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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing Board

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

SUFFOLK COUNTY'S MOTION FOR ORDER COMPELLING
LILCO TO RESPOND TO SUFFOLK COUNTY'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to 10 CFR § 2.740(f), Suffolk County hereby requests the Board to issue an order compelling LILCO to respond to the portions of Suffolk County's First Set of Interrogatories and Request for Production of Documents, dated January 4, 1988 (hereafter, "Interrogatories"), which are identified below, for the reasons set forth below.

I. Background

The Interrogatories consisted of discovery requests seeking either factual information, documents, or both. Pursuant to 10 CFR §§ 2.740b and 2.741, LILCO's response to the requests which were "interrogatories" was due within 14 days, while the response

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to the requests for production of documents was not due for 30 days.

On January 20, 1988, LILCO filed "LILCO's Responses and Objections to Suffolk County's First Set of Interrogatories and Request for Production of Documents" (hereafter, the "Response"). Counsel for Suffolk County received the Response the following day, on January 21, 1988. The Response consisted of so-called "General Answers and Objections to Interrogatories, Definitions and Instructions," responses or objections to the individual interrogatories, and the advice that LILCO "is in the process of identifying documents that may be responsive to requests," and that "[t]o the extent LILCO does not object to their production, all documents referenced in these answers which are not enclosed will be provided within the 30-day production period in accordance with 10 CFR §2.741." Although LILCO in some instances objected to requests for documents and indicated that it would refuse to respond, it at other times implied that objections to document requests would be made later on, within the 30-day deadline.

In this Motion, Suffolk County addresses only the responses to the Interrogatories which actually are included in the LILCO Response, and only those objections which are followed by a refusal to respond to a request. That is, we do not address herein either those instances in which LILCO has indicated that it may, or intends to, object to requests in its yet-to-be-filed

30-day response,^{1/} or those objections which were apparently made for the record, but which are nonetheless followed by substantive responses.^{2/}

II. Legal Framework

As will be demonstrated below, the inadequacy of LILCO's Response requires the County to seek the Board's assistance in obtaining the information requested by the County -- information which is clearly relevant to this proceeding and which the County needs if it is to litigate meaningfully the central issues relating to LILCO's proposal for resolving the outstanding issues raised by the remanded Contention 25.C. LILCO's refusal to provide such information flies in the face of generally accepted rules governing the conduct of discovery, as well as in the face of NRC regulations and precedent.

The scope of discovery in a licensing proceeding encompasses any matter, not privileged, which is relevant to the subject matter of the proceeding. The fact that the information sought will be inadmissible at hearing is not grounds for objection, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 10 CFR § 2.740(b)(1). Put another way, pretrial discovery is liberally granted to enable

^{1/} See, e.g., LILCO Response to Interrogatories 6, 8, 9, 19, 22, 25, and 28.

^{2/} See, e.g., LILCO Response to Interrogatories 5, 10, 21(a), and 23.

parties to ascertain the facts, to refine the issues, and to prepare adequately for a more expeditious hearing or trial. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494 (1984); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981); Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 322 (1980); Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

Further, objections to interrogatories must be specific; general objections are insufficient. The burden of persuasion is on the objecting party to show that the interrogatory should not be answered. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937, 1944 (1982). In any event, "[f]ailure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order. . ." 10 CFR § 2.740(f)(emphasis added). Thus, if LILCO was serious in its assertions that it had grounds for objecting to portions of the County's Interrogatories, it was required at the very least to come forward with an explanation of the bases for its objections and to seek a protective order. LILCO, however, did not do this.

Even a cursory examination of LILCO's Response reveals that LILCO has followed neither the letter nor the spirit of NRC rules and regulations governing the conduct of discovery. We turn now to such an examination.

In its December 30, 1987 Memorandum and Order (Ruling on Applicant's Motion of October 22, 1987 for Summary Disposition of Contention 25.C Role Conflict of School Bus Drivers) (hereafter, "December 30 Order"), the Licensing Board acknowledged the existence of outstanding "emergency planning issues concerning the evacuation of school children," and indicated a preference to resolve those outstanding issues in the remanded proceeding on Contention 25.C. December 30 Order at 6. To achieve that end, the Board set forth the scope of discovery for this proceeding. In light of LILCO's new schools evacuation proposal, as first described by LILCO in its October 22, 1987 motion for summary disposition,^{3/} the Board stated:

It will suffice for our purposes that an opportunity to confront this plan (i.e., LILCO's new proposal) be provided and a period for discovery on the plan's dimensions be authorized. Accordingly, the Board permits a discovery period of 30 days on LILCO's new auxiliary proposal . . .

December 30 Order at 5 (emphasis added).

Notwithstanding the Board's clear ruling permitting discovery into the many facets of LILCO's new schools evacuation

^{3/} LILCO's Motion for Summary Disposition of Contention 25.C ("Role Conflict" of School Bus Drivers), dated October 22, 1987 (hereafter, "LILCO's Motion").

proposal -- or, as the Board stated, "the plan's dimensions" -- LILCO has chosen, in its Response, to redefine the Board's discovery order. Indeed, LILCO unilaterally exempts itself from the scope of discovery imposed by the Board, by redefining that scope to focus only upon the very narrow and wholly abstract issue of whether there will be enough school bus drivers available in a Shoreham emergency. See Response at 2, 4, 7-11, 14-16, and 18-20.

