been the object of strikes by their local unions. Thus, Suffolk County has failed to establish that it could not have presented its current concerns with the requisite degree of specificity long ago.3/

Suffolk County's only real attempt to establish that new evidence has prompted its proposed contention is its claim that there have been en masse resignations from LERO. Motion at 8. This claim is unsupported in fact.4/ There was no en masse resignation of LERO workers either immediately prior to, during, or after the strike. Affidavit ¶ 7. A total of 33 workers resigned from LERO during the period from just before the strike to the present time.5/ Affidavit ¶ 6. In fact,

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3/ Cf. Duke Power Company (Catawba, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983) (for new contentions raised by licensing-related documents, good cause for the filing does not exist when information which forms the factual basis of the contention was publicly available elsewhere previously.)

4/ For this reason, even if the contention were timely, it would lack basis on this point.

5/ Of these 33 workers, 26 tendered formal, written resignations. The remaining 7 tendered oral resignations to immediate superiors, but have never tendered them in writing. Affidavit at ¶ 6.

since the end of the strike two union workers have volunteered to join LERO. Id. Thus, the sole piece of "new" evidence on which Suffolk County bases its showing of good cause is not evidence at all and thus can not be relied on to establish good cause.

Even if one accepts that a significant, unforeseen event occurred with the start of the strike, on July 10, Suffolk County was still inexcusably tardy in filing its pending motion. For two weeks, from July 10 to July 24, Suffolk County could have filed its current motion;6/ it did not. Following this Board's July 24 Memorandum and Order, Suffolk County claims to have interpreted that Order as including the issues raised by its pending motion and then to have relied on that interpretation until August 8 when the Board ruled that the issues of the long-term effects of the strike were not covered by its three questions. The plain language of the three questions posed in the Board's July 24 Order should have indicated to Suffolk County that its earlier articulated concerns had not

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6/ At the hearing on Thursday, July 19, 1984, counsel for Suffolk County stated that there was pertinent information in the record that 1200 LERO personnel had resigned (Tr. 13,843), that this was a serious safety issue (id.), that he had been reading all the press clippings about the strike (id.), and that there was an issue about "even if you had people rejoin LERO after the strike is over, assuming it does end, what is the quality of that participation given the bitterness and the situation that has arisen" (Tr. 13,843-44). Apparently the County waited a month after that to submit its proposed strike contention because it hoped the Board would take up the issue on its own (see Tr. 13,844). But that is no justification at all.

been accepted by the Board for litigation. See Statement of Judge Laurenson at the August 8, 1984 Conference of Counsel, Tr. 14,005-06. Suffolk County's tardiness in filing its motion should not be excused based solely on Suffolk County's own misinterpretation of the Board's Order. Cf. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 796-98 (1977); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 645 (1977) (tardiness of potential intervenor is not excused by claim that intervenor was lulled by the intervention of another which later withdrew). Finally, even after the Board's clarification of August 8, Suffolk County took nearly two more weeks -- 12 days -- to file its Motion. In total, forty days passed between the occurrence of the "unforeseen circumstances" on which Suffolk County bases its showing of good cause and the filing of its pending motion. There can be no question that Suffolk County has failed to file its motion in a timely manner and to establish good cause.

B. Other Means for Protecting the County's Interests

Second, Suffolk County argues that no other means are available for protecting its interests. Motion at 10. In the area of emergency planning, this argument is absurd. This second factor can never work in the County's favor, because the County always has the option of doing what other counties and states do, which is to participate in emergency planning.

Laying that fact aside, there are still other means for protecting the County's alleged interest. First, as is

described more fully below, Suffolk County has already been allowed to raise and explain the issues it seeks to raise in its Motion. Second, the graded FEMA exercise and the exercises thereafter will provide a continuing means of determining whether LERO is a viable, functioning organization. If sufficient LERO workers are not available to implement the emergency plan, then that deficiency will be detected.

