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LILCO, March 9, 1988

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	)	
	)	

LILCO'S RESPONSE TO INTERVENORS' MARCH 8 MOTION FOR EXTENSION OF DISCOVERY PERIOD

On March 7 the Board stated in an Order that it would not consider any requests previously filed concerning the discovery schedule for the three remand issues presently before it. Those requests consisted of a 21-page paper of March 1 and a six-page letter of March 3 from Intervenors.[1/] The Board also provided the opportunity for parties to make further extension requests but required, in view of the narrowness of the remand issues and the time already available to the parties to deal with them, that any such requests contain concise and particularized showings of need.

Intervenors' present response, a four-page motion dated March 8, involves largely a refiling of their earlier papers, which the Board's March 7 Order stated that it not only had not considered but would not consider. Those refiled attachments are not, and to that extent Intervenors' motion is not, responsive to the Board's Order and should be summarily rejected.

1/ LILCO and the NRC Staff responded to Intervenors' March 1 paper but not to that of March 3.

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To the extent that Intervenors' current paper itself contains argument, it is not the concise and particularized demonstration that the Board required and does not show cause for any extension, much less the approximately 60 days requested. It should be rejected by the Board. To treat its areas of discussion briefly:

1. EBS Coverage: Written and deposition discovery has been undertaken promptly by both sides. Intervenors have, as they have noted, filed substantial discovery requests on this matter, to which LILCO is replying expeditiously.[2/] LILCO has also made available its primary communications expert witness, Ralph Dippell, for deposition. Unfortunately, Intervenors have refused both to give substantive answers to written requests for admissions[3/] and to take offered depositions within the established discovery schedule,[4/] on the ground that they either do not know enough to answer fully or lack time to prepare.

Intervenors' contention is invalid. They have not fully utilized the time available to them to date. LILCO filed its summary disposition motion on EBS stations (including two backup technical reports by Cohen & Dippell) on November 6, 1987; LILCO's case on this issue has not changed materially since then; thus Intervenors have had four months to develop their case by hiring experts, analyzing LILCO's filings and

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2/ LILCO has answered the first set fully, except as to those portions of Intervenors' interrogatories which are outside the scope of the admitted issues. LILCO is currently working on responses to Intervenors' second set of interrogatories.

3/ Intervenors' response to each of LILCO's 7 requests for admissions contains the statement that they are unable to admit or deny because they "lack sufficient information (discovery having just begun) to respond otherwise." Response of Suffolk County [et al.] to LILCO's First Set of Requests for Admissions Regarding LILCO's Emergency Broadcast System, March 7, 1988. The remarkable aspect of these answers is that each of them relates to matters alleged in the portion of Intervenors' EBS contention admitted for litigation.

4/ LILCO offered on March 1 to make its primary communications expert, Ralph Dippell, available for deposition on March 7, 8 or 9. Intervenors have not accepted this offer. They have stated that they do not have time during this period to prepare to take this deposition.

generating their own analyses. If they have failed to do so, it is they, not LILCO, that should feel the consequences.[5/] Their unparticularized claim that they simply need more time to retain and confer with experts fails to account for their failure to prepare substantively during the past four months, during which they have been on explicit notice.

2. Hospital ETEs: Again, LILCO's case has been explicitly available for analysis for two and one-half months, ever since LILCO filed its summary disposition motion on December 18, 1987. Written discovery has gotten underway from both sides. LILCO believes that it could be completed by March 14. Intervenors have not been willing to pursue their opportunities on depositions, however. The Staff brought its traffic expert, Dr. Thomas Urbanik, from Texas to Washington last Friday, March 4; Intervenors refused to take his deposition, claiming they could not prepare for it.[6/] LILCO has also offered to make its principal expert, Edward Lieberman, available on both March 10 or 11; Intervenors have not taken LILCO up on its offer.[7/] Their current, unparticularized

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5/ Intervenors took at least a first step toward preparation in December 1987, when they obtained a 1980 coverage survey on station WPLR from the FCC Public Document Room and interviewed its author. Counsel for Suffolk County acknowledged that document search and interview in a contemporaneous telephone conversation, but indicated in that conversation that the County did not intend to retain this person as an expert. Telephone conversation, Michael Miller-Donald Irwin, December 30, 1987. Certainly Intervenors' awareness over two months ago of the need to prepare a substantive case, and their apparent abortive effort to do so, cut strongly against their present, unexplained claim now that they need more time to retain and learn from experts.

6/ LILCO ultimately proceeded itself to take Dr. Urbanik's deposition at the time offered by the Staff, and believes that if the adequacy of opportunity to obtain discovery of Dr. Urbanik is ever challenged, the deposition transcript will show that Dr. Urbanik was prepared on the appointed date to provide substantially all information he presently intends to generate on analysis of Shoreham hospital ETEs; and that this information is straightforward and was reasonably available to Intervenors.

7/ Intervenors have, however, deposed (on March 7) a LILCO employee, Jeffrey Sobotka, who actually prepared the hospital ETE calculations and worksheets under the direction of Mr. Lieberman. Intervenors had prior access to LILCO's work papers and used them during the deposition; a New York State traffic expert, Mr. David Hartgen, assisted counsel in the examination of Mr. Sobotka.

explanation that they need time to retain experts and confer with existing experts fails to explain why, in the two and one-half months since LILCO outlined its case on hospital ETEs in its summary disposition motion, Intervenors have not begun to prepare a substantive response.

