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LILCO, April 5, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 APR -7 A9:52

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

LILCO'S MOTION TO IMPOSE
WITNESS DESIGNATION CUT-OFF

LILCO hereby asks the Board to rule immediately that Suffolk County and New York State must designate their witnesses on the "best efforts" (realism) issue in time for those witnesses to be deposed by the end of the discovery period on April 15. LILCO asks the Board to rule that, if such witnesses are not so designated, they may not present evidence by affidavits or by written or oral testimony.

The circumstances of this case, and of this issue, amply justify the relief requested herein. The Board is well aware of these circumstances; nevertheless, LILCO summarizes them below.

I. The Circumstances

The crux of the matter is that less than two weeks remain in the discovery period, and the Intervenor still have not designated any witnesses on the "best efforts" issue.

The discovery period on this issue began March 7 with the Board Order (Setting Hearing and Discovery Schedule) of that date. Six weeks were allowed for discovery, ending April 15, 1988. LILCO promptly filed a short set of interrogatories asking who the Intervenor's witnesses would be.^{1/} The Intervenor responded on March 23, both

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^{1/} LILCO's First Set of Interrogatories (Mar. 9, 1988).

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the State and County saying that they had not yet designated any witnesses.

LILCO phoned Suffolk County's counsel last Friday, April 1, to ask again if the Intervenor had designated any witnesses, but was not able to reach anyone with the requisite knowledge. Today, LILCO made a written demand upon the County and the State to inform LILCO immediately of the names of Intervenor's proposed witnesses. Intervenor has failed to do so. Thus, as of today, LILCO still does not know the name of any Intervenor witness.

LILCO needs discovery on the "best efforts" issue. What the State and County would do in an emergency is at the core of this issue. Without discovery, LILCO cannot find out, or effectively test, what the Intervenor says they would do in an emergency. Indeed, the Intervenor may claim that they are the only ones who can say what they would do in an emergency. The Board has stated its expectation that they will be "forthcoming." Memorandum and Order, LBP-87-26, 26 NRC 201, 216 (1987).

LILCO filed a second set of interrogatories on March 24, asking about the substance of the Intervenor's case. The responses to those interrogatories are due this Thursday, April 7. Although some information may come from the answers to these interrogatories, LILCO expects that it will be necessary to depose the Intervenor's witnesses to find out anything significant. LILCO cannot do so until witnesses are named. Even then, it takes a certain amount of time to arrange and prepare for a deposition once the deponent is designated as a witness.

LILCO has waited as long as it reasonably can for the Intervenor to come forth with the names of their witnesses, and still they have not. Accordingly, LILCO must now do the best it can to protect its interests. Accordingly, LILCO is today issuing notices of deposition for several State and County people who may know how the State and County would respond in a real Shoreham emergency.

In addition, LILCO asks the Board to disqualify any Intervenor witnesses who are named too late to be deposed. LILCO judges this Friday, April 8, to be the last possible date for designation, assuming the Intervenor names only a small number of witnesses. If they name a large number, then today is already too late to take meaningful depositions by the end of the discovery period.

II. Conclusion

For the reasons stated above, LILCO asks the Board to establish a witness designation cut-off date. No Intervenor witness should be designated unless there is time left for him or her to be deposed by April 15, 1988, including a reasonable time to prepare for the deposition. LILCO asks that any Intervenor witness not so designated be forbidden to present evidence, whether by affidavit, by written or oral testimony, or by any other means.

Respectfully submitted,



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DATED: April 8, 1988

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S MOTION TO IMPOSE WITNESS DESIGNATION CUT-OFF were served this date upon the following by telecopier as indicated by one asterisk, by Federal Express as indicated by two asterisks, or by first-class mail, postage prepaid.

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DATED: April 3, 1988