As the Board recognized when it permitted discovery sufficient in scope to "confront" the "dimensions" of LILCO's new schools evacuation proposal, the "basic issue to be explored by the Board is whether, in light of the potential for role conflict, a sufficient number of school bus drivers can be relied upon to perform emergency evacuation duties." December 30 Order at 5 (emphasis added). Thus, a significant number of issues, beyond the narrow and abstract issue of how many school bus drivers could potentially be available, are also raised by LILCO's new proposal. That is, as Contention 25.C itself makes clear, the availability of drivers cannot be analyzed, reviewed, or evaluated in a vacuum. Rather, whether sufficient drivers are available can only be addressed intelligently and meaningfully in the context of what duties they are expected to perform, and how, by what means and when they are to perform them. Thus, the "dimensions" of LILCO's new proposal must also be addressed in evaluating the issues raised by the remand of Contention 25.C.

The issues raised by LILCO's new plan, then, which have never before been litigated or even addressed in the earlier emergency planning litigation, include, but are not limited to: the amount of time necessary to accomplish an evacuation of school children under LILCO's new proposal; whether school districts or superintendents would, or could, permit LILCO employees to transport school children; whether, and how, a "single wave" evacuation could be implemented by LILCO workers, particularly in the absence of any identified reception centers to which the evacuated children would be taken; how LILCO employees responsible for transporting school children would be notified and mobilized at preassigned bus yards; the impact on the implementability of other portions of LILCO's Plan of having 562 additional emergency workers to mobilize, dispatch, communicate with, supervise, coordinate, and otherwise control; the adequacy of facilities to accommodate these new workers; the adequacy of equipment and other LERO staff to service and manage 562 additional workers; whether there would be an adequate number of buses available for use by LILCO's employees; the adequacy, legality, and efficacy of LILCO's proposed training of school bus drivers; the value, if any, of LILCO's "commitment" to offer training, equipment and compensation to school bus drivers; and the impact of survey data and other evidence concerning role conflict on the adequacy and implementability of LILCO's new proposal.

These, and potentially other, issues must be resolved in LILCO's favor, before it can be determined (a) whether the allegation of Contention 25.C -- that under the LILCO Plan, "LILCO will be incapable of implementing the . . . protective actions [of] early dismissal of schools . . . [and] evacuation of schools" -- is correct, or (b) that LILCO's proposal is workable and will adequately protect the health, safety and welfare of the school children within the Shoreham 10-mile EPZ, as required by 10 CFR §§ 50.47(a)(1) and (b), as further alleged in the contention. Thus, LILCO distorts the Board's December 30 Order and the scope of discovery to be permitted in this proceeding by claiming that the only issue before the Board is the abstract and meaningless one of the number of school bus drivers which in theory could be available for duty in a Shoreham emergency. See, e.g., Response at 2.

Suffolk County, as well as the other parties in this proceeding, are entitled to conduct discovery into all issues relevant to determining whether LILCO's new schools evacuation proposal is implementable and workable. As will be demonstrated below, however, rather than permitting the discovery this Board has ordered and the parties are entitled to conduct, LILCO has categorically refused to provide relevant information to the County and has stonewalled its legitimate discovery requests. Thus, for example, LILCO in its Response has frequently objected on so-called "relevancy" grounds to discovery requests which seek information that is directly relevant to LILCO's new schools

evacuation proposal. In addition, LILCO has: asserted privileges without providing adequate and required identifying information to enable the County, or this Board, to determine if the privilege is properly applicable to the materials in question; arbitrarily limited its "interpretation" of a request and thereby responded to only a part of the request; and merely asserted that, in its opinion, requests are "unduly burdensome," and thereupon refused to respond. We identify and address below the specific LILCO responses which are improper, and request this Board to order LILCO to respond completely and properly to each of the interrogatories as to which such improper responses were given.

III. Discussion

A. LILCO's "General Answers and Objections"

We respond to LILCO's "General Answers and Objections to Interrogatories, Definitions and Instructions" (Response at 1-2) as they are applied to particular interrogatories. One general comment is in order, however.

LILCO objects to Paragraph L of the "Definitions and Instructions" in the Interrogatories; that instruction indicates, in pertinent part, that:

Whenever in the interrogatories there is a request to identify a person . . . set forth:

- (1) his name;
- (2) his last known residence address;
- (3) his last known business address;
- (4) his last known employer;
- (5) his title or position;
- (6) his areas of responsibility;
- (7) his business, professional, or other relationship with LILCO; . . .

Attachment to Interrogatories at 3-4. LILCO's objection is that "disclosure of such information would constitute an invasion of privacy of those individuals, and may subject them to harassment and intimidation." Response at 1. LILCO reiterates this "invasion of privacy" objection, and alleges that disclosure of the requested information, "could, if used improperly, subject [identified persons] to harassment and intimidation" (see Response at 4) with respect to Interrogatory 4. See also Response at 12 (with respect to Interrogatory 17).

As Suffolk County noted in footnote 1 to Interrogatory 4, LILCO could protect the privacy of individuals by identifying them by number, or some other means, rather than by name. This would be consistent with past practice in this case. At this time, we do not intend to seek Board intervention on this LILCO position, so long as LILCO somehow identifies the persons for which information is sought. However, in not seeking an order compelling disclosure of individuals' names at this time, the County does not waive its right to seek and obtain such

information. In the future, it may become necessary to learn the identification of particular LILCO employees who are scheduled to participate in the implementation of LILCO's schools evacuation proposal, in order to depose them, or otherwise determine relevant facts. Presumably, counsel will be able to reach agreement on how to deal with the logistics of obtaining such information when it becomes necessary. If not, we will seek a Board order at that time.

