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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

) Docket No. 50-322-OL-5
) (EP Exercise)

OFFICE OF SECRETARY
DOCKETING & RECORDS
MANAGEMENT

**LILCO'S MOTION AND PROPOSED FORM OF ORDER
RESPECTING SCHEDULE FOR EXERCISE HEARINGS**

Pursuant to this Board's bench Order at the September 24, 1986 prehearing conference (Tr. 16,628-29), LILCO attaches a proposed form of order setting a schedule for hearings on the February 13, 1986 FEMA-graded offsite emergency planning exercise for the Shoreham Nuclear Power Station.^{1/} This schedule is inherently uncertain because it is not known yet how many contentions the Board will admit (and thus what scope of issues will be available for litigation), though LILCO strongly believes that under the tests enunciated in UCS v. NRC, 735 F.2d 1437, 1448-49 (D.C. Cir. 1984) and the Commission's implementing Order, CLI-86-11 (June 6, 1986), precious few issues

^{1/} LILCO notes that the Licensing Board's original order establishing a hearing schedule for the entire emergency planning proceeding -- a broader proceeding than this, and one not required to be expedited -- contemplated the start of hearings less than 90 days from issuance of the order. In actual fact, hearings started in slightly over 100 days. Special Prehearing Conference Order (Ruling on Contentions and Establishing a Schedule . . .), Docket 50-322-OL-3 (August 19, 1983). The schedule attached to this Motion would result in the commencement of hearings approximately 75 days after issuance of the Order Admitting Contentions. A comparison may be made with the low power proceeding in this operating license docket (Docket 50-322-OL-4), where the Commission set a schedule (which was adhered to) leading to hearings 55 days from the commencement of active prehearing events. CLI-84-8 (May 16, 1984). An earlier, more rapid schedule initially proposed by the Licensing Board had been stayed by the U.S. District Court for the District of Columbia Circuit.

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ought to be admitted. LILCO believes that the schedule attached would be generous even in the event that the Board, notwithstanding LILCO's objections to Intervenor's contentions, admits a relatively large number of them. It could and should be truncated substantially if, as LILCO believes it should, the Board admits a relatively small number.

The schedule operates on the following facts and assumptions:

1. In the UCS case, 735 F.2d 1437 (1984) the U.S. Court of Appeals for the D.C. Circuit merely held that the results of emergency planning exercises cannot be excluded from review before an Atomic Safety and Licensing Board as long as those results were considered material to the Commission's licensing decision. The Court clearly limited the scope of proceedings, however, to fundamental flaws in the plan revealed by the exercise, as distinguished from minor or ad hoc problems occurring on the exercise day, id. at 1448. It also recognized unequivocally that the Commission's regulations permit licensing boards to expedite proceedings by "strictly limiting" presentations and by use of summary process, id. at 1448-49, esp. footnote 21. The Commission implemented that opinion under the facts of this case in CLI-86-11 (June 6, 1986), which ordered that this proceeding be conducted on an expedited basis. Board rulings on the admissibility of contentions are imminent, and thus a schedule leading to hearings is appropriate at this point.

2. LILCO, in an effort to facilitate this proceeding, has already provided the other parties with extensive document discovery during the period between May and July. FEMA has also provided significant document discovery already.

3. The focus of this proposed schedule is on the February 13, 1986 exercise. It might, but need not, be affected by any other Shoreham emergency planning matters to come before this Board.

4. All, or virtually all, of the materials which form the basis for this proceeding already exist except for FEMA's response to LILCO's proposals to remedy Deficiencies and ARCAs (Areas Requiring Correction Active) found in FEMA's April 17, 1986 Post-Exercise Assessment. LILCO provided its proposed solutions for Deficiencies, along with a matrix summary of forthcoming solutions for the lesser ARCAs, in Revision 7 to the Shoreham Emergency Plan (filed June 20, 1986), and provided its actual proposals for remedying ARCAs in Revision 8 (filed September 18, 1986).