C. Development of a Sound Record

1. Failure to Raise a Significant Issue

Third, Suffolk County asserts that its participation will assist in the development of a sound record. Motion at 10-11. In support, Suffolk County states that it has retained four expert witnesses and has had discussions with other experts. Id. However, as another Licensing Board in this proceeding has already noted, "the fact that the County has engaged experts is not wholly dispositive of the issue of whether Intervenors can assist in developing a sound record." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, slip op. at 24 (August 13, 1984). That Board reasoned that "the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record is only meaningful when the proposed participation is on a significant, triable issue." Id.

Suffolk County has failed to present a significant, triable issue. The County's motion assumes that the resentment of LILCO's union employees will prevent them from carrying out

their voluntary LERO duties. To the extent that this assertion is not merely an unsupported exercise in speculation, it is simply the latest version of an often-repeated County theme: namely, that LERO workers cannot be counted on to perform emergency duties. Suffolk County has advanced this argument during the litigation of the role conflict and the training contentions.7/ Further discussion of this same theme will not add to

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7/ Suffolk County cannot seriously expect this Board to find that New York's Taylor Law, particularly N.Y. Civil Service Law § 210 (McKinney 1983), which forbids public employees to strike, marks the difference between a viable emergency organization and a nonviable one. As the 1981 nationwide strike by the Professional Air Traffic Controllers Organization reminded us, a statute forbidding public employees to strike does not ensure that they will not strike. See B. Meltzer & C. Sunstein, Public Employee Strikes, Executive Discretion, and the Air Traffic Controllers, 50 U. Chi. L. Rev. 731 (Spring 1983). In particular, strikes of New York public employees have occurred notwithstanding the Taylor Law. See Kiernan v. Lindsay, 334 F. Supp. 588 (S.D.N.Y. 1971) (alleged six-day strike by New York City policemen in January 1971). After 15 months of experience under the Taylor Law, one commentator wrote the following:

> The Taylor law has not prevented strikes. In this regard it does not differ from other efforts to inhibit concerted action by legislative degree.

T. Kheel, The Taylor Law: A Critical Examination of its Virtues and Defects, 20 Syracuse L. Rev. 181 (1969); see also id. 184, 185-89. And there is no guarantee that the Taylor Law will continue to exist, particularly inasmuch as labor can be expected to work for the abolition or weakening of the law. See the article in the New York Times, November 16, 1980, at 40, quoting the president of Local 100 of the Transport Workers Union as saying "We in labor have got to get together and take the vicious teeth out of the Taylor Law."

The County's theory that a strike destroys the "dedication" of an emergency force and affects employee "attitudes" is

(footnote continued)

the development of a sound record.

2. Failure to State its Evidence with Specificity

Moreover, Suffolk County has not met the standard for this test set forth by this Board in its Order Ruling on Suffolk County Motion for Leave to File New Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program (March 19, 1984) at 11:

> This element, the extent to which the County's participation on these issues may be expected to assist in developing a sound record, weighs against the County. We are aware of the County's vigorous and extensive performance in this proceeding to date, and we do not doubt that it will continue in this manner, sponsoring witnesses and cross-examining witnesses offered by other parties. However, for admission of late-filed contentions a substantially greater showing than mere past performance is required. The County supplemented the showing it had made on this factor in its original Motion where, in its Reply, it

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(footnote continued)

at best speculative. The Board might just as well speculate about whether the attitudes of public employees are hurt by a law that prohibits them from striking. For example, the Kheel article cited above says this about a particular strike by 50,000 teachers shortly after the Taylor Act was enacted:

> The event left wounds of ill will between the union, the Board of Education, the Mayor and groups of irate parents. These wounds are not easily healed, and the atmosphere of distrust and hostility undoubtedly contributed to the lengthy conflict that closed the schools again this fall.

Kheel, supra, at 186. The article makes clear that the Taylor Law itself, not just the strike, contributed to this distrust and hostility.

