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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING DIVISION  
WASHINGTON, D.C.

Before the Atomic Safety and Licensing Board

In the Matter of )  
)

LONG ISLAND LIGHTING COMPANY )  
)

(Shoreham Nuclear Power Station,  
Unit 1) )  
)

Docket No. 50-322-OL-3  
(Emergency Planning)

GOVERNMENTS' MOTION FOR EXTENSION OF TIME  
TO RESPOND TO REALISM DISCOVERY REQUESTS,  
AND TO EXTEND DISCOVERY SCHEDULE

Introduction

In a Memorandum and Order dated March 10, 1988, the Board set a discovery and hearing schedule for the remaining remand issues, including realism. Under that schedule, discovery on the realism issues is to end on April 15,<sup>1/</sup> testimony is to be filed on April 29, and the hearing is to commence no sooner than one week after completion of the hearings on the other remand issues -- schools, emergency broadcast system, and hospital evacuation time estimates.

<sup>1/</sup> The Board actually established the April 15 discovery termination date on March 7, when it issued an Order authorizing discovery "on the remaining eight 'realism' issues" until that date.

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Even before the Board's March 10 Order was issued, LILCO initiated discovery against Suffolk County, New York State and the Town of Southampton (hereafter, the "Governments").<sup>2/</sup> The Governments responded to LILCO's First Discovery Requests within the time allotted by the NRC's rules;<sup>3/</sup> in addition, prior to responding to LILCO's First Discovery Requests, interrogatories and requests for documents were propounded by Suffolk County to LILCO, the NRC Staff and FEMA.<sup>4/</sup>

Thereafter, on March 24, 1988, LILCO filed a second round of discovery against the Governments.<sup>5/</sup> Unlike its First Discovery Requests, which essentially asked who the Governments' witnesses would be, LILCO's Second Discovery Requests are lengthy and complicated; indeed, the interrogatories presented by LILCO, by any

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<sup>2/</sup> See LILCO's First Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8 and 10 to Suffolk County, New York State and the Town of Southampton, dated March 9, 1988 (hereafter, "LILCO's First Discovery Requests").

<sup>3/</sup> See Suffolk County's Response to LILCO's First Set of Interrogatories Regarding Contentions 1-2, 4-8, and 10, dated March 23, 1988; Response of the State of New York to LILCO's First Set of Interrogatories and Requests for Production of Documents Regarding Realism, dated March 23, 1988.

<sup>4/</sup> See Suffolk County's First Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8 and 10 to Long Island Lighting Company, dated March 15, 1988, and Suffolk County's First Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8 and 10 to the NRC Staff and FEMA, dated March 16, 1988 (collectively, "Suffolk County's First Discovery Requests").

<sup>5/</sup> See LILCO's Second Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8 and 10 to Suffolk County, New York State, and the Town of Southampton, dated March 24, 1988 (hereafter, "LILCO's Second Discovery Requests").

estimate, would require substantial time and effort to answer. Accordingly, the Governments are compelled to request an extension of the time ordinarily permitted to them to respond to LILCO's Second Discovery Requests. For the reasons set forth below, the Governments seek a three-week extension, until April 29.<sup>6/</sup> The Governments propose that the overall period of discovery be extended until May 6.

Since the requested extension would extend discovery until after the time testimony on the realism issues is currently required to be filed, the Governments also request that the hearing schedule established by the Board's March 10 Order be extended by three weeks. If granted, the request made herein would result in testimony having to be filed by May 20, with motions to strike due May 27 and responses to such motions due June 3; the Governments would propose that, as before, the hearing on the realism issues would begin, at a minimum, one week after the hearings on the three other remand issues have been completed. Such a

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<sup>6/</sup> The Governments also request that the time available to them to respond to the NRC Staff's First Set of Interrogatories, dated March 31, 1988, be extended until this same date. While the Staff's interrogatories are not nearly as lengthy as LILCO's, they nonetheless require the Governments to consider and decide basic and fundamental questions regarding the realism proceeding. Thus, for example, if the Staff's interrogatories were to be answered, the Governments would need to decide such matters as whether they will subpoena witnesses or documents. Further, assuming documents and witnesses would be subpoenaed, the Governments would have to specify the persons and documents for which subpoenas would be sought, the subjects they intend to ask subpoenaed witnesses about, and the information hoped to be elicited. Given the nature of the Staff's inquiries, the requested extension of a week-and-a-half is reasonable and necessary.

schedule, if adopted by the Board, would not significantly impact the likely commencement date of the realism hearing. It would, however, provide the Governments with the minimum additional time needed by them to proceed with their case regarding the realism issues remanded to this Board.

### Discussion

It can be expected that LILCO will oppose the extensions of time requested by this Motion. Most likely, LILCO will contend that the Board allowed over five weeks for discovery, and that the schedule established by the Board on March 10 provided ample time for the Governments to proceed with discovery.

