

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

DOCKETED
 USNRC

Before the Atomic Safety and Licensing Board

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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 OPPOSITION TO SUFFOLK COUNTY
 DISCOVERY REQUESTS CONCERNING USE OF NASSAU
 COLISEUM AS A RECEPTION CENTER, MOTION FOR
PROTECTIVE ORDER AND REQUEST FOR EXPEDITED BOARD RULING

LILCO received last night, without prior notice, a four-page letter from counsel for Suffolk County (Attachment 1), containing 16 separately numbered discovery requests and attaching a notice of deposition for Elaine Robinson, LILCO's affiant in its January 11 motion to reopen the record on use of the Nassau Coliseum as a reception center.^{1/} Similar letters were sent by counsel for Suffolk County to the NRC Staff (Attachment 2) and FEMA (Attachment 3).^{2/}

^{1/} For purposes of this paper, and so as to avoid delay LILCO considers Suffolk County's letter, though not so labeled, as a request for document production under § 2.741.

^{2/} The letter to FEMA counsel recites his agreement to make FEMA personnel available for deposition. LILCO counsel understands that this "agreement" was obtained by telephone prior to FEMA counsel's receipt of the letter and before FEMA counsel was informed that Suffolk County was filing, in addition, document requests upon FEMA.

LILCO believes that these discovery requests fundamentally distort the limited reopening contemplated by the Board's January 28 Order. That Order permitted any party to produce its own response, in accordance with the Board's guidance, to LILCO's prima facie case by February 18 -- not to do so only after obtaining extensive discovery. The Order did not provide for any discovery on LILCO's January 11 submissions, nor did Suffolk County ever ask for such discovery in its January 18 response to LILCO's January 11 papers.^{3/} The Board's Order is consistent with other Commission summary procedure, e.g., § 2.749 (no discovery as of right in connection with summary disposition motions) and with other recent usages in this proceeding (e.g., use of summary procedure on remand from ALAB-788).^{4/}

^{3/} Suffolk County asked only for the opportunity to submit its own evidence and to cross-examine LILCO's presentation. Suffolk County and State of New York Opposition to LILCO's Motion to Reopen the Record, January 18, 1985, at 49.

^{4/} In the general safety phase of this case, the Appeal Board remanded three issues to the Brenner Licensing Board in ALAB-788 (October 31, 1984). That Board followed a procedure very similar to that ordered by this Board on January 28: it ordered the parties each to provide their views on the merits of each of these issues, on the basis of information available to them. LILCO and the Staff provided pleadings and affidavits; Suffolk County stated that it could not comment substantively without further time and opportunity to review various documents. On the basis of those papers and one conference of counsel, the Board ultimately dismissed the three remanded issues. Memorandum and Order Ruling on Remand Issues, LBP-84-53, November 30, 1984 (Docket 50-322-OL); Order Terminating Further Proceedings on Remand Issues, December 20, 1984 (Docket 50-322-OL).

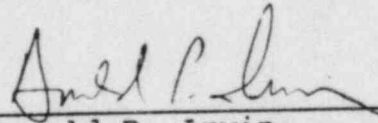
Secondly, even if this Board were to conclude that it had not intended categorically to exclude discovery before February 18, 1985, the scope of Suffolk County's requests sweeps far beyond the designation of the Nassau Coliseum as a reception center. Various of the requests to LILCO involve, in whole or in part, (1) discussions or drafts underlying agreements or documents which speak for themselves (requests 1, 2, 3, 9, 10, 15), (2) issues already litigated or outside the scope of contentions (e.g., requests 4, 5, 6, 7, 13, 14, 16), and other issues of dubious relevance or materiality. In addition, the requests purport to seek documents, and drafts of documents, not in LILCO's possession or control (i.e., documents and drafts from "any non-LILCO organization which may be expected to respond to a radiological emergency at Shoreham"). Requests 2 and 3 to the NRC Staff and FEMA are of a similarly sweeping nature. Literal compliance with them would implicate issues far beyond the scope of this reopening, would be extraordinarily burdensome for LILCO, and command that which cannot be produced, i.e., documents beyond LILCO's control.