> included some additional description of its intentions in litigating these issues. The County provided the names of two expert witnesses, a noninclusive list of those whom it intends to call in this regard, but its description of the evidence it would provide was more or less a reiteration of the contentions themselves. We require that parties seeking the admission of late-filed contentions provide more specific information on the contribution they intend to make. Specific showing could include types of evidence to be offered, lists of proposed witnesses and the substance of testimony the proponent will adduce from them. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-783, 18 NRC 387, 399-400 (1983).

In the single paragraph devoted to this factor in its Motion, Suffolk County again presents a noninclusive list of witnesses, and its description of its evidence is limited to the single statement that it would submit testimony by these experts on "the implications of the LILCO strike on LILCO's ability to implement its Plan as set forth in this Motion and in the proposed contention" (Motion at 10-11). The other discussion of what the County hopes to prove (chiefly at Motion 2-4) amounts to little more than a reiteration of the contention itself.

D. County's Interests Represented by Other Parties

Fourth, Suffolk County argues that the County's interest in the proposed contention will not be adequately represented by other parties since no party has presented a similar contention. Motion at 11. LILCO cannot disagree with this assertion.8/

8/ This fourth factor, however, is of little or no importance here. The five factors of § 2.714(a)(1) are for judging peti-

(footnote continued)

E. Broadening of the Issues and Delay of the Proceedings

Finally, Suffolk County argues that the proposed contention would not unduly broaden the issues relating to the LILCO strike or unduly delay the proceedings. Motion at 12. No one familiar with this proceeding can possibly believe this.

1. Broadening the Issues

While Suffolk County concedes that its proposed contention "would broaden somewhat the inquiry deemed necessary by the Board," it contends that this broadening is minimized because the proposed contention is "specific and narrowly focused." Id. Even a cursory review of the proposed contention indicates that these assertions are untrue.

Read even in its narrowest, most favorable light, the proposed contention raises a myriad of issues, including whether LERO can be "re-created" (assuming that it needs to be); whether that "re-created" LERO would be the same organization as the one presented in the LILCO Transition Plan, and if not what the effects of any differences are on each and every part of the

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(footnote continued)

tions to intervene, where a failure to raise a litigable contention means that the petitioner is excluded from the proceeding altogether. Where, as here, a petitioner is already a party and the only question is whether he may raise a new issue, it is always the case that his "interest" (narrowly defined) cannot be protected by any other party: if the contention is not admitted, no one can support it. In short, the fourth factor has little or no meaning, and should be given little or no weight, in a situation such as this.

Plan; whether the strike has affected LERO volunteers in a manner in which they would not "dedicate themselves" to achieving an adequate level of preparedness; and whether the "re-created" LERO could or would respond to a radiological emergency in accord with the LILCO Transition Plan. Thus, rather than being narrowly focused, the proposed contention would reopen virtually every area of the emergency planning proceeding based solely on a hypothetical assertion about the attitude of LERO workers. Accordingly, the proposed contention would unreasonably broaden the scope of this proceeding.9/

2. Delay

As for delay, any new contention admitted at this time will definitionally delay this proceeding, whose record will otherwise close this week. This point was made recently when the Brenner Board rejected a new contention proposed by Suffolk County on financial qualifications:

> Intervenors cannot seriously expect this Board to believe that admission of this totally new contention "is not likely to have a material impact on the length of these proceedings." Intervenors' Memorandum at 32. Hearings before this Board are scheduled to commence on September 5, only two months after Intervenors filed this contention. The Miller Board is even

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9/ It is true that the existence or not of the "en masse" resignations should be relatively easy to determine. But the "reliability" and "dedication" of the work force," raised in item 3 of the contention, are subjects broad almost beyond belief, as is the issue (item 2) whether LERO "would be the same." Finally, the County has included a catchall contention (item 4) apparently designed to allow the County to litigate just about anything it wants.

> further along procedurally. The hearings before that Board commenced within a month of the filing of the contention and have already, except possibly for one sub-issue, been completed. In order to hear this contention, we would have to authorize a new round of discovery. New testimony would have to be prepared and filed, in advance of the hearing, so as to address this new issue. Under these conditions it is impossible to see how the expected length of the proceedings could not be substantially increased.