B. LILCO's Relevance Objections Are Without Merit

LILCO's Response is riddled with its assertions that the information requested by the County is not relevant to the issues properly before the Board in the Contention 25.C remand proceeding.^{4/} Such assertions, however, are wholly without merit and must be rejected by this Board. As previously noted, LILCO has arbitrarily redefined the scope of discovery permitted by the Board in its December 30 Order. As a result, each and every discovery request made by the County which falls outside of LILCO's interpretation of what is permissible discovery is labeled "irrelevant" by LILCO. In this way, LILCO stonewalls the County's legitimate discovery requests. LILCO is well aware that evidence sought by discovery is considered relevant if it is reasonably likely to lead to evidence admissible at trial. Under

^{4/} See LILCO Response to Interrogatories 4(a), 4(b), 4(c), 7, 11(a), 11(c), 12, 13, 14, 15, 16, 21(b), 24, 26, 29, 30, and 31. LILCO's specific objections will be discussed in Part IV of this Motion dealing with LILCO's "Specific Responses."

this definition, all the County's interrogatory requests are relevant and must be responded to by LILCO.

LILCO has, in fact, conceded the relevance of much of the information sought by the County. In LILCO's "Second Set of Interrogatories and Requests for Production of Documents Regarding Role Conflict of School Bus Drivers to Suffolk County and New York State," dated January 13, 1988 (hereafter, "Second Set of Interrogatories"), LILCO requests information from the State and the County which is virtually identical to the kind of information sought by the County but refused to be provided by LILCO.

For example, in response to Interrogatories 11, 12, 13, 14, 15 and 16 regarding the training of LILCO-employed school bus drivers, LILCO objects on relevance grounds by asserting that training of the LILCO employees who will serve as school bus drivers under LILCO's new proposal is beyond the scope of the LILCO-defined issue of whether an adequate number of school bus drivers would be available to transport school children. See Response at 9-11. Yet, in LILCO's Second Set of Interrogatories, LILCO, in Interrogatories 26 and 27, requests the County to provide LILCO with information regarding the training of school bus drivers not only in Suffolk County, but throughout New York State. LILCO thereby concedes the relevance of school bus driver training to evaluation of the adequacy of its proposal to evacuate school children.

The other interrogatories LILCO claims are not relevant seek information with respect to: the recruitment and qualification of the LILCO-employed school bus drivers;^{5/} the time estimates for a school evacuation under LILCO's proposal;^{6/} the notification, mobilization, briefing, equipping, dispatching, and coordination of the LILCO-employed school bus drivers;^{7/} the relocation centers to which school children would purportedly be transported by LILCO-employed school bus drivers;^{8/} and the routes over which the buses would travel during a Shoreham emergency.^{9/} For the reasons set forth below in connection with LILCO's "Specific Responses," these issues are all clearly relevant, and therefore discoverable, since they must necessarily be considered and resolved in LILCO's favor before LILCO's new schools evacuation proposal can be deemed implementable or adequate to protect the safety and welfare of school children within the Shoreham EPZ, the two fundamental, regulatory-based allegations in Contention 25.C.

^{5/} See Interrogatories 4(a), 4(b), 4(c), 11(a), 11(b), and 11(c).

^{6/} See Interrogatory 24.

^{7/} See Interrogatory 26.

^{8/} See Interrogatory 29.

^{9/} See Interrogatories 30 and 31.

IV. LILCO'S "Specific Responses"

In the second part of its Response, LILCO provides individual answers to the County's Interrogatories. In many instances, as part of its answer to an interrogatory, LILCO simultaneously raises objections to, and places limitations upon, the scope of the interrogatory being answered. For the reasons discussed below, the County submits that many of LILCO's objections must be overruled, and that LILCO should be directed to provide the information requested by the County's interrogatories. To aid the Board's analysis, each of the interrogatories objected to by LILCO for which the County seeks to compel further answer is set forth below, along with LILCO's objection(s), and a discussion of why the objection(s) cannot be upheld.

A. LILCO's Response to Suffolk County Interrogatory 4

Suffolk County Interrogatory 4 reads as follows:

4. Provide the following information with respect to each LILCO-employed LERO worker who LILCO relies upon to implement its new schools evacuation proposal by serving as backup and primary school bus drivers:

- (a) Name 1/
- (b) Position with LILCO; and
- (c) Qualifications/experience to serve as a school bus driver.

[1] Should LILCO wish to protect the privacy of individual workers, the County has no objection to LILCO's designating, at this time, the LILCO-employed school bus drivers by

number (or some other means) rather than by name.

In response, LILCO stated that it objected to this Interrogatory "on the grounds that disclosure of such information could, if used improperly, subject those workers to harassment and intimidation." Response at 4. LILCO also objected to providing any identification of LERO school bus drivers on the grounds of relevancy. With respect to the experience of LILCO-employed school bus drivers, LILCO stated:

. . . it is LILCO's position that the previous experience of LERO workers who will act as school bus drivers is not relevant to this proceeding and, even if it were relevant, is res judicata for purposes of this remand. In the plan hearings, Suffolk County contended that LERO workers could not perform their emergency response jobs without prior experience. PID at 749. The Board found "no substantial evidence in support of the Suffolk County claim that the jobs cannot be performed properly without extensive experience." PID at 750. The Board found an even stronger case for LILCO in connection with LERO [general population] bus drivers. Id. Thus, the Board has already found that relevant prior experience is not essential for LERO workers to perform their emergency jobs. Intervenors cannot raise the issue anew in this remand proceeding.

