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LILCO, February 5, 1988

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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
	)	(Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	(School Bus Driver Issue)

**MOTION TO SET HEARING SCHEDULE AND TO PROHIBIT THE  
DESIGNATION OF ADDITIONAL WITNESSES ON "ROLE CONFLICT"**

With this motion LILCO asks two things. First, it asks the Board to set a hearing schedule for the school bus driver "role conflict" issue. Second, it asks the Board to rule that the designation of new witnesses on that issue will not be allowed, except insofar as the Board's future ruling on LILCO's motion in limine expands the issues to be litigated.

**I. Request for Hearing Schedule**

This motion to set a hearing schedule is in the nature of an amendment to LILCO's earlier request, LILCO's Motion In Limine and Motion to Set a Hearing Schedule (Jan. 25, 1988). In that motion, with discovery scheduled to end on February 3, LILCO proposed a schedule leading to a hearing beginning March 7 or 8.

On January 28, however, the Board extended the discovery period until February 19. Based on a February 19 end to discovery, LILCO requests that the Board set the following schedule:

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<u>Date</u>	<u>Event</u>
March 3	All parties file testimony
March 10	Motions to strike testimony
March 17	Answers to motions to strike
March 22	Hearing begins

LILCO submits that this schedule gives everyone ample time to prepare his case. This issue arises because a single piece of evidence sponsored by Suffolk County, the pool of volunteer firemen, was incorrectly excluded from the record. The nature of LILCO's case on this issue has been known since last October 22, when LILCO filed its motion for summary disposition.

**II. Motion to Prohibit Further Designation of Witnesses**

LILCO designated three of its witnesses on January 20 and the fourth on January 26. LILCO intends to call no other witnesses, unless the Board rules that evacuation time estimates are within the scope of this proceeding. In that case, LILCO will designate Mr. Lieberman, a witness already well known, and often deposed, by the Intervenor. LILCO's case, and its witnesses, are well known to the Intervenor.

Intervenor has designated only one witness, Professor Cole. They have produced no documents (except his curriculum vitae) in response to LILCO's discovery requests. Apparently Intervenor has no case to speak of and will be forced to create one in the future.

The Intervenor should have been required to designate their witnesses by February 3, the original end of the discovery period. That date having passed, it is improper for them to name new witnesses now. LILCO has repeatedly asked the Intervenor whether they have other witnesses to designate. The most recent such (oral) requests from LILCO counsel were on February 2 (to New York State counsel) and February 3 (to Suffolk County counsel). Both the State and County responded that they

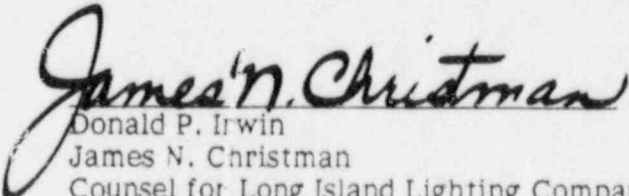
will tell LILCO who their witnesses are as soon as they can. Also, the State and County say they do not know whether they will designate their witnesses in time for LILCO to depose them before the end of the discovery period. This, LILCO submits, is unacceptable.

Designation of Intervenor witnesses at this late date, after the original close of discovery date has passed, would be unfair and prejudicial to LILCO. It would have the effect of forcing a de facto extension of the discovery period. It would therefore be in defiance of the Board's discovery orders.

It is no answer for the Intervenors to claim, as they surely will, that they are busy and are doing the best they can. NRC precedent is clear that the parties have an obligation to marshal their resources so as to meet their obligations. General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), LBP-86-14, 23 NRC 553, 558-59 (1986).

For the reasons stated above, LILCO asks the Board to rule that further designation of witnesses (except in response to the Board's upcoming ruling on the motion in limine) will not be permitted.

Respectfully submitted,

  
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DATED: February 5, 1988

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(Shoreham Nuclear Power Station, Unit 1)  
Docket No. 50-322-OL-3

I hereby certify that copies of MOTION TO SET HEARING SCHEDULE AND TO PROHIBIT THE DESIGNATION OF ADDITIONAL WITNESSES ON "ROLE CONFLICT" 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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