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RELATED CORRESPONDENCE

SUFFOLK COUNTY 9/24/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 SEP 25 P3:00

Before the Atomic Safety and Licensing Board OFFICE OF SECRETARY FOR INS & SAFETY BRANCH

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

SUFFOLK COUNTY'S RESPONSE TO LILCO'S MOTION  
TO ADMIT SUPPLEMENTAL TESTIMONY ON  
SUFFOLK COUNTY CONTENTION REGARDING CYLINDER BLOCKS

On Friday, September 21, counsel for Suffolk County received LILCO's Motion to Admit Supplemental Testimony on Suffolk County Contention Regarding Cylinder Blocks, dated September 20, 1984, together with the Supplemental Testimony attached. This Motion thus arrived the Friday before the Monday on which the County is likely to begin cross-examination of the LILCO witness panel on their cylinder block testimony filed August 14, 1984.

Suffolk County agrees with LILCO that the proffered Supplemental Testimony concerns matters relevant and material to the adjudication of the County's contention on cylinder blocks. The Supplemental Testimony discloses for the first time to the Board and parties the existence of significant new information concerning the cracks in the tops of the blocks and in the camshaft gallery area of the blocks. It also discloses for the first time

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to the Board and parties that another type of crack -- circumferential cracks -- have been found in the block of EDG 103.

LILCO's Motion and its Supplementary Testimony do not state when LILCO discovered this new information, except that it was after August 14, 1984. In fact, it appears that LILCO knew this information even before the hearing began and withheld it from the Board and parties until now. During the telephone conference with the Board and parties on September 6, counsel for Suffolk County advised the Board that he had been told by LILCO's counsel that LILCO intended to file supplementary testimony on the cylinder blocks. LILCO did not disclose the existence of the new information then, and even failed to disclose it when LILCO's counsel at the hearing mentioned the issue of supplemental block testimony to the Board. See Tr. 22,911-12.

LILCO's Motion states that the new information concerning the blocks is subject to the McGuire rule. Therefore, it should have promptly been disclosed to the Board and parties. There is no excuse for LILCO's withholding this information until the cylinder block cross-examination is about to begin, and then revealing its existence only in the form of conclusionary and adversarial written testimony.

A review of the Supplemental Testimony shows that it is based upon information of relevance and materiality to the entire issue of the adequacy of the cylinder blocks. First, it discloses that "extensive non-destructive and destructive examinations" have been carried out on the cam gallery cracks of EDG 103, from which LILCO's witnesses reach new and revised conclusions concerning

these cracks. Second, it discloses that FaAA's measurements of crack depths, as reported in the FaAA Block Report and prefiled testimony, may have been faulty, and on this basis revised the cumulative damage index calculation made by FaAA. Third, it discloses that circumferential cracks have been found in one block, suggests such cracks may exist in the blocks for EDGs 101 and 102, and reaches conclusions about the significance of these cracks.

Suffolk County believes that the most important issue at hand is not whether LILCO's Supplementary Testimony should at some point be admitted. Rather, the issue is that LILCO has now disclosed for the first time that significant new information concerning the cylinder blocks exists, information which is by LILCO's own admission relevant and material to the adjudication of the cylinder block contention. Suffolk County would be severely prejudiced unless it is given an opportunity to discover and evaluate this new information and, if appropriate, file its own direct supplementary testimony regarding the issues raised by the new information.

Immediately upon receiving LILCO's Motion on Friday, the County's attorney sent the Supplemental Testimony to the County's experts by Federal Express to request assistance in determining what discovery would be necessary.<sup>1/</sup> He telephoned counsel for the Staff and was informed that the Staff had not yet been served LILCO's Motion. The County's counsel then telephoned counsel for

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<sup>1/</sup> Professor Anderson, the County's metallurgical expert, is out-of-town until Monday, September 24, and will not receive the material until then.

LILCO to request LILCO's agreement to provide voluntary discovery of the new information and to support the County's position that the hearing should be suspended until discovery is completed and the new information evaluated. LILCO rejected these requests.

Accordingly, Suffolk County requests that this Board (i) upon completion of the cross-examination of Professor Sarsten regarding the County's crankshaft contention, suspend the hearing until further notice in order to give Suffolk County an opportunity for discovery of the new information (the existence of which is disclosed in LILCO's Supplemental Testimony), evaluation thereof, and, if warranted, the filing of supplemental testimony thereon, and (ii) defer ruling on LILCO's Motion until after the County has completed its discovery and evaluation.

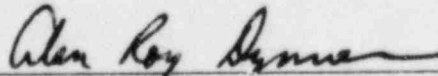
Suffolk County realizes that suspension of the hearing is a significant inconvenience to the Board, the parties, and all witnesses, including those of the County. However, fairness and due process in this proceeding require this unusual step. LILCO has consistently urged an overly expeditious litigation schedule, has opposed the Staff's request for a short delay, and now, in the middle of the hearing, has blind-sided the Board and Suffolk County by revealing the existence of important new information relevant to the cylinder blocks just a few days before litigation on that component is to begin. Under these circumstances, LILCO can hardly be heard to complain about necessary delay brought about by its own failure to do a more complete examination of the EDG 103 block earlier and by its own action in withholding important new information.

Finally, we recognize that one way to avoid suspending the hearing might be to reschedule the order of the proceeding to complete litigation of piston skirts and crankshafts pending discovery and evaluation of the cylinder block information. That alternative would penalize the County. First, the County's witness panel has not yet been adequately prepared to be cross-examined. Many of them have been involved only in assisting the County's attorneys with their cross-examination of LILCO's witness panel during the past few weeks. Second, the County has the same expert witness panel for all components. These experts could not possibly be involved in preparing for and undergoing cross-examination on pistons and crankshafts, while at the same time analyzing new information discovered on the cylinder blocks and, possibly, preparing supplemental testimony.

For the foregoing reasons, Suffolk County urges this Board to grant the County's requests to suspend the hearing pending discovery and evaluation of the new evidence on cylinder blocks.

Respectfully submitted,

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September 24, 1984

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NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board OF SECRETARY  
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Docket No. 50-322-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S RESPONSE TO LILCO'S MOTION TO ADMIT SUPPLEMENTAL TESTIMONY ON SUFFOLK COUNTY CONTENTION REGARDING CYLINDER BLOCKS, dated September 24, 1984, have been served on the following this 24th day of September 1984 by U.S. mail, first class, except as otherwise noted.

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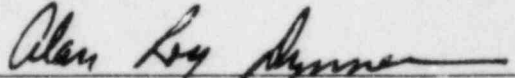
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DATE: September 24, 1984

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# By Federal Express  
\* By Hand Delivery