Response at 5.

LILCO's objections to Interrogatory 4 must be rejected. Clearly, the identification of LILCO-employed bus drivers (if only by LILCO employee number) and their positions with LILCO are relevant to the issues of the availability of an adequate number of LILCO-employed bus drivers to implement LILCO's new schools evacuation proposal and the qualification of LILCO's employees

to serve as bus drivers to transport school children during a Shoreham emergency. Certain positions at LILCO are, no doubt, less likely than others to adequately prepare or qualify employees to transport school children. It goes without saying that poorly qualified or inexperienced employees should not and could not be entrusted with the task of safely transporting school children.

Further, there is no basis for LILCO's refusal to provide such clearly relevant and discoverable information merely because a so-called "improper" use of such information can be conjured up by LILCO's counsel. Bald assertions of harassment and intimidation do not constitute a valid or legally cognizable objection to a perfectly proper discovery request, nor do they justify LILCO's refusal to respond to such a request, particularly since LILCO has not sought a protective order. The Board should order LILCO to respond.

With respect to LILCO's res judicata argument made in response to Interrogatory 4(c), LILCO inaccurately references Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-12, 21 NRC 644, 744-56 (1985) (hereafter, the "PID"), as support for the proposition that "the previous experience of LERO workers who will act as school bus drivers . . . is res judicata for purposes of this remand." Response at 5. In the PID, the Licensing Board was not presented with the scenario faced by this Board: LILCO's proposal to use its own employees

to find and retrieve school buses, identify, locate and drive to particular schools in the EPZ, coordinate, as necessary, such activities with school authorities and parents, and then drive buses loaded with school children out of the EPZ during a Shoreham emergency. Thus, the PID Licensing Board neither considered nor ruled upon the issues presented in LILCO's new schools evacuation proposal, and the PID ruling referenced by LILCO in its Response has no res judicata effect upon LILCO's new and unevaluated schools evacuation proposal. The County is entitled to explore the qualifications, including the experience, of the LILCO employees who are relied upon by LILCO to implement its new schools evacuation proposal.

Moreover, contrary to LILCO's assertions (see Response at 5), the PID did not resolve and find acceptable the adequacy of training of LILCO-employed emergency workers. The findings in the PID, referenced by LILCO, were contingent upon confirmation by a finding to be made by FEMA, after a graded exercise, that the LILCO Plan could be satisfactorily implemented with the training program submitted for review, and that LILCO possessed an adequate number of trained LERO workers. PID at 756.

Following the February 13, 1986 Exercise of the LILCO Plan, FEMA identified many "Deficiencies" and "Areas Requiring Corrective Action" in its Report. FEMA Post-Exercise Assessment, dated April 17, 1986 (hereafter, "FEMA Report"). Likewise, the NRC Staff, in its Proposed Findings of Fact and Conclusions of

Law on the February 13, 1986 Emergency Planning Exercise, dated September 11, 1987 (hereafter, "Staff's Proposed Findings"), concluded that LERO workers had not been sufficiently trained to effectively deal with a radiological emergency at Shoreham. Indeed, the Staff, like FEMA, concluded that the LILCO training program was fundamentally flawed. Staff's Proposed Findings, at 185-86. Thus, it is absurd for LILCO even to suggest that its training program has been found acceptable by the PID Licensing Board. No one has found LILCO's training program to be adequate, except perhaps LILCO.

For these reasons, the Board should direct LILCO to provide the information sought by the County in Interrogatory 4.

B. LILCO's Response to Suffolk County Interrogatory 7

Suffolk County Interrogatory 7 reads as follows:

7. Have any LILCO personnel declined to participate in LILCO's new schools evacuation proposal? If so, please indicate the number who have declined to participate, and identify the reason(s) given for their declining to participate.

In response, LILCO contended that the information sought is not relevant, as it is beyond LILCO's interpretation of the scope of discovery permitted by the Board's December 30 Order. See the above discussion regarding LILCO's claim that the only issue in

this proceeding is whether there will be enough school bus drivers in a Shoreham emergency. LILCO further stated:

. . . the only proper inquiry will be focused on the LERO school bus drivers that LILCO has in fact recruited and trained, not on any LILCO personnel who may have declined to participate in the first place.

Response at 7.

LILCO's objections to Interrogatory 7 should be overruled, and LILCO should be ordered to provide the information sought by the County. The interrogatory is clearly reasonably calculated to lead to the discovery of admissible evidence. There is therefore no legitimate basis for LILCO's refusal to provide the requested information.

As noted, LILCO has put into issue a new and previously unevaluated schools evacuation proposal, under which its employees are relied upon to transport school children during a Shoreham emergency. LILCO conjured up this proposal, in its attempt to resolve Contention 25.C, which had been remanded to this Board for further proceedings by the Appeal Board in ALAB-832. Therefore, it is up to LILCO to prove that its proposal is workable and provides adequate protection of the school children within the EPZ.

This Board, in its December 30 Order, noted that LILCO's proposal "requires analysis and review." December 30 Order at 5.