The Board's prompt attention to this matter is necessary to avoid any delay in this proceeding. Suffolk County has requested depositions beginning next Wednesday, February 6. Further, if the Board permits the requested discovery, LILCO will have to undertake to comply with it immediately in order to avoid imperiling the February 18 reply date.

For the reasons stated above, LILCO believes the Board should deny Suffolk County's requested discovery on the basis that it is not contemplated by the summary procedures set forth in the Board's January 26 Order. LILCO also requests that the Board rule on this issue as soon as possible, by telephone today if possible. In the event the Board wishes to examine the discovery requests individually before ruling, LILCO requests either a telephone conference or live hearing at the earliest possible time, either this afternoon or Monday if possible.^{5/}

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



Donald P. Irwin
James N. Christman
Kathy E.B. McCleskey

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: February 1, 1985

^{5/} LILCO, by requesting a protective order, intends only to comply with the form of the regulations and not to set off a new round of responsive pleadings. Counsel for Suffolk County have been told by telephone to expect this response and have been served with it by telecopier.

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January 31, 1985

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VIA TELECOPY

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 Kathy E. B. McCleskey, Esq.
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Dear Jim and Kathy:

Pursuant to the Board's Memorandum and Order of January 28, 1985 requiring us to submit by February 18 testimony or affidavits on the issues raised by LILCO's Motion to Reopen the Record, we request that LILCO furnish the following information pertaining to LILCO's proposed use of the Nassau Veterans Memorial Coliseum as a relocation center as soon as possible, but not later than February 5, 1985. This will provide the minimum time necessary to review the requested information prior to the deposition of Elaine D. Robinson, which we have noticed for Thursday, February 7, 1985.

1. All documents relating to discussions or meetings between or among representatives of LILCO and the Hyatt Management Corporation of New York, Inc. concerning LILCO's proposed use of the Nassau Veterans Memorial Coliseum ("Nassau Coliseum"), including, but not limited to, the discussions referenced in Ms. Robinson's January 10, 1985 Affidavit (§ 2) and any other discussions, meetings, or correspondence relating to the letter from William J. Catacosinos to E. B. Sumerlin, Jr. dated September 25, 1984 (Robinson Affidavit, Attachment 1).

2. All documents relating to the Nassau County Executive's "advi[ce] [to] the General Manager of the Coliseum that he approved the use of the Coliseum as a [relocation] center in the event of an accident at the Shoreham Nuclear Power Station"

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James N. Christman, Esq.
Kathy E. B. McCleskey, Esq.
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(Robinson Affidavit, ¶ 3), including, but not limited to, correspondence, or documents relating to discussions or meetings, between or among representatives of LILCO and the Nassau County Executive and/or other Nassau County officials or agencies concerning LILCO's proposed use of the Nassau Coliseum.

3. All documents relating to discussions or meetings between or among representatives of LILCO and the Nassau County Chapter of the American Red Cross, including, but not limited to, the discussions referenced in Ms. Robinson's Affidavit (¶ 4) and any other correspondence, discussions, or meetings relating to the matters referred to in the letter from Matthew C. Cordaro to Frank M. Rasbury dated October 23, 1984 (Robinson Affidavit, Attachment 3).

4. All documents relating to the ordinary business use of the Nassau Coliseum and its availability for use by LILCO or as a relocation center in the event of a radiological emergency at Shoreham.

5. Copies of a calendar and description of events scheduled and/or held at the Nassau Coliseum during the past five years.

6. A calendar and description of events scheduled for 1985, and 1986.

7. A copy of the agreement or contract form generally used by Hyatt Management Corporation in permitting the use of the Nassau Coliseum.

8. All documents relating to the physical layout of and facilities available in the Nassau Coliseum, including, but not limited to, information about the number, size, dimensions, and locations of lockers/dressing rooms, toilet and shower facilities, sinks, storage areas, common areas, telephones, and food preparation areas.

