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-5
	)	(EP Exercise)
(Shoreham Nuclear Power Station, Unit 1)	)	
	)	

LILCO'S ANSWER TO INTERVENORS' MOTION FOR EXTENSION OF TIME

LILCO opposes the Intervenors' request for additional time to file contentions on the June 1988 exercise, styled "Suffolk County, State of New York, and Town of Southampton Motion for Postponement of Deadline for Filing Contentions Related to June 1988 Exercise, or In the Alternative, for Extension of Time" (Oct. 4, 1988). LILCO's reasons are as follows:

1. The fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. A participant in NRC proceedings should anticipate having to manipulate its resources, however limited, to meet its obligations. General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), LBP-86-14, 23 NRC 553, 558-59 (1986); Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). This policy should apply a fortiori to Intervenors that are governmen's with power, resources, and expertise.

2. This proceeding is supposed to be disposed of "as expeditiously as possible, consistent with fairness to all the parties." ALAB-901, 28 NRC ___, slip

D503

op. at 6-7 (Sept. 20, 1988). See also CLI-86-11, 23 NRC 577, 582 (1986), calling for the hearing on the February 1986 exercise to be expedited.

3. Most of the Intervenors' justification for delay is that they have had to spend time appealing their dismissal from the proceeding in LBP-88-24. They were dismissed for longstanding bad-faith obstruction of the Commission's factfinding process.[1/] Thus the expenditure of resources that they complain about results from their own bad-faith conduct, as found on the record by the OL-3 Licensing Board. They should not be allowed to use the consequences of their own bad-faith conduct to secure additional delay in this proceeding.

4. Intervenors claim they have been forced to begin preparation of papers seeking a stay of issuance of a Shoreham license. October 4 Motion at 8. Since then, however, they have announced their intention to ask for a tolling of the time for filing their stay motion.

5. The Intervenors also complain that they have not had enough discovery to allow them to write contentions. But this Board already took into account the state of discovery when it set the schedule in the first place. Intervenors offer nothing new to justify reconsideration. Moreover, the regulations contemplate no discovery at all at the contention-writing stage,[2/]

1/ The Appeal Board, in ALAB-902 issued October 7, 1988, ruled that the OL-3 Board lacked the authority to dismiss the Intervenors from the proceeding. LILCO will ask the Commission to review ALAB-902 as well as ALAB-900 and -901, which are already the subjects of petitions for Commission review dated October 5, 1988. In the meantime, since the Appeal Board has not reviewed the OL-3 Board's factual findings concerning the Intervenors' bad faith, those findings must still be deemed to be correct.

2/ Even after contentions have been admitted and intervenors are faced with motions for summary disposition that they cannot answer, they are not necessarily entitled to discovery. They must first convince the Licensing Board that discovery is necessary. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-86-11, 23 NRC 577, 582 (1986).

i.e., before matters have been admitted into controversy by contention. See 10 C.F.R. 52.740(b)(1) (1988); Wisconsin Electric Power Co. (Point Bend Nuclear Power Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982). Intervenors may have been permitted premature discovery on the 1986 exercise, but that does not entitle them to it now, let alone justify delay.

6. In fact, the Intervenors have had ample discovery already. They observed the exercise itself. LILCO has turned over to them every available document used or created by participants in the offsite portion of the three-day exercise. These more than 33,000 pages of documents were turned over almost three months ago, on July 13. (Since LILCO has voluntarily provided Intervenors with every document used by participants in the offsite portion of the three-day exercise, Intervenors' assertion that LILCO has withheld some player logs, Intervenors' Motion at 15, is simply incorrect.) The Intervenors' demand for additional "training" documents simply indicates their intention not only to litigate the exercise but also to reopen issues (like training) already resolved in 1985.

7. The exercise took place June 7-9, 1988. The Intervenors were present at it. If they had concerns, they should have been putting them in writing for four months now. If after all this time they still cannot articulate their concerns, that inability raises a question over whether they have any legitimate ones.

8. Delay is prejudicial to LILCO, as has been explained to this and other boards many times before.

Intervenors have long been engaged in delay for their own advantage. On March 10, 1982, they complained at a prehearing conference that the schedule was too "Draconian." Conference of parties, Mar. 10, 1982, Tr. 525 (counsel for Shoreham

Opponents Coalition, now counsel for Town of Southampton); see also Tr. 519 (counsel for Suffolk County). At the next prehearing conference on April 13 and 14, 1982, they continued to complain that the proceeding was moving too fast. Conference of parties, Apr. 13, 1982, Tr. 537 (Suffolk County Executive), 824 (Suffolk County counsel). Similarly, the first day of hearings on emergency planning, on December 6, 1983, produced a speech by Suffolk County counsel complaining about the too-fast pace of the proceeding:

> Finally, the county is distressed by certain procedural rulings. This proceeding is moving at a pace for which there does not seem to be any justification. There are many, many lawyers working on it all the time. These things can be done but they put a burden on the parties which sometimes has the effect of compromising quality. There is no need to rush in this case, because everyone knows that Shoreham will not be needed for a minimum of ten years, or as much as 15 years.

Tr. 819 (Suffolk County counsel). Now, almost five years later, Suffolk County is still complaining that the proceeding is moving too fast for its resources. This complaint should not be taken seriously.

For the above reasons the Board should deny Intervenors' October 4 motion for additional time.

Respectfully submitted,

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DATED: October 11, 1988

CERTIFICATE OF SERVICE

In the Matter of
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(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-5

I hereby certify that copies of LILCO'S ANSWER TO INTERVENORS' MOTION FOR EXTENSION OF TIME 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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