It therefore ordered that there be "an opportunity to confront" LILCO's proposal, through discovery of the proposal's "dimensions." Accordingly, the County must be given leeway to inquire into whatever aspects of LILCO's proposal it chooses, so long as such inquiry is reasonably calculated to lead to the discovery of evidence concerning the proposal's workability and adequacy. Viewed in this light, the County is entitled to discover whether LILCO employees have declined to participate in LILCO's proposal, and their reasons for doing so. The County submits that such information could well provide support for the County's contention that persons expected to drive school buses during a Shoreham emergency would place family obligations ahead of such driving obligations. The interrogatory at issue certainly could lead to the discovery of relevant evidence, and therefore is clearly proper.

Moreover, it should be noted that LILCO willingly provided information to the County in response to Interrogatory 8,^{10/} which sought the same information as Interrogatory 7, but with respect to non-LILCO employees. By responding to Interrogatory 8, LILCO conceded the relevancy of the County's inquiry into the reasons that LILCO employees have declined to participate as school bus drivers in a Shoreham emergency.

^{10/} Interrogatory 8 asked: Have any non-LILCO organizations or personnel declined to participate in LILCO's new schools evacuation proposal? If so, please identify and, for individuals, specify the organizations which they represent or of which they are members, and identify the reason(s) given for their declining to participate.

For these reasons, the Board should direct LILCO to respond to Interrogatory 7.

C. LILCO's Response to Suffolk County Interrogatory 11(a)

Suffolk County Interrogatory 11(a) requests LILCO to:

11. Provide a copy of all documents relating to:

(a) The recruitment of LILCO employees to serve as school bus drivers under LILCO's schools evacuation proposal;

In response, LILCO objected on relevancy grounds, claiming the information sought was beyond the scope of the Contention 25.C remand proceeding. Response at 9. For the reasons previously discussed, LILCO is wrong, and this Board should order LILCO to respond to the County's discovery request. How LILCO recruits its employees to serve as bus drivers is clearly relevant to the issue of whether LILCO has already or will in the future be able to find qualified employees willing to transport school children in the event of a Shoreham emergency. If LILCO's recruitment drive results in the designation of unqualified employees to serve as school bus drivers, or a number less than that which LILCO asserts is necessary, then clearly LILCO's proposal cannot adequately protect the health and safety of school children. Indeed, LILCO concedes the relevance of this issue by noting in response to a different interrogatory (Interrogatory 7) that it would be a "proper inquiry" for the

County to "focus[] on the LERO school bus drivers that LILCO has in fact recruited and trained . . ." Response at 7.

Nor can LILCO shield its recruitment process from discovery by claiming that the recruitment and selection of LERO workers were previously litigated issues. See Response at 9. LILCO's October 22 Motion revealed for the first time that to recruit the 562 additional LERO workers needed to implement LILCO's schools evacuation proposal, LILCO had "[r]ecently conducted a general recruitment drive . . ." LILCO's Motion at 15, n.10. According to LILCO, approximately 550 LILCO employees signed up for LERO during this recruitment effort, but only about 400 of these recruits were projected by LILCO to be designated as auxiliary school bus drivers. The County is entitled to inquire into the parameters of this recent recruitment drive, which clearly differed from past LILCO efforts to recruit and select LERO workers by its sheer size and magnitude. Further, the County must be given the leeway to explore how LILCO intends to make up the shortfall in manpower which apparently exists within LERO, particularly since 150 of those previously "recruited" were apparently deemed "unqualified" even by LILCO. Such information would be highly relevant, and cannot be concealed by LILCO from the County or this Board. Accordingly, the Board should direct LILCO to respond more fully to Interrogatory 11(a).

D. LILCO's Response to Suffolk County Interrogatories 11(c), 12, 13, 14, 15, and 16

Interrogatories 11(c), 12, 13, 14, 15 and 16 all seek information regarding the training of the LILCO-employed school bus drivers. These interrogatories read as follows:

Interrogatory No. 11(c)

11. Provide a copy of all documents relating to:

(c) The training of LILCO employees who agree to serve as LERO school bus drivers.

Interrogatory No. 12

12. Identify by date and description all drills, exercises, tabletop exercises, classroom training sessions, and all other training activities relating to LILCO's new schools evacuation proposal that have been held and/or scheduled to be held.

Interrogatory No. 13

13. For each activity identified in response to the previous interrogatory, identify the persons who participated.

Interrogatory No. 14

14. For each activity identified in response to Interrogatory 12, provide all documents concerning the activity.

Interrogatory No. 15

15. Identify all persons responsible for training LILCO employees to serve as LERO school bus drivers. Describe the functions and responsibilities of these people.

Interrogatory No. 16

16. Provide an up-to-date resume for each of the persons identified in response to the previous interrogatory, including information regarding each person's qualifications and experience.

In response, LILCO objected on relevancy and res judicata grounds, claiming that "[t]he training program was litigated previously and cannot be relitigated here." Response at 10. As noted in the County's request for the Board to compel LILCO to respond to Interrogatory 4, a res judicata argument cannot properly be raised in regard to the training of the LILCO-employed school bus drivers. The Board did not find in the PID that the LILCO training of LERO workers was necessarily adequate. LILCO's schools evacuation proposal had not even been thought of as of that time; thus, the Board neither considered, nor resolved in the PID, the issue of the training of LILCO-employed school bus drivers to perform the functions necessary to implement LILCO's new schools evacuation proposal. More importantly, subsequent to issuance of the PID, LILCO's training program was found to be fundamentally flawed by not just the Governments, but also by FEMA and the NRC Staff. See, e.g., Staff's Proposed Findings at 185-86. Thus, LILCO cannot seriously claim that its training program has previously been litigated and found acceptable (see Response at 5), thus barring the discovery sought by the County.