9. All documents relating to the Nassau County Executive's "assur[ance] . . . that the Nassau County Government would cooperate to the fullest in making the Coliseum available in the event of an accident at Shoreham" (Robinson Affidavit, ¶ 7), including, but not limited to, correspondence, or documents relating to discussions or meetings, between or among representatives of LILCO and the Nassau County Executive and/or other Nassau County officials or agencies concerning LILCO's proposed use of the Nassau Coliseum.

KIRKPATRICK & LOCKHART

James N. Christman, Esq.
 Kathy E. B. McCleskey, Esq.
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10. All correspondence of any kind relating to LILCO's proposed use of the Nassau Coliseum as a relocation center, including, but not limited to, all drafts of the September 25, October 1, October 23, and December 31, 1984 letters attached to the Robinson Affidavit (Attachments 1, 2, 3 and 6, respectively).

11. All documents relating to the information in the Robinson Affidavit regarding the time required to clear the Coliseum and its parking lot should an accident at Shoreham occur while a "sporting or entertainment event" were in progress at the Coliseum (Robinson Affidavit, ¶ 7), including, but not limited to, the circumstances surrounding and assumptions underlying such information.

12. All documents, including, but not limited to, any survey, report or study, which relate to the parking lot capacity of the Nassau Coliseum, and access to and from the Coliseum from the EPZ, areas outside the EPZ (for example, from west of the EPZ to the Coliseum), and the roadways and streets surrounding and adjacent to the Coliseum.

13. All documents relating to LILCO's proposal to direct evacuees from the Nassau Coliseum to so-called "congregate care centers" (where evacuees would be housed), including, but not limited to, the distances and locations of such congregate care centers from the Nassau Coliseum, proposed travel routes, and proposed method(s) of transporting evacuees.

14. All documents relating to the time and types and numbers of personnel necessary to monitor and decontaminate all evacuees at one facility or at the Nassau Coliseum.

15. All documents and correspondence of any kind between or among representatives of LILCO and the NRC Staff and/or FEMA concerning LILCO's proposed use of the Nassau Coliseum.

16. All documents relating to the health effects to EPZ evacuees or to the population of Nassau County or other areas outside the EPZ that could result from LILCO's proposal to use the Nassau Coliseum as a relocation center.

Please construe the term "document" as used in this request to include, but not be limited to, all drafts or final copies of memoranda, correspondence, comments, reports, notes, minutes, or summaries. Please also construe the term "document" to include,

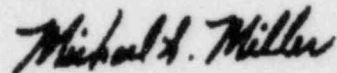
KIRKPATRICK & LOCKHART

James N. Christman, Esq.
Kathy E. B. McCleskey, Esq.
Page Four
January 31, 1985

but not be limited to, documents in the possession or control of LILCO, LERO, LERIO, any representative (including, without limitation, attorneys and their respective agents and employees) or other person acting for or on behalf of LILCO, LERO, or LERIO or at their direction, including, without limitation, any non-LILCO organization which may be expected to respond to a radiological emergency at Shoreham.

Counsel for New York State has authorized me to inform you that the State joins in this request.

Sincerely,



Michael S. Miller

cc: Fabian Palomino, Esq.
Bernard M. Bordenick, Esq.
Stewart M. Glass, Esq.
James B. Dougherty, Esq.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Docket No. 50-322-OL-3
(Emergency Planning)

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Suffolk County and New York State, by counsel, pursuant to 10 CFR 2.740a of the Nuclear Regulatory Commission's Rules of Practice, will take the deposition upon oral examination of Elaine D. Robinson on the subject of LILCO's proposed use of the Nassau Veterans Memorial Coliseum as a relocation center. Such deposition will be taken before a notary public, or before some other authorized official, at the H. Lee Dennison Building, 8th Floor, Veterans Memorial Highway, Hauppauge, New York 11788, on the 7th day of February, 1985, at 10:30 a.m. and thereafter until the deposition is completed.

