Attachment 2

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March 3, 1988

BY TELECOPY

James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gentlemen:

This letter has two purposes: first, to provide some additional information which confirms the necessity for this Board to modify its 15-day discovery period set for the EBS and hospital evacuation proceedings; and, second, to respond very briefly to the filings made by LILCO and the Staff late yesterday attacking the Governments' March 1 Response to the Board's Request for Schedule Proposals.

The 15-Day Discovery Periods Will Deprive the Governments of Their Right to a Hearing

The Governments explained in their March 1 Response why the Board's imposition of a 15-day discovery schedule, to run simultaneously for both the EBS and the hospital evacuation proceedings, is unnecessary, unreasonable, irrational, unfair, unworkable, contrary to the NRC's regulations, and violative of the Governments' due process rights. We do not repeat here the discussion contained at pages 10-20 of that Response, but must emphasize that every point made there remains valid and compelling. Having received additional discovery materials from LILCO on both the EBS and hospital evacuation issues, however, the Governments can now supplement that Response and be even more specific in advising the Board as to why its proposed 15-day discovery schedules must be extended.

First, with respect to the hospital evacuation proceeding, the evacuation time estimate data provided by LILCO to date is not very illuminating standing alone. Based upon a preliminary review of the many pages of LILCO calculations and data that have

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been produced, one of the Governments' experts has informed counsel that it is impossible to evaluate the validity of LILCO's conclusions drawn from such calculations and data absent certain additional information. Such information, concerning the methodology, the data and the calculations themselves, could probably be obtained through interrogatories, or through depositions of the LILCO employees who appear to have prepared the documents. At any rate, counsel for the Governments are in no position to conduct a meaningful or productive deposition of LILCO's expert witness, Mr. Lieberman, concerning his conclusions, without having first (1) obtained the information necessary for their own expert consultant to understand the underlying data, (2) permitted that consultant to review and evaluate such information and data, (3) met with that consultant so he can advise counsel as to the meaning and significance of the LILCO materials, and (4) prepared to conduct the deposition of Mr. Lieberman.

It is not possible to accomplish the discovery, review, consultation, and deposition preparation, necessary to enable counsel to conduct a meaningful discovery deposition of an expert witness, in the five business days available between now and Friday, March 11, when LILCO has offered to make Mr. Lieberman available to be deposed. This is particularly true in light of the other discovery, appeal, and litigation obligations which have been imposed on the Governments' counsel by this Shoreham licensing proceeding -- as already discussed at some length in the Governments' March 1 filing.[1/]

Second, with respect to the EBS issue, the Governments have not yet had an opportunity to discuss in any detail with the appropriate expert consultants the technical materials provided by LILCO in support of its new EBS proposal.[2/] In fact, they

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1/ For these same reasons, it is not possible to go forward with the deposition of the Staff's witness on the hospital evacuation proceeding, Mr. Urbanick. At this time, the Staff has offered to make Mr. Urbanick available for deposition on only one day during the 15-day discovery period -- tomorrow, March 4. As the Governments made clear in their March 1 Response, a deposition of Mr. Urbanick at that time simply would not be productive or meaningful, because the Governments will not have had the time or the necessary materials to perform the preparation required to take Mr. Urbanick's deposition.

2/ Some of these materials were just produced by LILCO late
(footnote continued)

have not yet had an opportunity even to meet with such experts to determine if they can be helpful as consultants or perhaps witnesses on the technical matters raised by the LILCO analyses, although we hope to be able to schedule such meetings for sometime during the next week.3/

Counsel for the Governments are in no position to conduct a meaningful or productive deposition of LILCO's technical expert witness, Mr. Dippell, concerning his technical analyses or his conclusions, without having first (1) retained their own expert consultants, (2) permitted such consultants to review and evaluate the LILCO analyses and conclusions and obtain by discovery whatever additional facts and data the consultants may need to understand the LILCO analyses, (3) met with the consultants so counsel can be advised as to the meaning and significance of the LILCO materials and conclusions, and (4) prepared to conduct the deposition of Mr. Dippell.

In light of the obligations related to school discovery and other ongoing and pending litigation in this licensing proceeding, it will be impossible for the Governments to accomplish the retention of experts, discovery, review, consultation, and deposition preparation, necessary to enable counsel to conduct a meaningful discovery deposition of an expert witness, in the three business days available between now and Wednesday, March 9,

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(footnote continued from previous page)
yesterday. At this time, counsel for the Governments have not had any meaningful opportunity to review the materials. Clearly, it will also be necessary to subject the technical data produced by LILCO to expert review and analysis.

3/ Indeed, the attorneys who will be taking the lead in handling the EBS issues have, since the Board's February 24 Order on the EBS matter was issued, had to devote almost full time to completing discovery in the schools evacuation proceeding (i.e., preparing for and defending depositions of Dr. Suprina and Mr. Smith on February 25, Dr. Turner on February 26, and Dr. Muto on February 29, responding to LILCO interrogatories and requests for admissions, and otherwise answering LILCO's unending stream of school-related discovery demands, many of which have been made during the depositions of Suffolk County's witnesses, and then followed up by letter requests. Notwithstanding the hectic pace of the school-related discovery, counsel for the Governments were able to send out some preliminary interrogatories and document requests in the EBS proceeding on February 29.

which is the latest date that LILCO has offered to make Mr. Dippell available to be deposed, or even by March 14, the close of the Board's 15-day discovery period.

