

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'84 SEP 12 P2:05

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
OF THE BOARD
& STAFF
BRANCH

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

SUFFOLK COUNTY RESPONSE TO NRC
STAFF'S MOTION FOR EXTENSION OF TIME

Late yesterday afternoon, September 11, 1984, Suffolk County received the NRC Staff's Motion for Extension of Time to respond to the LILCO summary disposition motion of Contentions 1-10. The Staff's motion, however, fails to represent completely the County's position with respect to this matter. The County files this response to set the record straight and to urge the Board, if it is going to grant the Staff additional time, to also grant the County and State some additional time as well, although the additional time for County and State response need not be as long as that granted for the Staff.

The present schedule calls for all parties to respond to the LILCO motion by September 17. The Staff seeks a two week extension of time (until October 1) to file its response. Suffolk County and the State would get no extension of time at all. The Staff represents that LILCO does not oppose the extension of

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time. The Staff further states that "Counsel for Suffolk County and the State of New York have indicated that they would oppose the instant request, absent the provision of an extension of time for the filing of their responses to LILCO's motions." Staff Motion at 4. That is not the complete story.

Late last week, Staff counsel contacted the County's counsel to explain his need for an extension of time and to ask for the County's support for such an extension. Suffolk County indicated, during the course of several conversations (the last being on Monday), that the County would not oppose an extension of time for the Staff. The County explained, however, that it too was pressed for time (for many of the same reasons set forth in the Staff's motion),^{1/} and for that reason, the County also needed some additional time. When Staff counsel indicated that the Staff wanted more time than the County because it wanted an opportunity to review the County's arguments, the County stated

^{1/} The County disagrees with one of the Staff's asserted reasons for need for additional time. The Staff states that the "inherent familiarity possessed by Suffolk County and the State of New York with respect to the State laws cited in Contentions 1-10 . . ." constitutes a basis to grant more time to the Staff and not to the County and State. Staff Motion at 2. The Staff has not read LILCO's Motion with any care. LILCO's Motion does not deal at all with the details of State laws; rather, LILCO's Motion assumes those laws bar LILCO from implementing the Transition Plan and goes on to argue the preemption issue. The County and State have no "inherent familiarity" with the preemption issue addressed in LILCO's Motion. For the same reason, the Staff's November 14, 1983 request to go last when addressing "questions of New York law" (quoted at page 3 of the Staff's Motion) is irrelevant since questions of New York law are not the subject of LILCO's Motion.

that it had no objection to the Staff taking additional time beyond any extension granted for the County and State. The County suggested that the County and State brief be filed on September 24, a one-week extension, and that the Staff brief be filed on October 1, 1984, a two-week extension. Staff counsel refused to agree to the County's alternate proposal.

Suffolk County now reiterates its view. Suffolk County has no objection to an extension of time for the Staff filing, provided that the County and State also receive some relief from the September 17 date. In fact, if the Staff needs two weeks to review any County response, Suffolk County has no objection to the Staff taking until October 8 to file its response, with the County and State filing a response on September 24.

Briefly, the reasons that the County and State need additional time are similar to those proffered by the Staff.

-- Like the Staff, the County and State counsel who are most familiar with the factual matters raised in LILCO's Motion were tied up in the emergency planning hearings in August and are presently working full time on proposed findings. Thus, other counsel less familiar with the record are taking the lead on the factual issues (i.e., those matters dealing mostly with LILCO's "immateriality" argument).

-- The County's counsel responsible for responding to the main body of LILCO's Motion, the so-called "realism" issue and the preemption issue, have been devoting much of their time to responding to a LILCO Motion to Dismiss in the New York State Supreme Court legal authority case. The joint County/State response took longer to prepare than previously expected and was not completed until yesterday. Thus, they are not as far along in responding to LILCO's ASLB Motion as previously expected.

-- Events in the parallel low power exemption proceeding for Shoreham have also caused a diversion of resources from work on the response to LILCO's Motion. Thus, by Order issued last Friday, September 7, 1984, the Commission directed the parties to file papers by September 14 concerning the Miller Board's "Order Reconsidering Summary Disposition of Phase I and Phase II Low-Power Testing." See Commission Order, CLI-84-16, September 7, 1984. And yesterday, the Miller Board scheduled a prehearing conference for September 14, 1984 to address certain new security developments. See ASLB Order Scheduling Conference of Counsel, September 11, 1984. These events are causing Messrs. Brown and Lanpher, who are working on the response to the instant LILCO Motion, to divert attention to these other matters.

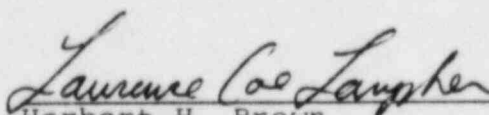
-- Finally, the County and State are planning to file a joint response to the LILCO Motion. The necessary coordination which such a joint response entails is an additional reason that a brief time extension is required.

In sum, therefore, events have occurred which constitute good cause for a brief extension of time for the County and State to file their joint response. Thus, while the County does not oppose a reasonable time extension for the Staff, an extension for the County and State until September 24 is also proper.

Given the shortness of time between now and September 17, Suffolk County respectfully requests the Board to expedite its consideration of the Staff's Motion and the County's Response thereto. The County's counsel are available for a conference call if the Board deems such to be necessary.

Respectfully submitted,

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September 12, 1984

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NUCLEAR REGULATORY COMMISSION

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DOCKETING & SERVICES
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LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))
_____)

Docket No. 50-322 (O.L.)
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County's Response to NRC's Staff Motion to Extension of Time have been served on the following this 12th day of September 1984, by U.S. mail, first class, except as otherwise noted.

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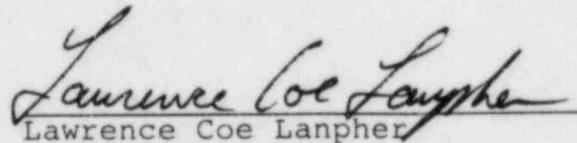
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