DATED: January 31, 1985

KIRKPATRICK & LOCKHART

By Michael S. Miller
Michael S. Miller

Attorneys for Suffolk County
1900 M Street, N.W., Suite 800
Washington, D.C. 20036
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Fabian G. Palomino
Fabian G. Palomino, Esq.
Special Counsel to the Governor
of the State of New York

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WRITER'S DIRECT DIAL NUMBER

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VIA TELECOPY

Bernard M. Bordenick, Esq.
 U.S. Nuclear Regulatory
 Commission
 Washington, D.C. 20555

Dear Bernie:

Pursuant to our telephone conversation earlier today, this will confirm, with respect to the Board's Memorandum and Order of January 28, 1985 granting LILCO's Motion to Reopen the Record ("Order"), that, at this time, the NRC Staff does not intend to cross-examine LILCO's witness "on the substance of the designation of the Nassau Veterans Memorial Coliseum as a relocation center . . ." Order, at 9. Nor does the Staff presently intend "to submit direct testimony or other evidence on the merits of LILCO's designation of the Coliseum as a relocation center . . ." Id. You have advised, however, that FEMA may submit testimony or other evidence on the issues raised by the Board's Order.^{1/}

As you know, the Board's Order requires the parties to submit any testimony or affidavits on the issues raised by LILCO's Motion to Reopen the Record by February 18. In light of the schedule set by the Board, we request that the NRC Staff furnish the following information pertaining to LILCO's proposed use of the Nassau Veterans Memorial Coliseum as a relocation center as soon as possible, but not later than February 5, 1985. We also request that you immediately inform us if the Staff later decides either to conduct cross-examination of LILCO's witness or to submit testimony or other evidence on the issues regarding LILCO's proposal to use the Nassau Coliseum as a relocation center.

^{1/} Following our telephone conversation, I was advised by Stewart Glass that, at this time, FEMA does intend to submit direct testimony or evidence in the form of affidavits on the LILCO relocation center issues. Apparently, such testimony or affidavits will be submitted by the same witnesses FEMA has used on other emergency planning issues, i.e., Messrs. McIntire, Kowieski, Keller and Baldwin.

KIRKPATRICK & LOCKHART

Bernard M. Bordenick, Esq.

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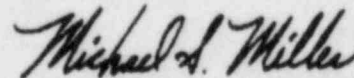
January 31, 1985

1. All documents and correspondence of any kind between or among representatives of the NRC Staff and LILCO and/or FEMA concerning LILCO's proposed use of the Nassau Coliseum.
2. All documents relating to the use or proposed use by any licensee, including LILCO, of a relocation center (or other facility at which all evacuees would be monitored and, if necessary, decontaminated in the event of a radiological accident) which is 40 or more miles from the licensee's nuclear power plant.
3. All documents relating to the health effects to EPZ evacuees or to the population of Nassau County or other areas outside the EPZ that could result from LILCO's proposal to use the Nassau Coliseum as a relocation center.

Please construe the term "document" as used in this request to include, but not be limited to, all drafts or final copies of memoranda, correspondence, comments, reports, notes, minutes or summaries. Please also construe the term "document" to include, but not be limited to, documents in the possession or control of the NRC Staff, any representative (including, without limitation, attorneys and their respective agents and employees) or other person acting for or on behalf of the NRC Staff, or at its direction or control.

Counsel for New York State has authorized me to inform you that the State joins in this request.

Sincerely,



Michael S. Miller

cc: Fabian Palomino, Esq.
James N. Christman, Esq.
Kathy E. B. McCleskey, Esq.
Stewart M. Glass, Esq.
James B. Dougherty, Esq.

