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May 26, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
DEPUTY 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)

MOTION FOR LEAVE TO FILE SURREBUTTAL TESTIMONY

I. Introduction

On May 18, 1988, five weeks after the parties filed their initial testimony on the issue of evacuation time estimates ("ETEs") for EPZ hospitals, LILCO filed a motion to file rebuttal testimony on the issue. The LILCO Rebuttal Testimony,^{1/} which was attached to the motion, is based on a new computerized analysis never revealed to the State of New York or Suffolk County (the "Governments") prior to May 18. Notwithstanding the untimeliness of LILCO's submission and the Governments' arguments

^{1/} Rebuttal Testimony of Edward B. Lieberman and Diane P. Dreikorn on the Remanded Issue of the Bases and Accuracy of LILCO's Hospital Evacuation Time Estimates (May 18, 1988) ("LILCO Rebuttal Testimony").

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that consideration of the new LILCO analysis would unfairly prejudice the Governments, the Board granted LILCO's motion.

Because the State's initial pre-filed testimony on the hospital ETE issue could not, for obvious reasons, address LILCO's new analysis, the State hereby moves this Board for leave to file Surrebuttal Testimony, a copy of which is attached hereto. The Surrebuttal Testimony addresses LILCO's new analysis to the extent possible (given the very limited time that the State's expert, Dr. Hartgen, has been afforded to examine the sophisticated computer model and its results) as well as the conclusions which LILCO draws from that analysis. Good cause for the filing of the attached testimony is set forth as follows.

II. Discussion

The filing of LILCO's Rebuttal Testimony came in the middle of the current hearing without any prior notice to the Board and the parties. Thus, LILCO kept secret the analysis on which the Rebuttal Testimony is based until only a few hearing days before the issue was originally scheduled to be heard. LILCO's conduct in doing so was not questioned by the Board despite the fact that: (1) LILCO had had the opportunity to computerize its analysis since November, 1987 when its original manual calculations were completed; (2) LILCO had informed the Governments in discovery that its hospital ETEs were not the product of a computer model and LILCO did not attempt to supplement that answer or warn the Governments that it was

preparing an analysis which would render that answer incorrect; (3) in the many discussions and correspondence between counsel for LILCO and counsel for the Governments regarding scheduling for this hearing, counsel for LILCO had never once mentioned the possibility of additional testimony -- a fact that would obviously be material to counsel for the Governments in considering any schedule; and (4) LILCO had established a practice in the first week of the hearing of introducing new testimony and data never before revealed to the Governments -- a practice which the Board recognized was prejudicial to the Governments (see Tr. 19432-33). The Board's decision has left the Governments at an obvious disadvantage.

At the time the parties filed their initial pre-filed testimony, the basis for LILCO's hospital ETEs was an extensive series of manual calculations which were provided to the Governments during discovery. The Governments were thus able to review the relevant documentation, depose individuals with knowledge about the calculations, and thereby gain an understanding of LILCO's methodology (and the flaws in that methodology). On the basis of the facts that were revealed to the Governments during discovery, the State filed testimony on April 13 which demonstrated certain flaws in LILCO's calculations and, more importantly, demonstrated the sensitivity of the results to changes in the narrow set of assumptions on which the calculations were based.

The May 18 Rebuttal Testimony, however, introduces an entirely new computerized analysis which, according to LILCO, took a group of KLD employees weeks to develop and "debug", and which is so sophisticated that it takes four hours to run one scenario. See Rebuttal Testimony at 8. While the State has been given only a limited opportunity to review and analyze the new analysis, the State has a right to submit testimony on LILCO's new analysis and to comment on the conclusions which LILCO draws from it.

The Surrebuttal Testimony is plainly timely. It is offered only eight days after receiving LILCO's new analysis, only two days after receiving some of the documentation underlying the analysis, and only one day after Mr. Lieberman's deposition (all of this, of course, in the middle of ongoing litigation). Furthermore, the proposed Surrebuttal Testimony is relevant and will be helpful to the Board in resolving the issue before it because the testimony directly addresses LILCO's new analysis and Rebuttal Testimony. Finally, the State's Surrebuttal Testimony should be admitted as a matter of fairness. LILCO cannot be given the opportunity to spring new testimony on the parties at the last minute without affording the parties the opportunity to address it in their direct cases. Thus, it is beyond question that good cause exists for the Board to accept the State's proposed Surrebuttal Testimony. Indeed, the Board has recognized the possible need for such testimony. See Tr. 20237.

III. Conclusion

For the foregoing reasons, the State's motion for leave to submit the attached Surrebuttal Testimony should be granted.

Respectfully submitted,



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