

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED  
USNRC

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

Docket No. 50-3224OL-3  
(Emergency Planning)

OFFICE OF SECRETARY  
FOR PUBLIC AFFAIRS & SERVICE  
ANCH

SUFFOLK COUNTY AND NEW YORK STATE  
RESPONSE TO LILCO'S OPPOSITION  
TO NASSAU COLISEUM DISCOVERY REQUESTS

On January 28, 1985, the Board agreed to reopen the record in this proceeding "for the limited purpose of assessing the adequacy of LILCO's proffered evidence concerning the Nassau Veterans Memorial Coliseum as a relocation center to be used in the event of an emergency at Shoreham."<sup>1/</sup> The Board made clear, however, that before ruling on LILCO's proffered evidence, it would consider the positions of the other parties regarding LILCO's evidence. Thus, it established a schedule which requires the parties by February 18, inter alia, to file cross-examination plans and/or testimony or affidavits addressing LILCO's proposal, if they believe there is a need to cross-examine LILCO's witness and/or to submit direct testimony or other evidence on the merits of LILCO's proposal. LILCO must respond by February 25, and then

<sup>1/</sup> Memorandum and Order Granting LILCO's Motion to Reopen Record (hereinafter, "Order"), at 9.

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the Board will decide whether "to admit in the record any or all of the evidence proffered or to schedule a further oral hearing." Order, at 9-10.

In order to comply with the Board's schedule, Suffolk County and New York State have pursued limited informal discovery, as was the practice of all parties throughout the emergency planning litigation, concerning LILCO's proposal to use the Nassau Coliseum. Copies of the informal discovery requests to LILCO, the NRC Staff and FEMA are attached for the Board's information. In addition, the County and State noticed the deposition of LILCO's witness on the Nassau Coliseum relocation center issues, and have notified the NRC Staff and FEMA that they wish to depose any witness who intends to submit testimony or other evidence on their behalf. The County and State understand that the Staff does not presently intend to present any evidence on the relocation center issues; FEMA, however, has indicated that it will likely submit testimony or affidavits regarding LILCO's new relocation center proposal by some or all of the witnesses who previously testified on FEMA's behalf.

Neither the Staff nor FEMA has indicated any opposition to the discovery requests made by the County and State; indeed, counsel for FEMA has made clear that he intends to respond to the discovery requests and to make whatever witnesses FEMA decides to use in presenting evidence to the Board available for deposition. LILCO, on the other hand, has opposed the County and State's

discovery requests.<sup>2/</sup> LILCO's Opposition, received late Friday afternoon, February 1, 1985, asserts that the Board should preclude any discovery on the issues raised by LILCO's reopening of the evidentiary record. In the view of the County and State, this assertion is wholly without merit and should be rejected.

The sole reason for LILCO's seeking to reopen the evidentiary record was LILCO's inability to sustain its burden of proof on the relocation center contentions. Over the objection of the County and State, the Board agreed to reopen the record. While the County and State disagree with the Board's ruling, the fact is that the record has been reopened. As a result, limited discovery on the issues raised by LILCO's proposed use of the Nassau Coliseum is necessary if the parties are to develop and present to the Board in a meaningful manner their respective positions regarding LILCO's proffered evidence. Indeed, with few if any exceptions, discovery related to evidence proffered by any party to this proceeding has always been permitted by this Board, consistent with the NRC's Rules of Practice. There is no basis for reversing this practice here, especially since the discovery sought is limited.

Although LILCO's Opposition characterizes the discovery requests as "extensive," "extraordinarily burdensome," and "sweep[ing] far beyond the designation of the Nassau Coliseum as

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<sup>2/</sup>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, dated February 1, 1985 (hereinafter, "Opposition").

a reception center" (Opposition, at 2, 3), a review of the requests themselves reveal these LILCO assertions to be overstated and baseless mischaracterizations.

In essence, LILCO's complaint regarding the allegedly "extensive" nature of the County and State's discovery requests rests on three grounds. First, LILCO claims that various of the requests involve "discussions or drafts underlying agreements or documents which speak for themselves." Opposition, at 3. Documents relating to discussions underlying an agreement or drafts of the agreement itself, however, are clearly discoverable. See, e.g., 10 CFR §§ 2.740 and 2.741; indeed, such documents are often more revealing than agreements or documents which have been finalized and polished before being produced for examination.<sup>3/</sup>

LILCO also claims that various of the requests involve "issues already litigated or outside the scope of contentions ... and other issues of dubious relevance or materiality." Opposition, at 3. This claim is entirely indefensible. All the requests specifically relate to LILCO's new designation of the Nassau Coliseum as a relocation center. It was not until after

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<sup>3/</sup> Moreover, request 15, which LILCO claims involves discussions or drafts underlying agreements or documents, seeks documents and correspondence "between or among representatives of LILCO and the NRC Staff and/or FEMA concerning LILCO's proposed use of the Nassau Coliseum." To the knowledge of the County and State, no such documents or correspondence have to date been produced by LILCO; therefore, LILCO's claim that there can be no need for production, since there are underlying agreements or documents which "speak for themselves," makes no sense.

the record was closed that LILCO informed the Board and the parties of its proposal to use the Coliseum, so it is absurd to suggest that the issues have already been litigated. Further, the requests are clearly within the scope of admitted contentions. For example, the first request challenged by LILCO as involving an issue already litigated or outside the scope of contentions (request 4) seeks 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." How LILCO can argue that such information is not within the scope of Contention 24.N, which directly challenges the availability of facilities relied upon as relocation centers, is beyond comprehension.

