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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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)

STATE OF NEW YORK MOTION FOR EXTENSION OF TIME
TO FILE TESTIMONY ON IMMATERIALITY ISSUE

Pursuant to this Board's oral ruling of April 11, 1988 and
Confirmatory Memorandum and Order of April 12, 1988, the parties'
testimony on the CLI-86-13 remand issues is due on May 6, 1988.
For the reasons set forth below, the State of New York hereby
requests a one week extension of time in which to file its
testimony on the issue of "immateriality," which is one of the
LILCO arguments to be addressed in the remand proceeding.

FACTS

On December 8, 1987, LILCO filed a motion for summary
disposition of Contentions 1, 2 and 9 on the basis of its
"immateriality" theory.¹ In essence, LILCO's argument on
Contentions 1 and 2 (traffic control) was that even if traffic

¹LILCO's Motion for Summary Disposition of Contentions 1, 2
and 9 -- Immateriality (Dec. 18, 1987).

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control were not available to guide the public from the EPZ in the event of a radiological emergency at Shoreham, the adverse effects would be immaterial to the public in terms of dose savings or foreclosure of otherwise available protective actions.² LILCO's argument was based on revised evacuation time estimates (Revision 5 of the LILCO Plan) which were derived after the 1984 emergency planning hearings³ and served on August 5, 1985. They were never subject to discovery.

In response to LILCO's summary disposition motion, the Governments offered, among other things, the affidavit of David T. Hartgen, Ph.D.,⁴ a State of New York traffic expert who has appeared previously before this Board. Dr. Hartgen's affidavit raised several questions about LILCO's immateriality theory and the revised evacuation time estimates on which the theory is based. He noted, however, that before he could properly address those questions, he would need to review certain documents, including the computer inputs and outputs from which LILCO's revised evacuation time estimates were derived.

On February 22, 1988, the Board denied LILCO's summary

²Id. at 12-13.

³See, Affidavit of Edward B. Lieberman In Support of LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 -- Immateriality, dated December 14, 1987.

⁴See Affidavit of David T. Hartgen, Ph.D., P.E., Concerning Immateriality, dated February 1, 1988, attached to Opposition of Suffolk County, the State of New York and the Town of Southhampton to LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 -- Immateriality (Feb. 1, 1988).

disposition motion with respect to Contentions 1 and 2.⁵ In noting that there were factual issues to be resolved, the Board stated that, among other things, it expected the parties to address the "technical reliability" of the new time estimates.⁶ Accordingly, by letter of April 7, 1988 to LILCO,⁷ the State of New York identified Dr. Hartgen as a witness on the immateriality issue. On April 9, 1988, the Governments also served their second set of interrogatories and document requests,⁸ which were focused on LILCO's immateriality argument. Among the discovery requests to LILCO was:

11. Provide all documents, including computer inputs and outputs, concerning the Rev. 5 evacuation time estimates.⁹

On April 20, 1988, attorneys representing the County of Suffolk and State of New York deposed a panel of LILCO witnesses which included Edward B. Lieberman, LILCO's traffic expert, on the CLI-86-13 issues. Mr. Lieberman and his firm,

⁵Board Order (Feb. 24, 1988) at 1. The Board also granted the motion with respect to Contention 9, which pertained to the distribution of fuel.

⁶See the Board's follow-up ruling, Memorandum and Order, (Denying in Part and Granting in Part LILCO's Motion for Summary Disposition of Contentions 1, 2 and 9 -- Immateriality) (Mar. 11, 1988) at 8-9.

⁷Letter from Richard J. Zahnleuter to Mary Jo Leugers (Apr. 7, 1988).

⁸Suffolk County's Second Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8 and 10 to the Long Island Lighting Company (Apr. 9, 1986).

⁹Id. at 3.

KLD Associates, Inc., developed LILCO's revised evacuation time estimates. When asked whether he had yet begun to gather the documents requested by the Governments, he stated that he had not. He also remarked that the Governments should "send a truck" because of the large volume of documentation pertinent to the revised time estimates.¹⁰

Thereafter, on April 22, 1988, counsel for LILCO served its answers to the Governments' discovery requests. With respect to the documents requested by the Governments concerning LILCO's revised evacuation time estimates, LILCO indicated that the documents would be made available on Long Island for inspection during the week of April 25.¹¹ Counsel for the Governments did not receive further word from LILCO on the production of the documents until last Wednesday, April 27, when counsel for the State of New York received a telephone call from counsel for LILCO indicating that the requested documents would be made available for inspection in Long Island only, due to the "sheer volume" of the material. Because of the late notice by LILCO and prior commitments by both Dr. Hartgen and counsel for the State of New York (including representation of State witnesses during two depositions ordered to be taken by this Board, and an

¹⁰Depositions of Edward B. Lieberman et al. (Apr. 20, 1988) at 175.

