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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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

RESPONSE OF SUFFOLK COUNTY TO LILCO'S MARCH 11, 1988
MOTION TO COMPEL ANSWERS TO CERTAIN INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Suffolk County ("the County") hereby responds to "LILCO's Motion to Compel Answers to Certain Interrogatories and Requests for Production of Documents" ("Motion"), dated March 11, 1988.

In its Motion, LILCO seeks to compel the County to provide additional responses to LILCO Interrogatories Nos. 23-26, 30 and 35-37. The Motion must be denied for a simple reason: the additional information and documents sought by LILCO do not exist. Moreover, as the County has now informed LILCO at least three times, neither the County, nor its designated witnesses, possess documents or information, not already provided to LILCO, that are responsive to the Interrogatories at issue.^{1/} In short,

^{1/} On January 13, 1988, LILCO filed its "Second Set of Interrogatories and Requests for Production of Documents" (footnote continued)

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the documentation and additional information sought by LILCO does not exist and thus, there is nothing to compel the County to produce. --

In addition, LILCO's Motion is untimely as LILCO filed its Motion well after the 10 day period provided in 10 CFR § 2.740(f) for the filing of motion to compel.

I. LILCO'S MOTION IS UNTIMELY

Notwithstanding the fact that on the merits there is nothing to compel Suffolk County to produce, LILCO's Motion is untimely and in violation of 10 CFR § 2.740(f). Accordingly, the Board should not even consider it.

(footnote continued from previous page)
Regarding Role Conflict of School Bus Drivers" ("LILCO's Second Discovery Requests"), seeking much of the information sought in its Motion. The County's Response dated January 27, 1988 informed LILCO that the County possessed no information or documents responsive to LILCO's Requests. On January 27, 1988, LILCO filed its "Third Set of Interrogatories and Requests for Production of Documents" ("LILCO's Third Discovery Requests"), seeking some of the information sought in the Motion. In its Response dated February 10, 1988, the County again informed LILCO that the County possessed no information or documents responsive to those Requests.

By letter from M. Leugers to M. Miller dated February 24, 1988, LILCO again requested the County to produce information and/or documents responsive to Interrogatories Nos. 23-26, 30, and 35-37. The County informed LILCO, again, by letter from M. Miller to M. Leugers dated March 3, 1988, that the County possessed no information or documents responsive to those LILCO Interrogatories.

Section 2.740(f) governing motions to compel discovery provides:

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If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the deposing party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request, for an order compelling a response or inspection in accordance with the request.

(Emphasis added).

LILCO Interrogatories Nos. 23-26 and 30 first appeared in LILCO's Second Discovery Requests, to which the County responded on January 27. Under Section 2.740(f), a timely motion to compel concerning responses LILCO felt were incomplete would have had to have been filed by February 8. LILCO's March 11 Motion was, accordingly, 31 days overdue.

Similarly, the County responded to LILCO's Third Discovery Requests, including LILCO Interrogatories Nos. 35-37, on February 10. If LILCO was dissatisfied with the County's answers to those Interrogatories, Section 2.740(f) dictates that LILCO was required to have filed a motion to compel by February 22. Thus, LILCO's March 11 Motion was 18 days overdue.

Furthermore, LILCO's letter of February 24 requesting that the County "update" its discovery responses, including its

responses to LILCO Interrogatories Nos. 23-26, 30, and 35-37, cannot be construed to have somehow "tolled" the 10-day period prescribed by Section 2.740(f). There is no basis in the regulations or elsewhere for suggesting that a letter from counsel could negate or supercede the 10-day time period for the filing of motions to compel mandated by Section 2.740(f). Furthermore, upon receipt of additional information previously requested by LILCO, the County has promptly and regularly supplemented its prior responses. In fact, to date, the County has provided LILCO with six supplements to its previously-filed discovery responses, each one filed promptly upon receipt of new information.^{2/} The County's regular practice of promptly supplementing its discovery responses, whenever appropriate, should have indicated to LILCO that there was no additional information or documentation to be produced in this case. In any event, even if viewed as purporting to contest the adequacy of the County's supplemental discovery responses, LILCO's Motion

^{2/} See Suffolk County's Supplemental Response to LILCO's First Set of Interrogatories and Requests for Production of Documents, dated January 27, 1988; Second Supplement to Suffolk County's Answers to LILCO's First Set of Interrogatories and Document Requests Regarding Role Conflict of School Bus Drivers, dated February 15, 1988; Third Supplement to Suffolk County's Answers to LILCO's First Set of Interrogatories and Document Requests Regarding Role Conflict of School Bus Drivers, dated February 17, 1988; Suffolk County's Fourth Supplemental Response to LILCO's First Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of School Bus Drivers, dated March 3, 1988; Suffolk County's Supplemental Response to LILCO's Second Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of School Bus Drivers, dated February 26, 1988; Suffolk County's Second Supplemental Response to LILCO's Second Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of School Bus Drivers, dated March 3, 1988.

must be found to be untimely. All but two of those responses were filed substantially more than 10 days prior to March 11, and none of them involved any of the Interrogatories at issue in LILCO's Motion.