Finally, LILCO claims that the County and State "seek documents, and drafts of documents, not in LILCO's possession or control." Opposition, at 3. This is simply untrue. The discovery requests make clear that only information in the possession or control of LILCO or persons "acting for or on behalf of LILCO ... or at their direction" is sought. Furthermore, if a requested document is not technically in "LILCO's possession," LILCO can so indicate in its response, and a subpoena or other appropriate means can be used to obtain the information.

LILCO has requested expedited Board consideration of its Opposition to the requested discovery, and we endorse that proposal. Assuming the Board concurs and schedules either a telephone conference or hearing to resolve this dispute, the County and State will respond further to the arguments made by LILCO at that time. Therefore, we do not think it necessary to address here all the points made by LILCO's Opposition. However, there are several additional matters which simply must be mentioned, however briefly.

In a footnote to the Opposition, LILCO makes a serious allegation which must be corrected. Contrary to LILCO's "understanding" that FEMA's agreement to make its personnel available for deposition was obtained before FEMA's counsel was informed of the document requests to be served upon FEMA (Opposition, at 1, n.2), counsel for FEMA, Mr. Glass, was told of the County and State's forthcoming document requests during the same telephone call during which Mr. Glass agreed that FEMA personnel would be made available for deposition. Indeed, the telephone call was made by counsel for the County primarily to inform FEMA's counsel of the substance and nature of the discovery requests. The requests to FEMA and copies of those sent to the Staff and LILCO were telecopied to Mr. Glass that same day.<sup>4/</sup> Further, despite LILCO's complaint that the requests

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<sup>4/</sup> Indeed, LILCO, the NRC Staff and FEMA were all telecopied copies of all the discovery requested by the County and State, irrespective of which party was being requested to respond to such discovery.

made to FEMA and the Staff are of a "sweeping nature" that would "extraordinarily burden" them (Opposition, at 3), neither FEMA nor the Staff has complained or indicated it would not respond to the discovery requests. Indeed, after asking for clarification about the requests, counsel for FEMA indicated that FEMA will produce whatever responsive documents exist.

Although LILCO asserts (Opposition, at 2) that the County is somehow estopped from seeking discovery, because it never asked for discovery in its January 18 response to LILCO's motion to reopen,<sup>5/</sup> this assertion ignores the fact that the Board had ordered the parties to address in their January 18 filings only "the legal issue of whether the record should be reopened." See Order, at 4; Tr. 15,794. Thus, not only was there no need to request discovery as of January 18, but such would have been entirely premature.

LILCO's reliance on the procedures following the remand by the Appeal Board of certain health and safety issues (Opposition, at 2) to buttress its assertion that there should be no discovery here is misplaced, and its assertions relating to that matter are factually incorrect. Immediately following the issuance of the Brenner Board order requesting the views of the parties, the County informally requested pertinent documents and data from

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<sup>5/</sup> Suffolk County and State of New York Opposition to LILCO's Motion to Reopen the Record, dated January 18, 1985 (hereinafter, "January 18 response").

both the Staff and LILCO, and such materials were provided by LILCO and the Staff before any substantive views were submitted by the County.

Finally, the County and State have the following observation with respect to the Board's January 28 Order. If the Board decides to accept LILCO's proffered evidence into the evidentiary record, the County and State submit that the other parties to this proceeding have an absolute right to cross-examine that evidence unless it is determined that there are no genuine issues of material facts in dispute. See 10 CFR § 2.749. Indeed, the NRC's Rules of Practice and well established principles of due process and fundamental fairness guarantee the parties the right to cross-examine LILCO's proffered evidence. The County and State's February 18 submissions will demonstrate that there are many material facts in dispute, as we indicated in our January 18 response. Accordingly, consistent with due process principles,



we submit that a hearing to permit cross-examination will be necessary.

Respectfully submitted,

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*Michael S. Miller*

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Attorneys for Suffolk County

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Governor of the State of New York

By: *Fabian G. Palomino (MAM)*  
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Special Counsel to the Governor  
of the State of New York

Dated: February 4, 1985

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January 31, 1985

WRITER'S DIRECT DIAL NUMBER  
(202) 452-7022

## VIA TELECOPY

James N. Christman, Esq.  
Kathy E. B. McCleskey, Esq.  
Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, Virginia 23212

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.  
Page Two  
January 31, 1985

(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.  
Page Three  
January 31, 1985

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,

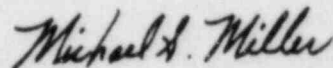
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James N. Christman, Esq.  
Kathy E. B. McCleskey, Esq.  
Page Four  
January 31, 1985

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.

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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.<sup>1/</sup>

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.

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<sup>1/</sup> 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.

Page Two

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.

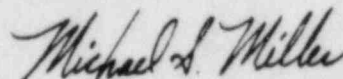
2. All documents relating to the use or proposed use by any licensee, including LILCO, of a relocation center (or other facility at which all evacuees would be monitored and, if necessary, decontaminated in the event of a radiological accident) which is 40 or more miles from the licensee's nuclear power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

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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



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Stewart M. Glass, Esq.

Page Two

January 31, 1985

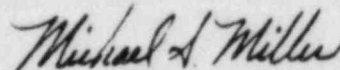
Thursday, February 7. In this regard, you have just advised me that Wednesday, February 6 appears to be available as a date for deposing FEMA's witnesses, and have promised to get back to me tomorrow to confirm this. Perhaps at that time we can discuss your suggestions that the depositions of Ms. Robinson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

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)

Certificate of Service

I hereby certify that copies of Suffolk County and New York State Response to LILCO's Opposition to Nassau Coliseum Discovery Requests have been served on the following this 4th day of February 1985, by U.S. mail, first class, except as otherwise noted:

\*James A. Laurenson, Chairman  
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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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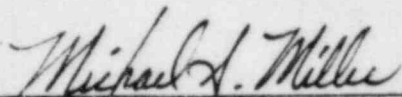
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