Third, as the above discussion makes clear, the Governments will not be able to identify or to make decisions concerning witnesses they intend to call in the EBS or hospital evacuation proceedings -- much less make these presently undetermined persons available to be deposed -- by the end of the Board's 15-day discovery period.4/ This should concern LILCO, because absent an extension in the discovery period, it will have no opportunity to depose the witnesses to be called by the Governments at trial.5/

The Governments have the right to a fair hearing in the EBS and hospital evacuation proceedings. This Board cannot ignore that right, or reduce it to a meaningless charade by arbitrary and irrational procedural rulings which defy reason and have no valid basis. If this Board refuses to extend its 15-day discovery periods, it will make a mockery of these proceedings. Such a ruling will deprive the Governments of their guaranteed rights to conduct meaningful discovery, to prepare their affirmative case, to present evidence at the hearing, and otherwise to exercise their due process rights as intervenors in this licensing proceeding.

The LILCO and Staff Replies Are Inaccurate and Inappropriate

We do not respond at length or in detail to the many unfounded allegations, mischaracterizations, and spurious attacks on the Governments' counsel which are contained in the LILCO Reply. A few of LILCO's comments, however, cannot go unanswered.

1. The suggestion that with respect to the EBS and hospital evacuation issues the Board should "presum[e] conclusively that all parties were ready to go to trial on these issues four

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4/ As noted, with respect to the EBS matter, counsel will not even be able to meet with potential witnesses until next week at the earliest.

5/ The alternative ruling frequently advocated by LILCO -- i.e., that the Governments should be prohibited from calling as witnesses any persons not designated during the identified "discovery period" -- would be an even more blatant violation of the Governments' rights than the Board's arbitrary establishment of the 15-day discovery period.

years ago" (LILCO Reply at 2) is vacuous. The parties did go to trial on LILCO's 1984 EBS and hospital proposals; the flaws in those proposals required LILCO to try again. LILCO's proposals at issue now are completely new. Moreover, in their March 1 Response (at pages 15-16) the Governments explained why LILCO's assertion that the late 1987 filing of its summary disposition motions should have caused the Governments to begin trial preparation (LILCO Reply at 2) is without basis and must be rejected.

2. LILCO's criticisms of the Governments' proposed discovery periods are disingenuous; they ignore the fact that prior to the Board's announced 15-day discovery periods, LILCO itself had proposed a discovery period of 45 days for those two issues.

3. This Board must reject out of hand LILCO's thinly veiled, but wholly unsupported and unsupportable accusation, that counsel for the Governments have lied in describing the resources available for the myriad ongoing proceedings in this Shoreham case (LILCO Reply at 2). The Governments have supported their statements and their position with facts, with logic and with law; LILCO's glib accusatory rhetoric fails to acknowledge the factual, substantive and legal bases for the Governments' statements, even though those bases were clearly stated in the Governments' March 1 Response.

4. LILCO's arguments that the FEMA review of Revision 9 is irrelevant, and that discovery of FEMA somehow requires a showing of "good cause" (LILCO Reply at 5) are also disingenuous and wholly without basis. First, LILCO is the one who has demanded that FEMA conduct a review of its Revision 9. Clearly, LILCO recognizes that such a review is essential to its license application. Second, the regulations themselves provide that FEMA findings constitute a rebuttable presumption in licensing proceedings; as LILCO well knows from the prior litigation on the eight earlier versions of its Plan, the FEMA findings, and testimony by FEMA witnesses concerning them, will be a part of the evidentiary record. FEMA witnesses are entitled to no immunity from discovery, nor can their opinions, or FEMA findings, be shielded from discovery. The Governments -- and LILCO as well -- are entitled to discovery in order to prepare their case, as necessary, to rebut the presumption afforded the FEMA findings. Third, again as LILCO well knows, there has never been a question in these proceedings about the entitlement of the Governments to depose the FEMA witnesses prior to trial, and to obtain document discovery concerning RAC reviews.

Little need be said regarding the Staff's March 2 "Partial Response." Simply put, the Staff's suggestion that the Board's February 8 Memorandum and Order prohibits the Governments from seeking -- and the Board from reconsidering and granting -- extensions of the 15-day discovery periods imposed by the Board in its February 24 hospital evacuation and EBS rulings is off base. The Board's February 8 Order was rendered in connection with the Contention 25.C remand proceeding. Nothing in that Order suggested that the parties were to be forever barred from seeking time extensions, irrespective of the issue or the circumstances giving rise to the relief sought. Indeed, such an order, if rendered, would have to be viewed as an infringement of the parties' basic and fundamental rights to a fair proceeding. The Staff's views therefore warrant no consideration by the Board.

The Governments do not respond herein to LILCO's views on the Governments' March 1 hearing-related scheduling proposals. Should the Board decide to consider LILCO's Reply on that matter, however, the Governments request that the Board advise counsel so a response to LILCO's arguments can be provided for the Board's consideration.

Sincerely,

Karla J. Letsche

KJL/slr

cc: All Counsel (by telecopier)

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March 8, 1988

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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)

CERTIFICATE OF SERVICE

I hereby certify that copies of GOVERNMENTS' MOTION FOR EXTENSION OF TIME FOR DISCOVERY ON HOSPITAL, EMERGENCY BROADCAST SYSTEM, AND SCHOOL ISSUES have been served on the following this 8th day of March 1988 by U.S. mail, first class, except as otherwise noted.

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* By Hand
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attachments by regular mail)