Such an argument, if actually made, would ignore the realities of this case and would result in an unfair and unreasonable schedule. The realities of this case are that the five weeks allowed by the Board for discovery on the realism issues were not sufficient for many reasons. First, discovery on the other remand issues was not completed until March 25; thus, it has only been since that time that the Governments have had the opportunity to focus on the realism case. Even then, as made clear below, many other Shoreham-related obligations have confronted the Governments and have effectively precluded the diversion of the time or resources needed to proceed with discovery on the realism issues. Also, as discussed below, this Board is itself responsible for the relatively little discovery that has been

taken thus far on the realism issues. Its failure to issue its reasoning or detailed rationale in support of its rulings on LILCO's motions for summary disposition on Contentions 1-2, 4-8 and 10 -- although it promised as long ago as February 25 to do so as soon as quickly as possible -- has resulted in a situation where the Governments are expected to proceed with a major proceeding without even knowing the Board's views and rationale on material aspects of the realism case. Further, it was not until April 7 that LILCO's prima facie case on the realism issues was received by the Governments. Until LILCO's recent pleading can be reviewed and assessed, and the Board has issued its reasoning and rationale in support of its rulings on LILCO's summary disposition motions, it is simply not possible to proceed with, much less bring to a conclusion, discovery. Indeed, the Governments have not yet decided upon or designated any witnesses on the realism issues, or even decided whether witnesses will be designated.

In any event, there are any number of reasons sufficient to support the extensions of time requested by the Governments in this Motion. For the sake of brevity, only four such reasons will be discussed: the burdensome nature of LILCO's, and to a lesser extent, the Staff's, outstanding interrogatories; the many other Shoreham-related obligations confronting the Governments; the nature of LILCO's record designations and prima facie case on the realism issues; and the failure of this Board to yet provide its written opinion(s), rationale or reasons in support of its

rulings on LILCO's motions for summary disposition of Contentions 1-2, 4-8 and 10.

**The Burdensome Nature of LILCO's and  
the Staff's Outstanding Discovery Requests**

As previously noted, LILCO's Second Discovery Requests are lengthy and complex, and would require the Governments to expend substantial time and effort in responding. The 40 pages of interrogatories filed by LILCO -- comprised of 115 separately numbered interrogatories, and literally hundreds of additional lettered subparts -- ask about not just the substance of the Governments' case, but also each and every aspect of how the Governments might respond to an emergency at Shoreham. Responding to these interrogatories would clearly require substantial time and effort, necessitating the extension requested by the Governments.

Little need be said regarding the Staff's outstanding interrogatories. They too would require substantially more time to answer than is ordinarily allotted by the NRC's rules, for the reasons already discussed. See note 6 above. Accordingly, the Governments request an extension of time to respond to LILCO's and the Staff's outstanding interrogatories, until April 29. If granted, the Governments would be provided an additional three weeks to prepare responses to LILCO's Second Discovery Requests, and an additional week-and-a-half to respond to the Staff's out-



standing interrogatories. The Governments submit that such an extension is amply justified by the extraordinary burdensome nature of the interrogatories. However, as made clear below, compelling other reasons exist for granting the extension of time sought by this Motion.

#### Other Shoreham-Related Obligations

In ruling upon the extensions of time requested by the Governments, the Board must take into account the many other Shoreham-related obligations presently confronting the Governments. These include: the filing of testimony on all remanded issues other than realism (schools, emergency broadcast system, and hospital evacuation time estimates) by next Wednesday, April 13, with motions to strike due April 20, and responses due April 27; the preparation and filing in mid-April of a reply brief in the U.S. Court of Appeals for the First Circuit, in the case challenging the NRC's new emergency planning rule; the preparation of the Governments' brief to the Appeal Board in response to LILCO's appeal of the OL-5 Licensing Board's February 1, 1988 Exercise Decision (LBP-88-2), which must be filed by April 18; an OL-6 25% power reply brief to this Board, which must be filed by April 21 (initial briefs were just filed on April 1); and preparing for and presenting oral argument to the Appeal Board on April 28 regarding LILCO's appeal of the OL-5 Licensing Board's December 7, 1987 Exercise Decision (LBP-87-3).

In light of the Governments' obligations in the OL-5 and OL-6 proceedings -- as well as in other aspects of the OL-3 proceeding -- not granting the extensions of time requested in this Motion would severely prejudice the Governments. This is particularly the case because counsel's obligations in the various Shoreham proceedings are highly concentrated during the month of April, and particularly the weeks of April 11 and 18. Indeed, the workload in the realism proceeding, without more, justifies the time extensions sought by the Governments. LILCO has now designated five witnesses in that proceeding; none has yet been deposed, and although the Governments wish to depose LILCO's witnesses, time does not exist to do so until the week of April 18, at the earliest. In addition, as already discussed, the burdensome nature of the LILCO and Staff interrogatories remaining to be answered precludes the Governments from responding within the time ordinarily provided by the NRC's rules. Finally, without the extension of time requested, the Governments will be unable to effectively prepare for or even decide upon the nature of their case on the realism issues.