Little need be said regarding the relevancy of the County's discovery requests relating to LILCO's training of the LERO school bus drivers. LILCO concedes that its employees relied upon to transport school children will receive some instruction different from the general LERO training given to all LERO workers. At a minimum, training will be given in connection with

obtaining a Class 2 bus driver's license. See Response at 10. Further, as previously noted, LILCO acknowledges in its Response that inquiry into the LERO school bus drivers that it, in fact, has recruited and trained would be proper. Id. at 7. Finally, it simply cannot be seriously disputed that the adequacy of the training of the LILCO-employed school bus drivers is central to the issue of the implementability, workability and adequacy of LILCO's new schools evacuation proposal, which are expressly raised by the remanded Contention 25 and subpart C. Without adequate training, LILCO's employees would not be able to perform appropriately or effectively during a Shoreham emergency. Thus, information regarding LILCO's training program is directly relevant to whether LILCO's schools evacuation proposal provides reasonable assurance that adequate protective measures can and will be taken for school children in the event of a Shoreham emergency.

For these reasons, the County requests that the Board compel LILCO to respond to Interrogatories 11(c), 12, 13, 14, 15 and 16 regarding the training of the LERO school bus drivers under LILCO's new schools evacuation proposal.

E. LILCO's Response to Suffolk County Interrogatory 21(b)

Interrogatory 21(b) requests LILCO to provide:

The number of LILCO-employed school bus drivers that could be ordered to report to each of the designated bus yards.

In response, LILCO objected once again on grounds of relevancy.

LILCO's objection is baseless. Clearly, the number of LILCO-employed school bus drivers ordered to report to each of the designated bus yards is highly relevant to an inquiry into the workability and adequacy of LILCO's schools evacuation proposal. Should LILCO, for example, assign a disproportionate number of LILCO employees to a particular bus yard, additional and potentially serious problems in the mobilization, equipping, briefing and dispatching of the bus drivers would have to be expected. The County is therefore entitled to inquire into LILCO's plans for ordering its personnel to report to the bus yards.

Moreover, it must be kept in mind that it was LILCO itself which initially called into question the issue of the preassignment of its employees serving as school bus drivers to bus yards. LILCO's Motion at 17. LILCO should not now be allowed to contest the relevancy of this issue. The Board should order LILCO to respond to Interrogatory 21(b).

F. LILCO's Response to Suffolk County Interrogatory 24

Interrogatory 24 requests that LILCO:

24. Provide copies of all documents relating in any way to any time estimates for the evacuation of public school children from the 10-mile emergency planning zone in a single wave under LILCO's schools evacuation proposal.

In response, LILCO again objected on relevancy grounds.

How long it would take for LILCO to accomplish its proposed single-wave evacuation of public school children from the 10-mile EPZ is clearly of paramount importance to any attempt to determine the "dimensions," not to mention the adequacy, of LILCO's new schools evacuation proposal. If the LILCO-employed school bus drivers cannot implement an evacuation of school children in a timely fashion, then LILCO's proposal is patently inadequate and must be rejected by this Board as failing to satisfy the regulatory requirements cited in Contention 25. See also 10 CFR §§ 50.47(a)(1), 50.47(b)(10) and NUREG 0654 § II.J.10.1. Therefore, it is absurd for LILCO to assert that the County should be barred from the information sought in Interrogatory 24, and the Board should order LILCO to provide the requested information.11/

11/ This conclusion is not changed by LILCO's belief that the calculation of evacuation time estimates for the schools is a matter which can be confirmed by the Staff, rather than this Board. Response at 17. As LILCO acknowledges in its Response, the Licensing Board directed LILCO to calculate such time estimates in its Concluding Partial Initial Decision, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-85-31, 22 NRC 410, 430 (1985). Nowhere, however, did the Board imply that this matter is to be only a Staff confirmation item. Indeed, such would be contrary to NRC precedent, which makes clear that only minor, procedural deficiencies or issues where on-the-record proceedings would not be helpful for resolution of the issue can properly be delegated to the Staff for resolution. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 737 (1975); Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951-52 (1974); Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973). See also Public Service Company of Indiana (Marble Hill Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978) (Staff Counsel urges that factual
(footnote continued)

G. LILCO's Response to Suffolk County Interrogatory 26

Interrogatory 26 requests that LILCO:

26. Provide a copy of all documents, including correspondence and drafts, concerning the impact on the implementability of LILCO's offsite emergency plan of LILCO's new schools evacuation proposal, including, but not limited to, the impact of having to notify, mobilize, brief, equip, dispatch, communicate with, coordinate and control, and/or manage as many as 562 additional LERO personnel.

In response, LILCO objected on relevancy grounds. In addition, LILCO claimed that to the extent Interrogatory 26 sought documents prepared by or on behalf of LILCO counsel, such documents would be protected by the attorney-client privilege and/or the attorney work product doctrine. Response at 18.