¹¹LILCO 's Responses and objections to Suffolk County's Second Set of Interrogatories and Requests for Production of Documents Regarding Contentions 1-2, 4-8, and 10 to the Long Island Lighting Company (April 22, 1988) at 7.

appearance before the Appeal Board), the earliest date that an inspection could be arranged was yesterday, Monday, May 2.

In light of the very large number of documents which LILCO was requiring the State to sort through, and in order to expedite the document inspection generally, counsel for the State of New York asked LILCO's counsel to have all of the documents labeled and to have someone familiar with the documents in attendance so that specific types of documents could be located and inspected without undue search time. LILCO's counsel stated that the documents would be labeled, but declined the latter request.

Yesterday, counsel for the State of New York and Dr. Hartgen flew to Long Island to inspect LILCO's documents. As LILCO had indicated, the amount of documents produced for inspection was extremely voluminous. Twenty boxes, each full of computer printouts, were placed on a row of tables. While the boxes were numbered 1-20 and a box key listed the contents, the list was vague, and, quite often pointed the reader to multiple boxes. Accordingly, much time was spent searching for documents in boxes and then perusing thousands of pages of computer printouts rather than analyzing them. In addition, LILCO was unable to provide immediate copies of the documents ultimately requested by the State so further study could be done. Those copies will not be available to the State of New York until at least midday on Wednesday, May 4, 1988. Even if LILCO were to produce the requested copies at that time, the State of New York would only have two and a half days in which to prepare and file testimony

based on the documents.

If Dr. Hartgen receives the requested documents by the end of this week, it is likely that he can complete his testimony by the end of the following week.¹² However, the State of New York cannot prepare testimony for submission on the current due date of this Friday, May 6 that will fairly incorporate the data that it needs to address the "technical reliability" of the new time estimates. Accordingly, the State of New York seeks a one week extension of time to file Dr. Hartgen's testimony.

DISCUSSION

The State of New York's dilemma is quite simple. LILCO's immateriality argument relies in part on revised evacuation time estimates. On the basis of the limited information available to him, Dr. Hartgen has been able to determine that the revised estimates raise certain questions which cast doubt on the validity of LILCO's arguments and conclusions. In order to address those questions, he must have an opportunity to obtain and analyze the data underlying LILCO's Revision 5 evacuation time estimates. However, LILCO has chosen to make those documents available for inspection only days before Dr. Hartgen's testimony is due. Copies of the documents which he must analyze will not be available until just before the filing deadline.

It was within LILCO's power to gather the requested documents and make them available to the State of New York much earlier

¹²Any further delays in providing the requested documents may require the State to seek a further extension.

will not be available until just before the filing deadline.

It was within LILCO's power to gather the requested documents and make them available to the State of New York much earlier than it did, as evidenced by Mr. Lieberman's testimony that he had not even begun to gather the requested documents some 11 days after the Government's April 9 discovery request. LILCO also could have copied and sent the requested documents to the State of New York for delivery today, as LILCO had originally promised on Monday, May 2, 1988. LILCO, however, has chosen to respond to the Government's discovery request in a way that makes it unfairly difficult to incorporate the necessary documentation into the State of New York's testimony.

In light of these circumstances, the State's request for a week's extension of time to file its testimony is fair and reasonable. This request, if granted, should not result in any delay in the CLI-86-13 remand hearing, which is not scheduled to start until one week after the termination of the hearing on the other outstanding emergency planning issues. More importantly, without the extension, the State will be denied its right to submit important testimony on the validity of LILCO's immateriality theory and the data on which it is based -- one of the very issues on which the Board expects the parties to provide testimony.

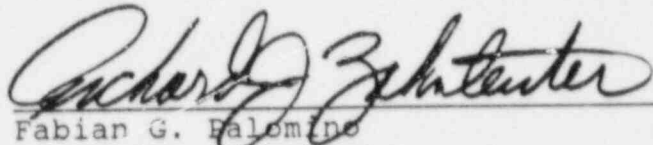
Accordingly, the Board should grant the State of New York's request for an extension of one week within which to file its immateriality testimony, and should further order LILCO to

provide all copies of the documents requested yesterday by the State of New York no later than this Friday, May 6. The State of New York also requests that the Board rule on this Motion as expeditiously as possible, and certainly before May 6.

CONCLUSION

For the foregoing reasons, the State of New York's motion for an extension of time to file immateriality testimony sponsored by Dr. Hartgen should be granted. The State of New York also requests expedited consideration of this Motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the "State of New York Motion for Extension of Time to File Testimony on Immateriality Issue," have been served on the following this 3rd day of May 1988 by U.S. Mail, first class, except as noted by asterisks.

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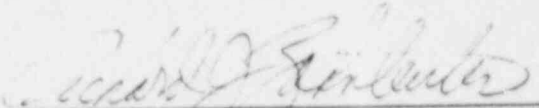
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