5. FEMA has stated that it intends to review Revisions 7 and 8 simultaneously, using its RAC (Regional Assistance Committee) process, and that because of other commitments, it would not be able to complete that review before December 15, 1986 or to submit prefiled testimony until about mid-February, 1987 (Tr.16,610-11). FEMA would, however, make appropriate personnel available for depositions at least during the period of October 14-17, 1986 (Tr. 16,623), and perhaps other times prior to completion of the RAC review of Revisions 7 and 8. Such depositions could apparently cover all aspects of FEMA's relationship to the exercise except its reaction to LILCO's actual proposals to remedy Deficiencies or ARCAs; those would have to await completion of the RAC's review of Revisions 7 and 8.

6. Assuming that FEMA has accurately indicated its capacity and timetable for participation in this proceeding, there is no way in which a final decision can be reached before February 13, 1987. Therefore, LILCO will be forced, given this schedule of events, to obtain an exemption from the nominal requirement of 10 CFR Appendix E, ¶ F.1 that an offsite exercise be completed within one year before issuance of a full-power operating license.

7. LILCO believes that the following principles should guide the progress of this expedited, limited-focus proceeding toward hearing. These principles assume admission of a relatively large number of contentions; specific time periods and process could and should be truncated in the event a lesser number are admitted:

- A. A finite period of approximately 50 days for discovery.
- B. Provision, within that period, for two rounds of written discovery (interrogatories, requests for production of documents, requests for admission) with the first round being a general round, and the second being restricted to follow-up questions.
- C. Limitations on the number of interrogatories (50, including subparts, to the first set; 25, including subparts, to the second set).
- D. Limitations on the extent of depositions. LILCO proposes limiting each side, defined as (1) LILCO, (2) NRC Staff/FEMA, and (3) Suffolk County/New York State/Southampton, to a total of 7 "deposition days" of depositions against any other "side." A deposition day is a working day (not to exceed 6 hours of examination excluding breaks) of depositions taken by any side, rounded off in units of not less than one hour, and with a minimum time of one hour. The number of persons being deposed together would not affect the computation. Thus one deposition day could consist of, for example, (a) one day-long deposition of one person, (b) one day-long deposition of more than one person, or (c) three (3) two-hour depositions of individuals or panels. It is anticipated that at some times more than one deposition may need to be scheduled simultaneously if all three "sides" take the maximum permitted number of depositions.
- E. Prompt resort to the Board for resolution of otherwise irresolvable discovery disputes or other needed modifications to the schedule.

F. Maximum feasible use of summary disposition, during and immediately following discovery.

G. Depending on the number of contentions admitted, use of a rolling schedule for proceeding to hearing, depending on which issues are first ready for litigation. Thus issues on which the parties do not file motions for summary disposition might be ready for trial on the merits even while summary disposition was in process with respect to other issues. This would permit hearings to get underway as soon as possible after discovery on any issues where summary disposition is not sought, while enabling the summary disposition process to eliminate or narrow the remaining issues. LILCO realizes that the Board may not feel that it can simultaneously be conducting evidentiary proceedings and ruling on summary disposition motions, or that the number of issues admitted may not be so large as to commend two-tiered scheduling; but the option still has been written into the schedule.

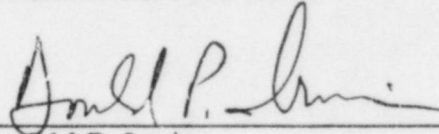
H. Setting of as many matters as possible for resolution independent of FEMA's scheduling constraints. FEMA's schedule for reviewing Revisions 7 and 8, for example, affects only FEMA's appraisal of LILCO's proposed corrections to Deficiencies and ARCAs. (FEMA's schedule does not, for instance, impact at all on analysis of the specific events of February 13 themselves.) If the Board issues its Order Admitting Contentions in time to permit the parties to undertake any necessary deposition discovery of FEMA by the week of October 14-17, FEMA's constraints will not affect the schedule in any respect except LILCO's proposed corrections to the Deficiencies and ARCAs. Even if FEMA depositions cannot be conducted during that week, if FEMA is able to make its designated personnel available either later in October or early in November, the same result can be achieved.

I. Since this is an expedited proceeding, document delivery and turnaround time must be minimized. Thus reply dates must be adhered to and document service or delivery must, with only minor exceptions, be physically effected on the date due.