LILCO's objections are without merit and should be rejected. First, to at least some extent, LILCO concedes the relevance of the information sought in Interrogatory 26 in its response to Interrogatory 23, which requests the identification of all persons relied upon by LILCO to notify, mobilize, brief, equip, dispatch, coordinate, control and/or manage the LILCO-employed school bus drivers during a Shoreham emergency. In committing to reveal the job titles of the persons who will perform these

(footnote continued from previous page)
determinations related to the issue of an applicant's financial obligations should not be left to the Staff because "delegating open matters to the staff for post-hearing resolution is a practice frowned upon by both the Commission and this [Appeal] Board"). The calculation of time estimate for the schools within the EPZ is not such an issue, particularly in light of LILCO's new schools evacuation proposal, which relies upon LILCO employees to serve as bus drivers for the schools.

functions, and to explain how the functions are to be performed, LILCO acknowledges the relevancy of these issues to any evaluation of the implementability and adequacy of its schools evacuation proposal.

LILCO's relevancy objection should be rejected for a second reason. This Board, in determining the adequacy of LILCO's schools evacuation proposal, cannot close its eyes to the fact that LILCO's new proposal increases significantly the size of LERO and also the logistical problems invariably experienced by all organizations. More specifically, in ruling on the issues raised by Contention 25.C, the Board will be required to evaluate such matters as whether 562 additional LERO personnel could be notified, mobilized, briefed, equipped, dispatched, communicated with, coordinated, controlled and managed, without adversely impacting LILCO's proposed capability to implement school evacuations, not to mention the impact of an additional 562 persons upon the effectiveness or implementability of LILCO's Plan as a whole. Suffolk County is therefore entitled to the information requested by Interrogatory 26.

Further, LILCO's claim of attorney-client privilege and/or attorney work product doctrine is not a proper response to Interrogatory 26; nor is it the proper way to assert a privilege as the basis for refusing to respond to a valid discovery request. A party asserting either an attorney-client privilege, or the qualified privilege provided by the attorney work product

doctrine, bears the burden of establishing the existence of the privilege. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144, 1153 (1982). Earlier in this proceeding the Board held that:

[A] party objecting to the production of documents on grounds of privilege does have the obligation to specify in its response to a document request those same matters which it would be required to set forth in attempting to establish 'good cause' for the issuance of a protective order, i.e., there must be a specific designation and description of (1) the documents claimed to be privileged, (2) the privilege being asserted and (3) the precise reasons why the party believes the privilege to apply to such documents.

Long Island Lighting Co., 16 NRC at 1153 (emphasis in original). See also Public Service Co. of New Hampshire, 17 NRC at 495; Duke Power Company, 16 NRC at 1944.

Matter either in the possession of attorneys or produced by, or at the request of, attorneys may be discoverable. The attorney-client privilege and the work product doctrine cannot be used to shield discoverable facts. See Long Island Lighting Co., 16 NRC at 1158, citing Upjohn Co. v. U.S., 449 U.S. 383, 395 (1981). LILCO cannot simply make a general objection to a valid discovery request and refuse to provide the information necessary to enable the other parties, or this Board, to determine whether a privilege is properly claimed, or whether, in fact, Suffolk County is entitled to obtain the requested materials.

LILCO has failed to respond fully to Interrogatory 26, and has failed to assert properly a work product or attorney-client privilege. The Board should compel it to do so.

H. LILCO's Response to Suffolk County Interrogatories 29 and 30

Interrogatory 29 reads as follows:

29. Identify any and all locations to which school children would purportedly be transported by LILCO-employed school bus drivers in the event of a Shoreham emergency.

Interrogatory 30 requests LILCO to:

30. Identify all routes which might have to be driven by LILCO-employed school bus drivers in transporting school children during a Shoreham emergency.

LILCO objected to both interrogatories on relevancy grounds. In addition, LILCO asserted that the information sought by Interrogatory 29 is "a Staff confirmation issue, not a litigation issue." Response at 19-20.

LILCO's objections should be overruled for the reasons stated above with respect to the same objections raised concerning Interrogatory 24. The information sought is clearly relevant and subject to discovery by the County. It is absurd to suggest that this Board could rule on the implementability of LILCO's schools evacuation proposal -- as required in ruling on Contention 25.C -- without knowing the locations to which school

children would purportedly be transported by LILCO employees.^{12/} Similarly, information regarding the routes over which the LILCO school buses would travel is essential to any meaningful appraisal of the adequacy or implementability of LILCO's proposal. Such information could lead to relevant and admissible evidence concerning the feasibility of LILCO's entire proposal to evacuate school children in a single wave during a Shoreham emergency. For example, if LILCO has identified no locations to which school children would be transported, its proposal is obviously incapable of implementation. Moreover, if the routes over which LILCO's buses would travel would be congested by other evacuating traffic, the adequacy and implementability of LILCO's proposal would be seriously called into question.

Accordingly, the information sought by Interrogatories 29 and 30 is clearly relevant and necessary if the County is to discover and marshall the relevant facts regarding LILCO's schools evacuation proposal. The Board should not allow LILCO to avoid responding by claiming a groundless relevancy objection. LILCO should be ordered to respond.

^{12/} It is equally absurd to assert that the identification of such locations is a Staff confirmation issue. The parties are entitled to know where LILCO intends to transport the school children at issue in this proceeding. Such information is relevant, since it is only when the locations are identified that inquiry can be made into the adequacy of the locations for sheltering/housing the school children, and assessment of the time estimates for their transportation to such locations can be made. For the reasons previously stated in response to Interrogatory 24, it is baseless for LILCO to assert that such matters can be left to Staff confirmation.