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LPB-84-30, slip op. at 26 (Aug. 13, 1984).

Suffolk County argues that litigation will take "no more than a few days of hearing time" (Motion at 12), and therefore the proceeding will not be delayed to any significant degree. But the actual hearing time is almost beside the point. There are in addition the matters of discovery, written testimony, and the oft-alleged inability of the County to cope with brisk schedules. The County's past insistence on numerous depositions, its frequent and comprehensive document requests (such as the one of August 1, 1983, concerning the strike issue), its insistence on written rather than oral testimony, and its many requests for additional time are well-known. We need not speculate about this; the County has already discussed its need for time to address the strike issue in Suffolk County's Motion for Reconsideration of Board's July 24 Order Regarding Schedule for Hearing and Prohibiting Written Testimony on the Strike Issues, dated August 3, 1984, in which the County relied on an Indian Point decision saying that hearing testimony on a new issue

entails a delay "on the order of months." The County has also complained recently about the demands that will be placed on it by the schedule for proposed findings. Suffolk County Motion for Reconsideration of Memorandum and Order Establishing Format and Schedule of Proposed Findings of Fact and Conclusions of Law (Aug. 6, 1984). It is simply not credible, given all this, that litigation of an additional issue can be quickly or easily accomplished.

Obviously, then, the proposed contention, if admitted, would create large delays. At a minimum, discovery would need to be conducted and cases prepared on these issues. Suffolk County may again assert a need for written submissions, see Suffolk County's Motion for Reconsideration of Board's July 24 Order Regarding Schedule for Hearing and Prohibiting Written Testimony on the Strike Issues (August 3, 1984), which would further delay the start of the hearings. This process could easily take a month or more. Since hearings are now within three or four days of completion, this potential delay portends to delay the filing of proposed findings as well as the ultimate resolution of this proceeding. This delay is particularly egregious when one considers that Suffolk County waited for 40 days following the start of the LILCO strike to file its proposed contention.

On balance, the only factor that even arguably weighs in Suffolk County's favor is that no other party will litigate the proposed strike issues. This factor is clearly insufficient to

overcome the lengthy delay that would result from admission of the contention; the County's failure to establish good cause; and the presence of other means for Suffolk County to address its concerns. Accordingly, Suffolk County's proposed contention must be rejected as late filed.

II. Suffolk County's Motion Does Not Provide Adequate Reasons for Reopening the Record

Suffolk County characterizes its Motion as merely a motion to submit a late-filed contention. See Motion at 1. In fact, it is an attempt to reopen the record on a number of issues that have already been litigated in this proceeding.10/ The contention that LERO members have resigned is simply a narrower version of Contention 39, the "attrition" issue. See Testimony of Deputy Inspector Peter F. Cosgrove et al., ff. Tr. 13,083, at 78-91. Indeed, Inspector Cosgrove has already testified about the effect of the strike:

> [B]ut again, if we look at the present situation, LILCO has all of its non-management people out on strike. As -- under my new duties in the Third Precinct, the Brentwood operations center is in my precinct, and as a result I had to get involved in some strike planning, and I had a conversation with Inspector Myers, who was our department's strike task force commander, who had told me of a conversation that he had with a Mr. Anzaloni, of Local 1049, whereby he was advised that all the Union members had withdrawn from LERO.

10/ While the formal record will not close until this week, the record on the issues which Suffolk County now seeks to reopen have been closed for more than a month.

> To my understanding, that means twelve hundred of the eighteen hundred members of LERO no longer exist. So, LERO is being manned now by about six hundred management people, less about fifty or so who have been laid off. I think right now LERO has a tremendous attrition problem, one that I can't imagine how they are going to surmount.
>
> And not only that, the argument might be made: Well, the strike might be a temporary thing, and they may come back and hard feelings may be soothed over; but these are still utility company employees with an absolute right to strike. They could go out next year, they could go out the year after. I don't think LILCO can ensure that there will never be another strike.
>
> Public workers, of course, are enjoined by law from striking. Private workers enjoy the right to strike, and they can exercise it, obviously, whenever they seem [sic] fit. I don't think LILCO can ever ensure that it won't happen again.