3. FEMA RAC Report: Intervenors allege, but show no basis for, a need to dam up this entire series of limited remand issues until the RAC report on LILCO's Revision 9 has been completed. Current estimates are that that review will be completed in May. FEMA witnesses are available before then. To the extent that they are not available before March 14 and are needed, case-by-case accommodations can be made thereafter. To the extent that the record on any issue cannot be completed or needs to be reopened on the basis of the RAC review, a good-cause showing can be made at the appropriate time.[8/]

The discovery schedule proposed by the Board is not unreasonable in light of the limited, previously foreshadowed remand issues now coming toward trial.[9/] Discovery in these circumstances should be a means of clarifying and narrowing issues, not broadening them. Intervenors' current paper is not responsive to the opportunity afforded by

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8/ These remand proceedings are limited to the three specified issues (plus realism), and are not a carte blanche opportunity for Intervenors to relitigate every issue within the scope of Revision 9.

9/ Intervenors cite a recent Appeal Board decision in the Seabrook case, ALAB-864, 25 NRC 417 (1987), to support the self-evident proposition that discovery schedules must be reasonable. However, application of the Appeal Board's reasoning to the circumstances of this case does not illustrate at all that the current schedule on the three remand issues is unreasonable. The facts under review by the Appeal Board at Seabrook are vastly different from those in the current situation. There, the scope of litigation was the entire New Hampshire portion of the Seabrook plan; here it is three narrow remand issues. There, the Applicants had just substantially revised their 19-volume, 8000-page plan; here, LILCO's proposals are discrete, known and limited. There, litigation, just beginning, had been at a halt for years for reasons the Appeal Board characterized as relating to Seabrook's lack of financial resources; here, LILCO has been actively and diligently pressing for resolution of emergency planning issues for five years now.

the Board in its March 7 Order, and should be denied since it makes no particularized, concise showing of need for any discovery extension, much less for one of the two months requested.

LILCO would not object, however, to the following one-time extension of the current discovery schedule, provided (1) all of the internal deadlines in it are adopted and (2) a schedule leading to start of hearings on April 25 is maintained. Schedule suggestions for both completion of discovery and getting to hearings by April 25 are set forth immediately below:

A. Completion of Discovery

Deadline or Date	Action
3/11/88:	A. All witnesses proposed by any party on hospital ETE or EBS coverage issues must have been designated, and must be made available for deposition on at least two business days between the date of their designation and March 16.[10/]
	B. All answers to written discovery requests filed and received by all parties on or before March 8 must be filed and be received by the Board and all parties in interest.
	C. All motions to compel discovery (other than those relating to discovery requests filed on March 9-11) must be filed and be received by the Board and all parties in interest.
	D. All written discovery requests of any nature must be filed and be received by the Board and all parties in interest.

10/ LILCO has already designated all of the witnesses it proposes to designate. The same is true of the NRC and FEMA. Depending on the number of witnesses remaining to be designated by Intervenors, this schedule may require holding simultaneous depositions, or "double-tracking," during the week of March 14-18. Intervenors have historically refused to participate voluntarily in simultaneous depositions. LILCO requests that the Board condition further designation of witnesses on willingness to "double-track" depositions if necessary to avoid confounding this schedule.

Deadline or Date	Action
3/15/88.	All responses to motions to compel discovery (other than those relating to discovery requests filed on March 9-11) must be filed and be received by the Board and all parties in interest.
3/18/88:	A. All depositions must be completed. B. All responses to discovery requests filed on March 9-11 must be filed and be received by the Board and all parties in interest.
3/21/88:	All motions to compel relating to discovery requests filed on March 9-11 must be filed and be received by the Board and all parties in interest.
3/23/88:	All responses to motions to compel relating to discovery requests filed on March 9-11 must be filed and be received by the Board and all parties in interest.
3/25/88:	Board final ruling (by telephone) on outstanding motions to compel discovery.
3/28/88:	Compliance with final Board Order to compel discovery.

This modification to the discovery schedule will require slight internal revisions to the schedule for hearings on the remand issues proposed by LILCO on March 1, but need not delay the projected April 25 date for start of the hearing. That revised schedule would work as follows:[11/]

B. Getting to Hearings

3/18/88	Bus Drivers. Direct Testimony Filing
3/25/83	Bus Drivers: Motions to Strike
4/1/88	Bus Drivers: Replies to Motions to Strike
4/8/88	EBS/Hospitals: Direct Testimony Filing

11/ All service dates in this schedule presume same-day or overnight service on the Board and the other parties in interest.

4/15/88	EBS/Hospitals: Motions to Strike
4/19/88	EBS/Hospitals: Replies to Motions to Strike
4/20, 21 or 22/88	PREHEARING CONFERENCE IN BETHESDA
4/25/88	HEARINGS BEGIN ON SCHOOL BUS DRIVERS, HOSPITALS, EBS
4/29/88	HEARINGS END ON SCHOOL BUS DRIVERS, HOSPITALS, EBS
5/16/88	LILCO Proposed Findings and Conclusions
5/23/88	Intervenors' Proposed Findings and Conclusions
5/30/88	Staff Proposed Findings and Conclusions
6/6/88	LILCO Reply Findings and Conclusions
7/88	Possible Board Decision

CONCLUSION

LILCO urges the Board to deny Intervenors' motion for an extension and to adopt the schedules for completion of discovery and proceeding to hearing set forth in this Response.

Respectfully submitted,

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DATED: March 9, 1988

LILCO, March 9, 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 RESPONSE TO INTERVENORS' MARCH 8 MOTION FOR EXTENSION OF DISCOVERY PERIOD 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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