For all these reasons, the Board should not even consider LILCO's Motion, which was filed in violation of the plain requirements of Section 2.740(f).

II. LILCO'S MOTION MUST BE DENIED ON THE MERITS
SINCE THE INFORMATION SOUGHT DOES NOT EXIST

LILCO seeks the production of information and documents relating to three categories of information: examples known to Suffolk County of bus drivers experiencing role conflict; an indication as to whether family members of school bus drivers reside within the Shoreham 10-mile EPZ; and documents and information relating to training by school districts of school bus drivers on how to deal with role conflict during emergencies. Notwithstanding LILCO's argument about the alleged relevance of these inquiries, its Motion must be denied: it is premised on LILCO's refusal to accept the fact that no responsive information beyond that already provided exists.

Several facts must be stressed at the outset. First, as noted, whenever appropriate the County has promptly supplemented its discovery responses. LILCO may not like the fact that the

County is unable to supplement any further, but such an inability is no basis for a motion to compel. Second, the County has expressly told counsel for LILCO, on several occasions, that additional information cannot be provided by the County because such information does not exist. Again, LILCO's displeasure with that fact is no basis for a motion to compel the County to do that which is impossible. Third, as LILCO acknowledges, it has deposed every one of the County's school official witnesses. LILCO thus had the opportunity to make direct inquiries about the information it seeks in its Motion. On a few occasions, LILCO did ask the County's witnesses the right questions, and it received whatever answers those witnesses were able to give. Furthermore, as discussed below, although under no obligation to do so, counsel for the County, following the depositions of its witnesses, inquired of those officials LILCO neglected to ask during depositions, and determined that they had no responsive information. Again, LILCO may not like this state of affairs, but LILCO must accept reality. We discuss each of LILCO's requests briefly below.^{3/}

^{3/} The County is only addressing those portions of LILCO's Motion that need be addressed in order for the Board to reach an opinion. Thus, the County is not addressing numerous unsupported accusations and misrepresentations made by LILCO in its Motion. The County's silence, however, should not be construed as indicating in any way agreement with LILCO's accusations and misrepresentations.

A. Interrogatory No. 23

Interrogatory No. 23 (Motion at 2-3) seeks examples of emergencies such as floods, fires, snowstorms or hurricanes where buses were used to transport people "either to their homes or places of safety away from their homes." The County objected to the relevance of the information sought by this Interrogatory; a non-radiological emergency such as a hurricane or snowstorm is in no way analogous to a radiological emergency and thus, information regarding the use of buses following a non-radiological emergency is not relevant to the issues presented in this proceeding. Notwithstanding this objection, however, the County has informed LILCO that it has no responsive information or documents beyond that already provided. Suffolk County's Answers to LILCO's Second Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of Bus Drivers ("Second Response") dated January 27, 1988 at 2-3.

Counsel for LILCO had ample opportunity to explore this subject in the many depositions that have taken place of the school officials designated as witnesses by the County. In some cases LILCO's counsel did so, or at least the general subject was discussed by the witnesses in response to other questions. To the extent the County's witnesses were questioned on this matter, LILCO received their responses. Moreover, although under no obligation to do so, counsel for the County has since the close of the discovery period asked each of its witnesses if they have

any additional information or documents which are responsive to Interrogatory No. 23. Based upon these inquiries, it can be stated that the County's witnesses possess no additional responsive information or documents.

B. Interrogatory Nos. 24, 35-37

These Interrogatories seek information regarding instances known to the County in which bus drivers attended first to the needs of their families before reporting to perform their bus driving duties. Motion at 3, 4. The County responded that with the exception of information set forth in testimony during the emergency planning proceedings of 1983-84, the County is not aware of any additional information or documentation within its possession, custody or control that is responsive to this Interrogatory. Second Response at 4; Suffolk County's Answers to LILCO's Third Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of School Bus Drivers to Suffolk County and New York State ("Third Response") dated February 10, 1988 at 4-5.

Counsel for LILCO requested information responsive to this Interrogatory during the depositions of County witnesses' Robert Petrillak, Edward Doherty, Anthony Rossi, and Drs. Nick Muto, Bruce Brodsky and Richard Suprina. (No such request was made during the depositions of County witnesses Thomas Smith or Dr. Howard Koenig). The witnesses answered to the best of their

abilities; indeed, several of the witnesses responded by providing information to LILCO regarding instances known to them in which bus drivers had attended to the needs of their families before performing their bus driver duties. In addition, although under no obligation to do so, counsel for the County, since the close of the discovery period, separately inquired of all the school official witnesses, and were informed that no documentation or additional information responsive to this request is within their possession, custody or control.