Tr. 13,289-90 (Cosgrove); see also Tr. 13,304 (Cosgrove). Moreover, it will not escape anyone's attention that the tension alleged by Suffolk County between the role of LERO members as emergency workers and their roles as union members or breadwinners looks suspiciously like yet another species of "role conflict." Finally, issues about the attitudes, incentives, and motivations of LERO workers have been raised repeatedly by Suffolk County in a variety of contexts. See, e.g., Tr. 13,184-88 (training issues).

Judged against the NRC standards for reopening a record, Suffolk County's motion must be rejected. The test for reopening the record requires "that (1) the motion be timely, (2) new

evidence of a significant safety (or environmental) question exists, and (3) the new evidence might materially affect the outcome of the proceeding." Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1141 (1983); see also Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 800 n.66 (1983).

The timeliness of the County's Motion has already been discussed above; clearly, the Motion untimely.

The existence of "new evidence" likewise does not militate in the County's favor. The new evidence here is simply the occurrence of a labor dispute. As we have shown above, this is not "new" at all; although the particular strike that prompted the County's Motion was recent, the County could have raised the same issue when it first submitted its contentions over a year ago. Nor is the possibility of a strike a "significant safety question." If it were, the NRC would have to inquire into the labor relations of all the people relied on in emergency plans all over the country.

As for whether the so-called new evidence might materially affect the outcome, it is inconceivable that any board would rule that a single five-week strike, plus the mere possibility of future strikes, renders an emergency organization permanently ineffective, because there is a test of that effectiveness at least every two years in the FEMA graded exercise. In short, hearing the County's "new evidence" cannot resolve the

matter and is unlikely to materially affect the outcome of this proceeding.

III. Conclusion

The proposed strike issue is simply another attempt by Suffolk County to claim that people who work for public utility companies are categorically unfit to be emergency workers. Early on, in the "role conflict" contention, the County claimed that a variety of emergency workers (school teachers, bus drivers, etc.) might not do their jobs because of concern for their families, and that utility employees, alone of all the possible emergency workers, would be fearful of their own safety as well. Cf. Contention 25.A to 25.B through 25.F. (Needless to say, Suffolk County presented no evidence to support this distinction.) Later, in Contention 11 on "Conflict of Interest" (which LILCO pointed out is just another species of "role conflict"), Suffolk County alleged that utility employees should be disqualified from making health and safety decisions because of the way they think. (The County's witnesses testified that utility employees have a subtle "mindset," Tr. 10,919-20, 10,961-62.) Now Suffolk County says that utility employees should be disqualified because they have the power to go on strike.

There is probably an unending variety of ways Suffolk County's lawyers can think up to explain why they believe utility employees cannot be trusted as emergency workers. But at

some point this Board must tell Suffolk County that enough is enough. Both Congress and the NRC have said that "utility plans" may be used to compensate for the failings of state and local governments. Suffolk County's persistent attempts to urge the contrary should be addressed to Congress.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

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DATED: August 27, 1984

LILCO, August 27, 1984

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S ANSWER TO MOTION OF SUFFOLK COUNTY TO ADMIT NEW CONTENTION were served this date upon the following by first-class mail, postage prepaid or, as indicated by an asterisk, by Federal Express, or, as indicated by two asterisks, by hand:

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DATED: August 27, 1984

UNITED STATES OF AMERICA
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LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3
	)	(Emergency Planning Proceeding)
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	)	

AFFIDAVIT OF ROBERT X. KELLEHER

Robert X. Kelleher, being duly sworn, deposes and says as follows:

1. My name is Robert X. Kelleher. I am Manager of the Employee Relations Department at the Long Island Lighting Company. My business address is 175 East Old Country Road, Hicksville, New York, 11801.