I. LILCO's Response to Suffolk County Interrogatory 31

Interrogatory 31 requests LILCO to:

31. Provide a copy of all maps which LILCO-employed school bus drivers are purportedly to be given as part of their training.

LILCO objected on relevancy grounds. For the reasons previously stated, especially with respect to LILCO's response to Interrogatory 30, LILCO's objection should be rejected. The maps sought by the County were referenced in LILCO's October 22 Motion (at page 17), and presumably would provide further information regarding the routes over which the LILCO buses would travel in the event of a Shoreham emergency. They, in addition, apparently will be relied upon by LILCO in arguing that its new schools evacuation proposal could be implemented. The information sought by Interrogatory 31 is therefore clearly relevant to an evaluation of the workability and adequacy of LILCO's schools evacuation proposal. The Board should compel LILCO to respond.

J. LILCO's Response to Suffolk County Interrogatory 32

Interrogatory 32 requests that LILCO:

32. Provide copies of any documents relating to LILCO's new schools evacuation proposal and not previously produced, including, by way of example only, drafts, notes, and correspondence, whether produced or generated by LILCO, LERO, or non-LILCO organizations or individuals.

In response, LILCO stated that Interrogatory 32 was overbroad and unduly burdensome. LILCO also claimed that the information sought might be protected by the attorney-client privilege and/or the attorney work product doctrine. Response at 21.

LILCO's objections are insufficient, and should be rejected. Objections to interrogatories must be specific. The objecting party bears the burden of demonstrating that the interrogatory should not be answered. Duke Power Co., 16 NRC 1937. Thus, LILCO's objections must be made with particularity, specifying the grounds, if any, for objecting, rather than claiming generally that the interrogatory is "overly broad" or "unduly burdensome."

Further, Interrogatory 32 is specific and limited in nature. It seeks documents relating to LILCO's new schools evacuation proposal that have not been produced in response to other interrogatories. Such documents clearly are relevant, as even LILCO concedes in asserting its objection. There is no basis for LILCO's assertion that the interrogatory "is a blunderbuss," and such hyperbolic assertions cannot be countenanced as the basis for refusing to respond to a legitimate discovery request. See Long Island Lighting Co., 16 NRC at 1155.

Finally, LILCO's objection on attorney-client and/or work product grounds is an improper response to Interrogatory 32 and does not constitute the proper assertion of such a privilege for

the reasons stated above with respect to LILCO's response to Interrogatory 26. Accordingly, LILCO should be compelled to respond.

IV. Request for Expedited Response and Disposition

Pursuant to the Board's December 30 Order, discovery in the Contention 25.C remand proceeding was to be permitted for 30 days, commencing with receipt of the Board's Order. December 30 Order at 5-6. The County's Interrogatories were filed on January 4. Thus far, LILCO has provided no documents to the County (even in response to those requests it did not object to) and, as demonstrated above, it has otherwise stonewalled the County's legitimate discovery requests by making unsupportable objections and refusing to produce documents altogether. Moreover, neither the NRC Staff nor FEMA has thus far responded at all to discovery requests including interrogatories, also filed by the County on January 4.^{13/} With only a little over a week left before the 30-day period for discovery ordered by the Board comes to an end, this Board must realize that an extension of its discovery order will almost certainly be required. Although the County has noticed the depositions of the three witnesses identified by LILCO at this time (but not Staff or FEMA witnesses, since they have not yet even been made known to the

^{13/} Counsel for the NRC Staff advised the County last week that the Staff had "forgotten" the County's discovery requests and that, rather than responding on January 19, when responses were due under the NRC's rules, the Staff would "attempt to respond" sometime during the week of January 25 -- if possible, by January 26.

County), meaningful and productive depositions cannot be taken until LILCO has produced all documents requested by the County, and there has been sufficient time to review and analyze their contents. Thus, it may be necessary to postpone the noticed depositions. In any event, additional time is needed for the County to develop its affirmative case, including the identification of witnesses it expects to call on its behalf, after it has received substantive responses to its legitimate discovery requests.

Suffolk County is serving this Motion by Federal Express on LILCO and New York State, and by hand delivery on the Board, the NRC Staff, and FEMA. In order that the depositions of LILCO's witnesses and any other further discovery may be readily completed, Suffolk County requests that the Board require responses to this Motion no later than the close of business on Thursday, January 28, 1988, and that the Board rule on this Motion as soon thereafter as the Board's schedule permits.

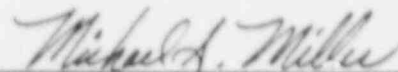
V. Conclusion

For all the foregoing reasons, Suffolk County submits that the Board should direct LILCO to complete its Response to the County's January 4 Interrogatories by answering fully each of the interrogatories discussed above. As the Board has made clear, time is of the essence in this proceeding. It is essential that

the information sought by the County in this Motion be provided as soon as possible.

Respectfully submitted,

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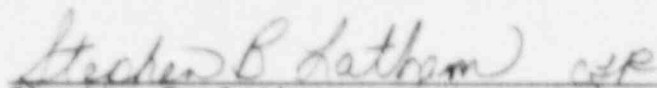
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DOCKETED
USNRC

January 25, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 FEB -1 P5:01

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY'S MOTION FOR ORDER COMPELLING LILCO TO RESPOND TO SUFFOLK COUNTY'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS have been served on the following this 25th day of January, 1988 by U.S. mail, first class, except as noted:

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- * Mailed on January 25, 1988
and By Hand Delivery
on January 26, 1988
 - ** By Federal Express