C. Interrogatory No. 25

This Interrogatory seeks information regarding whether the families of school bus drivers reside within the 10-mile Shoreham EPZ.^{4/}

Since LILCO claims information responsive to this Interrogatory is "highly relevant to the issue in this proceeding" (Motion at 7), it is difficult to understand why LILCO failed to ask any one of the eight school officials designated as witnesses by the County for such information during

^{4/} LILCO contends in its Motion that "if the school bus drivers family members are not in the zone of danger, there can be no role conflict," and thus, the information requested by this Interrogatory is "highly relevant to the issue in this proceeding." Motion at 7. The County does not concede the accuracy of this LILCO contention. In the event of a Shoreham emergency, school bus drivers may experience role conflict and not be available to perform driving duties as a result of concern for family members, friends and loved ones whom they believe may be in danger regardless of their residence or actual location, as well as concern for their own safety.

their depositions. Nevertheless, although under no obligation to compensate for LILCO's failure in this regard, counsel for the County has made inquiry of each of its witnesses. They do not possess the information or documents requested by LILCO.^{5/} The County has also informed LILCO that the County does not possess any information or documentation regarding the location of the residences of family members of school bus drivers. Second Response at 4.

D. Interrogatory No. 26

This Interrogatory seeks information regarding training of school bus drivers on the subject of role conflict during emergencies. The County has informed LILCO that it has no information or documentation responsive to this Interrogatory. Second Response at 3-4. Although in some depositions LILCO's counsel questioned the County's witnesses in general terms about training provided to school bus drivers, counsel for LILCO never requested from any of the County's witnesses information responsive to this Interrogatory. Although under no obligation to do so, counsel for the County has made such inquiries of its school official witnesses. None of the witnesses has information or documents that are responsive to this Interrogatory.

^{5/} Officials of the Longwood, Middle Country and Riverhead School Districts did indicate, however, that the vast majority of the drivers for each of those districts live in the district.

In its Motion, LILCO asserts that if "role conflict is the serious concern that these school officials now maintain, that should be evident in their approach to bus driver training." Motion at 7. Again, LILCO misconstrues the issue by equating a radiological emergency with a non-radiological emergency.

E. Interrogatory No. 30

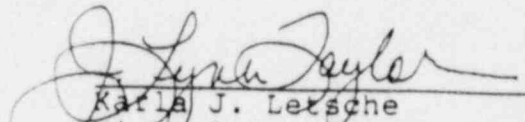
This Interrogatory seeks documents used to answer Interrogatories Nos. 23-28. As discussed above, no such documents exist. Thus, there is nothing to produce.

III. CONCLUSION

For the foregoing reasons, LILCO's Motion should be denied in its entirety.

Respectfully submitted,

E. Thomas Boyle
Suffolk County Attorney
Bldg. 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788


Karla J. Letsche
Michael S. Miller
J. Lynn Taylor

Counsel for Suffolk County

--
Kirkpatrick & Lockhart
1800 M Street, N.W.
South Lobby - 9th Floor
Washington, D.C. 20036-5891

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CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE OF SUFFOLK COUNTY TO LILCO'S MARCH 11, 1988 MOTION TO COMPEL ANSWERS TO CERTAIN INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS have been served on the following this 23rd day of March, 1988 by U.S. mail, first class, except as otherwise noted.

James P. Gleason, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James P. Gleason, Chairman
513 Gilmoure Drive
Silver Spring, Maryland 20901

William R. Cumming, Esq.
Spence W. Ferry, Esq.
Office of General Counsel
Federal Emergency Management Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

W. Taylor Reveley, III, Esq.
Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

Fabian G. Palomino, Esq.
Richard J. Zahnleuter, Esq.
Special Counsel to the Governor
Executive Chamber, Rm. 229
State Capitol
Albany, New York 12224

Joel Blau, Esq.
Director, Utility Intervention
N.Y. Consumer Protection Board
Suite 1020
Albany, New York 12210

E. Thomas Boyle, Esq.
Suffolk County Attorney
Bldg. 158 North County Complex
Veterans Memorial Highway
Hauppauge, New York 11788

Mr. L. F. Britt
Long Island Lighting Company
Shoreham Nuclear Power Station
North Country Road
Wading River, New York 11792

Ms. Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Alfred L. Nardelli, Esq.
New York State Department of Law
120 Broadway, 3rd Floor
Room 3-118
New York, New York 10271

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Mr. Jay Dunkleburger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

David A. Brownlee, Esq.
Kirkpatrick & Lockhart
1500 Oliver Building
Pittsburgh, Pennsylvania 15222

Anthony F. Earley, Jr., Esq.
General Counsel
Long Island Lighting Company
175 East Old Country Road
Hicksville, New York 11801

Ms. Elisabeth Taibbi, Clerk
Suffolk County Legislature
Suffolk County Legislature
Office Building
Veterans Memorial Highway
Hauppauge, New York 11788

Stephen B. Latham, Esq.
Twomey, Latham & Shea
33 West Second Street
Riverhead, New York 11901

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
1717 H Street, N.W.
Washington, D.C. 20555

Hon. Patrick G. Halpin
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, New York 11792

George E. Johnson, Esq.
Edwin J. Reis, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Mr. Stuart Diamond
Business/Financial
NEW YORK TIMES
229 W. 43rd Street
New York, New York 10036

Douglas J. Hynes, Councilman
Town Board of Oyster Bay
Town Hall
Oyster Bay, New York 11771

--

Michael S. Miller

Michael S. Miller
KIRKPATRICK & LOCKHART
1800 M Street, N.W.
South Lobby - 9th Floor
Washington, D.C. 20036-5891