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January 31, 1985

WRITER'S DIRECT DIAL NUMBER
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VIA TELECOPY

Stewart M. Glass, Esq.
 Regional Counsel
 Federal Emergency Management
 Agency
 26 Federal Plaza, Room 1349
 New York, New York 10278

Dear Stewart:

Pursuant to our telephone conversation earlier today, this will confirm, with respect to the Board's Memorandum and Order of January 28, 1985 granting LILCO's Motion to Reopen the Record ("Order"), that, at this time, although FEMA has some questions to ask of LILCO regarding LILCO's reliance on the Nassau County Red Cross, it is unclear whether FEMA will seek to cross-examine LILCO's witness "on the substance of the designation of the Nassau Veterans Memorial Coliseum as a relocation center . . ." Order, at 9. You indicated, however, that FEMA does intend "to submit direct testimony or other evidence on the merits of LILCO's designation of the Coliseum as a relocation center . . ." Id. In this regard, you advised that such testimony or other evidence in the form of affidavits would be submitted on FEMA's behalf by the same witnesses FEMA has used on other emergency planning issues, i.e., Messrs. McIntire, Kowieski, Keller and Baldwin. I advised you that we would want to depose these witnesses as soon as possible.

As you know, the Board's Order requires the parties to submit any testimony or affidavits on the issues raised by LILCO's Motion to Reopen the Record by February 18. In light of the schedule set by the Board, we request that FEMA furnish the following information pertaining to LILCO's proposed use of the Nassau Veterans Memorial Coliseum as a relocation center as soon as possible, but not later than February 5, 1985. We also request that you inform us promptly of the availability of the FEMA witnesses. We are hopeful that their deposition can be scheduled next week, either for the day before or after the deposition of LILCO's witness Elaine D. Robinson, which we have noticed for

KIRKPATRICK & LOCKHART

Stewart M. Glass, Esq.

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January 31, 1985

Thursday, February 7. In this regard, you have just advised me that Wednesday, February 6 appears to be available as a date for deposing FEMA's witnesses, and have promised to get back to me tomorrow to confirm this. Perhaps at that time we can discuss your suggestions that the depositions of Ms. Robinson and FEMA's witnesses be scheduled for the same day and held at your offices in New York City.

1. All documents and correspondence of any kind between or among representatives of FEMA and the NRC Staff and/or LILCO concerning LILCO's proposed use of the Nassau Coliseum.

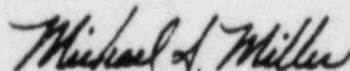
2. All documents relating to the use or proposed use by any licensee, including LILCO, of a relocation center (or other facility at which all evacuees would be monitored and, if necessary, decontaminated in the event of a radiological accident) which is 40 or more miles from the licensee's nuclear power plant.

3. All documents relating to the health effects to EPZ evacuees or to the population of Nassau County or other areas outside the EPZ that could result from LILCO's proposal to use the Nassau Coliseum as a relocation center.

Please construe the term "document" as used in this request to include, but not be limited to, all drafts or final copies of memoranda, correspondence, comments, reports, notes, minutes, or summaries. Please also construe the term "document" to include, but not be limited to, documents in the possession or control of FEMA, any representative (including, without limitation, attorneys and their respective agents and employees) or other person acting for or on behalf of FEMA, or at its direction or control.

Counsel for New York State has authorized me to inform you that the State joins in this request.

Sincerely,



Michael S. Miller

cc: Fabian Palomino, Esq.
James N. Christman, Esq.
Kathy E. B. McCleskey, Esq.
Bernard M. Bordenick, Esq.
James B. Dougherty, Esq.

LILCO, February 1, 1985

CERTIFICATE OF SERVICE

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

I certify that copies of LILCO's OPPOSITION TO SUFFOLK COUNTY DISCOVERY REQUESTS CONCERNING USE OF NASSAU COLISEUM AS A RECEPTION CENTER, MOTION FOR PROTECTIVE ORDER AND REQUEST FOR EXPEDITED BOARD RULING were served this date upon the following by first-class mail, postage prepaid, or (as indicated by an asterisk) by hand or telecopier, or (as indicated by two asterisks) by Federal Express.

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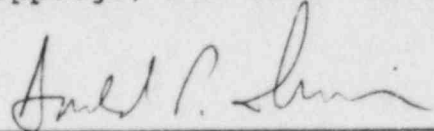
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DATED: February 1, 1985