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LILCO, February 18, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 FEB 22 P4:10

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))	(School Bus Driver Issuc)
)	

LILCO'S MOTION FOR A DISCOVERY CUTOFF AND
FOR SUMMARY TERMINATION OF WITNESS DESIGNATIONS

LILCO hereby asks for a one-week extension (until February 26, 1988) of the discovery period on school bus driver role conflict to allow LILCO to complete its depositions of Suffolk County's newly designated witnesses. LILCO also asks the Board to require Intervenor to make all witnesses designated to date available for depositions during the week preceding February 26, and to prohibit the designation of further witnesses by Intervenor following their receipt of service of this motion.

The Board, having previously set the end of discovery for February 3 (Memorandum and Order, Dec. 30, 1987, at 7), extended it at the Intervenor's request until February 19 (conference call of January 28, 1988). The Board has said it will entertain no more requests for extensions after close of business on February 19 (Memorandum and Order, Feb. 8, 1988, at 1). This is therefore the only such extension request LILCO expects to file.

The reason for this request is that Suffolk County, without any showing of good cause for its dilatoriness, has designated 10 of its 11 witnesses since February 12, has made only six of them available for deposition by the end of the discovery period on February 19, and will make no binding commitments about further designations. In order to take depositions of all currently designated witnesses, therefore, LILCO has

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little choice but to seek an extension. (Moreover, LILCO has agreed to make one of its witnesses available for deposition on February 22 because the Suffolk County lawyer who was scheduled to take the deposition on February 17 was unavailable for personal reasons.) In order to keep this proceeding on anything resembling an orderly track, LILCO is forced to ask the Board to cut off further witness designations.

I. Background

During the first six weeks of the discovery period Suffolk County named only one witness, Professor Cole. The County designated no further witnesses until the afternoon of February 12, when its lawyers designated seven new witnesses by phone. At 10:00 p.m. that night the County telecopied a letter adding two more witnesses (subject to confirmation) to the list. The following Tuesday, February 16, the County added another witness to the list, bringing the number of County witnesses to 11, ten of them having been designated on February 12 or later.^{1/} LILCO advised Suffolk County on February 13 that the County should make all of its witnesses available by the close of discovery on February 19 and that LILCO would assign as many lawyers as necessary to take their depositions by the 19th.

Nevertheless, of the 10 recently designated witnesses, Suffolk County will have made only five of them available by the close of the discovery period, presently February 19. LILCO has in fact taken or scheduled these five depositions this week. To date New York State has designated no witnesses. Counsel for the State has indicated that he at present "has no plans" to designate any witnesses but is unwilling to commit unequivocally that he does not intend to designate any.

^{1/} As we have advised the County, we regard a document telecopied at 10:00 p.m. as "later" than the date of telecopying.

II. Relief Requested

Given the large number of Suffolk County witnesses, the lateness with which they were revealed to LILCO,^{2/} and their unavailability this week, LILCO is unable to complete depositions by February 19. Accordingly, LILCO asks for an extension until February 26 to complete depositions. LILCO believes a more appropriate eventual remedy may well be to strike the new witnesses for untimeliness, and LILCO does not waive any rights it may have to so move. But at this point, without necessarily consenting to Suffolk County's new witnesses, LILCO has agreed to go forward with depositions of the new witnesses in order to save time. Information revealed in those depositions may reveal grounds for striking certain witnesses for untimeliness or irrelevance to the remand issue; it may also reveal the need for rebuttal of the new witnesses.

LILCO asks for February 26 as the new cut-off for discovery because it appears, based on representations by Suffolk County, that all presently named witnesses are available for deposition by that time. However, Suffolk County, in phone conversations with LILCO counsel, will not rule out the possibility that the County may attempt to designate additional witnesses next week.^{3/} If the County does name new witnesses, LILCO will move to strike them for untimeliness. Moreover, if for any reason the now-named Suffolk County witnesses cannot be deposed by February 26, LILCO will move to strike the witnesses.

Another development this week also supports this request for an additional week. New York State advised LILCO by phone that it has no plans to present witnesses on

^{2/} The first of the new witnesses LILCO has been able to depose, Dr. Koenig, indicated he was first contacted by the County on January 27 and that he first met with the County's lawyers February 1. He was not revealed to LILCO as a witness until February 12. Four other of the newly named witnesses testified for Suffolk County earlier in this proceeding in 1984. See ff. Tr. 3087, 11,001 (Muto, Smith, Petrilak, Rossi). These witnesses, too, it would seem, could have been revealed to LILCO earlier than February 12.

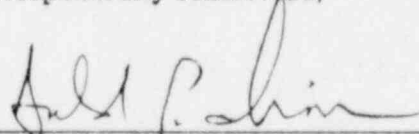
^{3/} Nor has Suffolk County been willing to commit to a certain deposition schedule until next Tuesday or Wednesday, February 23 or 24.

school bus driver role conflict and declined to make the director of the State's Radiological Emergency Preparedness Group, James Papile, available for deposition on February 18 pursuant to LILCO's notice of deposition. LILCO has declined to withdraw the notice, suggesting that it may ask the Board for a subpoena for Mr. Papile. We will attempt to resolve this dispute with the State but may not be able to do so by February 19; February 26, however, should provide enough time.^{4/}

III. Summary

For the reasons given above, LILCO requests: (1) that discovery be extended until February 26, 1988, only for the purposes of (a) completing depositions of now-designated witnesses and (b) allowing the parties to resolve outstanding discovery disputes such as the dispute over the deposition of Mr. Papile; (2) that Intervenors be required to make all witnesses designated to date available for depositions between now and the close of business on February 26; and (3) that Intervenors be prohibited forthwith from designating further witnesses on the school bus driver remand issue.

Respectfully submitted,



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DATED: February 18, 1988

^{4/} Likewise, there are a few other outstanding disputes. For example, LILCO has asked Suffolk County to reconsider its positions (1) that information from school districts is as accessible to LILCO as to Suffolk County and (2) that Professor Cole's contacts with other experts are protected from discovery by the work product doctrine. Suffolk County is considering LILCO's request but has not yet provided an answer.

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CERTIFICATE OF SERVICE

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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 FOR A DISCOVERY CUTOFF AND FOR SUMMARY TERMINATION OF WITNESS DESIGNATIONS 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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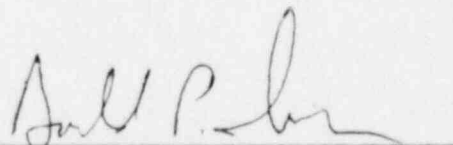
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