#### LILCO's Record Designations and Prima Facie Case

Pursuant to the Board's February 29 Confirmatory Memorandum and Order,<sup>7/</sup> LILCO was required to designate portions of the record that "support" its prima facie case on Contentions 1-2,

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<sup>7/</sup> Confirmatory Memorandum and Order (Ruling on LILCO's Motions for Summary Disposition of Contentions 1, 2, 4, 5, 6, 7, 8 and 10, and Board Guidance on Issues for Litigation) (Feb. 29, 1988).



4-8 and 10. LILCO has now done so.<sup>8/</sup> But its record designations and prima facie case were just received by the Governments on April 2. Further, LILCO's pleading is really no more than an outline of LILCO's case, which LILCO assumes can be further developed, if and when it chooses to do so. Indeed, in many instances, LILCO has done no more than cite to the underlying record in this proceeding, without explanation or discussion of why LILCO believes its case is supported by that record.

Under these circumstances, the Governments believe that an extension of the realism discovery schedule is not only warranted, but required. Even if it is assumed that LILCO's April 1 pleading fulfills the obligations imposed upon LILCO by the Board's February 29 Order -- an assumption with which the Governments do not necessarily agree -- LILCO's pleading, comprised of 55 pages and literally hundreds of citations to the record, Board rulings, and other matters viewed by LILCO to be in its favor, will require the Governments substantial time to review and analyze. For example, it will be necessary to search the record to determine why particular portions have been cited by LILCO, as well as to determine whether the record, as cited, actually supports LILCO's reasoning and says what LILCO represents is the case. Of course, to conduct the inquiry into LILCO's prima facie case that is necessary will require time, and a commitment of

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<sup>8/</sup> See LILCO's Designation of Record and Prima Facie Case on the Legal Authority Issues (Contentions 1-2, 4-8 and 10) (April 1, 1988).

resources. This provides additional support for the time extensions sought by the Governments in this Motion.

The Board's Failure to Issue Its Opinion  
on LILCO's Summary Disposition Motions

At this time, the Board still has not issued its formal written opinion(s) regarding LILCO's motions for summary disposition on Contentions 1-2, 4-8 and 10. Until the Board does so, the parties must proceed without knowing the Board's views on material facts alleged in support of and in opposition to LILCO's motions for summary disposition. This situation obviously impacts upon the Governments' ability to respond to outstanding discovery requests.

For example, many of LILCO's interrogatories seek information related to the Governments' summary disposition responses. The Board made clear in the February 25 conference call that it had not accepted all material facts alleged by the Governments to be in dispute. Thus, until the Board issues its opinion(s), it may well be the case that many of LILCO's interrogatories seek irrelevant data, given the order(s) finally issued by the Board.

Further, many of LILCO's interrogatories are based on a LILCO view of relevance that the Board may well have rejected by reason of its rejection of LILCO's summary disposition motions. For example, LILCO's outstanding interrogatories include a signi-

ficant number of questions based upon or related to other New York State nuclear plants. The Governments firmly believe that these (and other) interrogatories are irrelevant to the issues before this Board. Clearly, if the Governments are correct, less effort will need to be expended in answering LILCO's interrogatories. Conversely, if the Governments are wrong in their assessment of the relevancy of LILCO's interrogatories, they face additional work in responding. In any event, the Board's opinion(s) will presumably address this issue.

Similarly, it must be presumed that the Board's written opinion(s) could be of critical importance to the Governments in determining whether to seek discovery on large aspects of LILCO's prima facie case. In many respects, LILCO's prima facie case essentially realleges positions taken by LILCO in seeking summary disposition on Contentions 1-2, 4-8 and 10. Thus, the Board's opinion(s) ruling on LILCO's summary disposition motions, once received by the Governments, will in all likelihood prove to be instrumental in shaping determinations as to how and whether to proceed with discovery.

Accordingly, the Governments urge that the Board promptly issue its written opinion(s) ruling on LILCO's motions for summary disposition. Until the Board does so, the Governments submit that an extension of the realism discovery schedule is required.

Conclusion

For the reasons set forth above, the Governments request the Board to grant the extensions of time sought in this Motion.

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NUCLEAR REGULATORY COMMISSION

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(Shoreham Nuclear Power Station,  
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Docket No. 50-322-OL-3  
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of GOVERNMENTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO REALISM DISCOVERY REQUESTS, AND TO EXTEND DISCOVERY SCHEDULE have been served on the following this 6th day of April, 1988 by U.S. mail, first class, except as otherwise noted.

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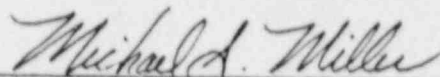
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