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LILCO, February 5, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

88 FEB -8 P3:50

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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BRANCH

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

LILCO'S RESPONSE TO THE INTERVENORS'
FEBRUARY 4, 1988 MOTION FOR POSTPONEMENT

The Intervenor's have filed yet another motion for delay of the "legal authority" litigation, this one entitled Governments' Motion for Immediate Conference Call to Discuss Postponement of Filing February 10 Deadline Pending Consideration of Impact of LBP-88-2 on Matters Pending in this Proceeding ("Motion"). This Motion was telecopied to LILCO at about 1:43 p.m. on February 4, 1988. It asks for a conference call to be convened the following day, February 5. It also asks that the Intervenor's be relieved of the task of filing their answer to LILCO's summary disposition motions on the "legal authority" issues on February 10. They propose instead a filing on February 10 of all parties' "views concerning the impact of LBP-88-2 on all matters pending before this Board," with replies a week later. They do not propose any date for the filing of their response to the summary disposition motions.

ARGUMENT

LILCO responds to the Intervenor's motion as follows.

1. It is improper for the Intervenor's to make a practice, as they have, of filing motions requesting almost instant relief, in an obvious attempt to prevent the other parties from responding in writing. The Board will have noticed that the Intervenor's

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file such "hurry-up" pleadings only when the relief they seek is the further delay of this proceeding; when the time comes for them to address the merits, particularly the facts, they are in no such hurry.^{1/}

2. LILCO is willing to argue the Intervenors' motion by phone on February 5, particularly if doing so will minimize delay. But LILCO submits that instead the Board should simply deny the Intervenors' motion without argument.

3. The Intervenors should be required to answer LILCO's summary disposition motions on February 10; they have already received a large extension of the time allowed by 10 C.F.R. § 2.749.

4. The Intervenors should be able to address LBP-88-2 in their February 10 response. They say they are able to file on February 10 their views concerning the impact of LBP-88-2 on all matters before this Board. It would be better for them to address the impact, if any, of LBP-88-2 on the legal authority issues as part of their response to the summary disposition motions. Their views on the impact on other issues can be brought before the Board by them on proper request thereafter.

5. The Intervenors claim (Motion at 4) that they do not have enough time to address LBP-88-2 in their February 10 answer to the motion for summary disposition. Yet they discuss its purported impact in the Motion itself and have several more days to refine their discussion. That is time enough. It is obvious that they greatly overstate the impact of LBP-88-2. The issues decided by the Frye Board in LBP-88-2 are not dispositive of the issues before this Board. They are certainly not dispositive of the "legal authority" issues.

^{1/} This is at least the third recent request for delay. See Governments' Motion for Extension of Discovery in the Remanded Proceeding Regarding Role Conflict of School Bus Drivers (Jan. 27, 1988) (asking for a conference call no later than January 29); Governments' Motion for Postponement of Briefing and Consideration of LILCO's Latest "Realism" Summary Disposition Motions Pending Issuance of Board Guidance (Dec. 21, 1987) (asking for a conference call "immediately" "if the Board wishes to hear from either LILCO or the Staff").

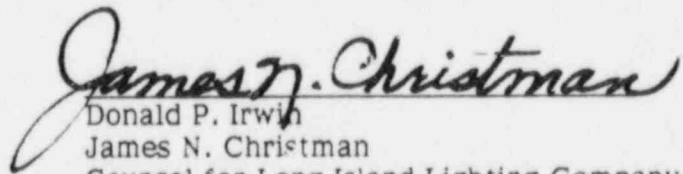
6. It is fair to say that the Intervenors have made every effort to avoid confronting the factual issues involved in the "legal authority" contentions. Their most recent Motion is another such effort. It should not be allowed.

7. Finally, as an aside, LILCO responds to a flagrantly incorrect piece of legal analysis contained in footnote 4 on pages 4-5 of the Motion. There the Intervenors claim that LILCO does not comply with 10 C.F.R. § 50.47(c)(1)(i), which calls for a showing that a failure to comply with § 50.47(b) is wholly or substantially the result of governmental nonparticipation. Intervenors claim that some open issues are unrelated to governmental nonparticipation. Their argument misses the point. LILCO's summary disposition motions address only the claim that LILCO lacks "legal authority"; lack of "legal authority" is purely the result of the nonparticipation of the State and local government. It cannot be argued otherwise.

REQUEST FOR RELIEF

For the above reasons, LILCO asks the Board to deny the Intervenors' February 4 Motion. LILCO also requests that the Board act to deter the disruptive and prejudicial practice of filing hurry-up motions for delay by requiring parties requesting any postponement of filing deadlines to (1) notify other parties, before filing, of their intent to file the request and of their reasons for requesting a delay and (2) represent the other parties' summary positions in the motion itself.

Respectfully submitted,


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DATED: February 5, 1988

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CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S RESPONSE TO THE INTERVENORS' FEBRUARY 4, 1988 MOTION FOR POSTPONEMENT were served this date upon the following by hand or 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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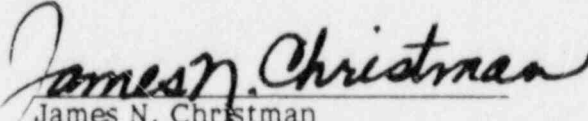
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