2. I make this affidavit in response to the July 3, 1984 motion of Suffolk County for admission of a new contention on the effect of the recent strike by labor unions representing LILCO employees on the future vitality of LERO. This affidavit has two primary purposes. The first is to dispel some of the clearly incorrect factual assertions contained in Suffolk County's motion, and second, to demonstrate that much of the factual information presented in Suffolk County's motion was available considerably before the commencement of the LILCO strike on July 10, 1984.

3. On March 6, 1984, LILCO implemented its austerity program. Contrary to Suffolk County's suggestion this program did

not drive a wedge between labor and management. The union layoffs that resulted from the austerity plan were not the approximately 20% as alleged by Suffolk County, but rather about 8%, allocated as follows:

(a) Clerical union: 245 layoffs outs of a union force of 1574 (or a 15.6% layoff)

(b) Physical union: 90 layoffs out of a union force of 2665 (or a 3.4% layoff).

In addition, a large number of these union layoffs were from a group of workers classified as "temporary indefinites." Employees in this classification understand they have the highest potential for being laid off. Since these March 6 layoffs, a sizable number of these union members have been rehired.

4. In early June 1984, representatives of labor and management exchanged statements of their respective positions regarding the renewal of the union contracts. While the LILCO management position included a proposed 5% wage cut, it also offered a stock plan basically identical to that offered LILCO's management personnel. LILCO's management bargaining position was premised on a desire to treat LILCO's union and non-union personnel as identically as possible. These bargaining positions appeared in local newspapers at various times from early to mid-June.

5. Other items asserted by Suffolk County to have caused the resentment of LILCO's union employees are inaccurate as a result of the recent strike settlement. Union employees did not suffer a pay cut, but rather will receive the same wages they had been

receiving for the prior year. In addition, no union worker has ever been without his/her insurance benefits, including health benefits. All benefits were retroactively restored a part of the strike settlement.

6. Suffolk County's assertions regarding the en masse resignation of LERO workers is simply incorrect. Workers volunteer for LERO individually by signing a written agreement; workers resign by tendering written notice individually. From July 1 to the commencement of the strike on July 10, 23 union workers submitted written resignations from LERO; during the strike, 1 additional union worker tendered his written resignation; and following the strike, 2 other workers have formally resigned. In addition, following the strike, 7 union workers have given oral resignation notices to their supervisors, but have yet to tender written notice. Following the strike, 2 new union workers have also joined LERO. Thus, the total loss to LERO, out of 1246 union members, was 31.

7. During the strike, business managers for the two LILCO unions did not present single, en masse resignation notices for LERO workers who are also members of their unions. Nor would such a notice have been effective since LERO is a voluntary organization outside normal LILCO job functions. Indeed, following the acceptance vote on the latest union contracts, the business manager for the clerical union signed a statement recognizing that

LERO is a voluntary organization outside the scope of LILCO's normal business and outside the coverage of the collective bargaining agreement. (Attachment 1). The business manager for the physical union, although he has yet to formally sign such a statement, has stated that he stands behind it.

8. Even during the just completed strike, there were clear indications that union workers will carry out their voluntary obligations, even if they are on strike from their normal jobs. For example, union members who are members of local voluntary fire departments continued to serve as voluntary firemen. In many cases, these voluntary functions were performed side-by-side with LILCO management personnel who were also members of those voluntary fire companies.

_____
Robert X. Kelleher

COUNTY OF NASSAU)
STATE OF NEW YORK)

Subscribed and sworn to before
me this ___ day of _____, 1984.

_____
NOTARY PUBLIC

My Commission Expires on _____.

ATTACHMENT 1

STATEMENT OF DONALD J. DALEY, BUSINESS MANAGER LOCAL 1381 IBEW (AFTER THE VOTE)

The Union recognizes that the Local Emergency Response Organization (LERO) is a voluntary organization and outside the normal scope of the Company's business. It further recognizes that members of Local Union 1381, IBEW who have volunteered for assignments in LERO are performing duties and functions not associated with normal operations of the Company or in job classifications covered by the Collective Bargaining Agreement between the Company and the Union. Accordingly, the Union has no objection to any of its members volunteering for LERO assignments.

Donald J. Daley

Business Manager