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LILCO, March 5, 1985

RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Docket No. 50-322-1(OL)

LILCO'S MOTION TO FILE REBUTTAL TESTIMONY

LILCO, by counsel, pursuant to 10 C.F.R. § 2.743(a), respectfully requests that it be granted leave to file rebuttal testimony by Dr. Franz Pischinger, Edward J. Youngling and Dr. Paul Johnston to respond to the Staff testimony concerning mechanical loads experienced during fast starts and step changes in electrical load which allegedly create a BMEP in excess of that which is associated with a continuous electrical load of 3300 KW. In support of its Motion, LILCO states:

(1) LILCO's prefiled testimony of January 15, 1985 addressed all the intermittent loads which, in LILCO's view, had been raised by the County's load contention and the motions and discovery regarding that contention.

(2) LILCO considered that the cyclic and intermittent loads covered by the contention were those identified by LILCO in its testimony. Thus, LILCO limited its testimony to these loads. The County, too, focused solely on these cyclic and intermittent loads and did not refer to any loads attributable

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to wide open fuel racks during fast start and loading. Thus, LILCO did not expect that the Staff would sponsor testimony regarding an intermittent mechanical load in excess of that resulting from operation at 3300 KW, and possibly up to that resulting from operation at 3900 KW, caused by opening of the fuel racks to the wide-open position during fast starts and application of load. (Test. of Knox, at 6; Test. of Bush, et al., at 13) LILCO does not believe that the loading condition described by the Staff in fact occurs or that it creates an intermittent load.

(3) LILCO's proffered rebuttal testimony will show that the BMEP's equivalent to those associated with 3800-3900 KW electrical loading hypothesized to occur during fast starts by the Knox and PNL testimony do not in fact occur. LILCO's testimony will also show that pressures in excess of those associated with operation at 3300 KW which might be placed on the EDGs by step changes in load associated with emergency operation are negligible since they would last only a few cycles (approximately 1.5 seconds).

(4) The standard applied to the admission of rebuttal testimony is a "good cause" test. This requires that the proposed rebuttal testimony be: (1) relevant to an important point in the direct testimony; (2) arguably relevant to an issue of decisional importance; (3) not cumulative with any other testimony in the record; and (4) incapable of being

reasonably filed in a more timely fashion. See In the Matter of Long Island Lighting Company (Emergency Planning Proceeding), Memorandum and Order dated March 4, 1984, per Judge Laurenson.

(5) The "good cause" standard for the admission of rebuttal testimony is liberally applied, and the authorities clearly support the proposition that the party with the burden of proof should be given an opportunity to submit rebuttal on matters which develop in the course of litigation. The Licensing Board in In the Matter of Philadelphia Electric Co., et al., Metropolitan Edison Co., et al., Public Service Electric and Gas, Co., and Rochester Gas and Electric Corp., et al., 10 N.R.C. 527, 529 (1979), stated:

Under familiar adjudicatory principles, parties saddled with the burden [of proof] typically proceed first and then have the right to rebut the case presented by their adversaries.

(6) LILCO's rebuttal testimony meets the requirements of the good cause test. First, LILCO's proffered rebuttal testimony is directly responsive to the Staff's testimony and addresses one of the central issues in the litigation, namely, the existence, size and duration of any intermittent load. Second, LILCO's rebuttal testimony is not cumulative since LILCO's direct testimony did not view fast starts or step changes in load during emergency operation as creating an intermittent mechanical load and therefore did not address the

effects of fast starts and loading on the engine. Finally, LILCO's rebuttal testimony is timely. LILCO did not expect the Staff's testimony, and it should be given an opportunity, as the party with the burden of proof, to respond with rebuttal testimony.

(7) Unless LILCO is granted leave to file its rebuttal testimony, the issues raised for the first time by the Staff in its testimony will not be addressed by LILCO, thus leaving a void in the record. The Board should therefore permit LILCO to file its rebuttal testimony to remove this gap in the evidence and to assist the Board in reaching its findings.

WHEREFORE, LILCO respectfully requests that the Board grant LILCO's Motion to File Rebuttal Testimony.

LONG ISLAND LIGHTING COMPANY

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DATED: March 5, 1985

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO's Motion to File Rebuttal Testimony were served this date upon the following by first-class mail, postage prepaid, or by hand as indicated by an asterisk:

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