J. Motions, other than summary disposition motions, must not exceed 15 pages in length, including attachments, except by leave of the Board.

The attached schedule currently presumes, contrary to LILCO's views, that the Board admits a large portion of the Intervenor's contentions. In the event the number is more limited, the amount of discovery and the time necessary to complete it can be considerably reduced, and LILCO may make specific simplifying suggestions for modification as appropriate.

Respectfully submitted,



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Lee B. Zeugin
Kathy E.B. McCleskey

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DATED: October 1, 1986

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))	

**ORDER RESPECTING SCHEDULE FOR
PROCEEDINGS ON FEBRUARY 13, 1986
EMERGENCY PLANNING EXERCISE**

This proceeding has been ordered to be an expedited one by the Commission. CLI-86-11 (June 6, 1986).^{1/} All of the parties have been familiar with the evolution of emergency planning issues in this case for over three years; all are represented by experienced counsel. Extensive preliminary document discovery has been provided by LILCO and a significant amount by the Federal Emergency Management Agency. All parties physically observed the exercise on February 13, 1986, and all have access to FEMA's April 17, 1986 Post-Exercise Assessment. Unless this proceeding can be completed by February 13, 1987, this Board will have to entertain a request for an

^{1/} The Commission's Order was issued in conformity with the controlling case, UCS v. NRC, 735 F.2d 1437 (D.C. Cir. 1984), in which the Court of Appeals merely held that the Commission could not totally screen off the results of prelicensing emergency planning exercises from licensing board review as long as the Commission considered such results to be material to its decision-making process. However, the Court also clearly limited the permissible scope of litigation of such exercises to "fundamental flaws" in the plan revealed by the exercise, as distinguished from "minor or ad hoc problems occurring on the exercise day." Id. at 1448. The Court of Appeals also explicitly recognized the Commission's authority to expedite proceedings under its rules, by "strictly limiting" presentations and by use of summary process. Id. at 1448-49, esp. note 21.

exemption from the provision of 10 CFR Part 50, Appendix E, requiring completion of an offsite emergency planning exercise within 1 year before issuance of a decision respecting a full power license.

The Board finds that the controlling law permits, the Commission has ordered, the circumstances commend, and the parties are capable of implementing, an orderly and brisk schedule which shall commence on the date of issuance of this Board's Order Respecting Admission of Contentions. The instant Order has two parts: Ground Rules and Schedule.

I. GROUND RULES

1. This is an expedited proceeding. Parties will be expected to govern all their actions in accordance with the principle of reaching an adequately based decisions on the merits as soon as practicable.

2. For purposes of this proceeding, there will be considered to be three principal "sides": (1) LILCO, (2) the NRC Staff/FEMA, and (3) Intervenors (Suffolk County/New York State/Town of Southampton), with all Intervenors expected to participate through lead counsel of their choice in the filing of papers and testimony, conduct of cross-examination, and the like, except by leave of the Board. No formal consolidation is required at this juncture.

3. Schedule deadlines must be adhered to. Documents must be physically in the hands of (1) the Board, (2) counsel for LILCO at a designated office, (3) lead counsel for Intervenors at a designated office, and (4) counsel for the NRC Staff at a designated office, all by hard copy or confirmed-delivery telecopy, prior to the close of business on the deadline day. Delivery on all other parties must be made by overnight mail, or, in the event of documents not exceeding 15 pages in length if the receiving party has a telecopier, by telecopier. All telecopier filings must be paralleled by hard copy.

4. All pleadings and other papers filed with the Board, except prefiled testimony, findings of fact, summary disposition motions, and other papers designated by the Board, must not exceed 15 pages in length including attachments, except by leave of the Board.

5. The parties are expected to attempt to resolve procedural matters to the maximum extent possible among themselves before resorting to the Board. Any "side" filing a procedural motion (i.e., one concerning schedule, discovery disputes, etc.) with the Board must recite that it has notified counsel for the other two "sides" as defined in rule 2 above, of the situation leading to the motion and has attempted to resolve it. The Board will not, except in extraordinary circumstances, entertain any procedural motion which does not make such a recitation. The Board will give expedited attention to those which do contain such a recitation. Responses to procedural motions shall be filed 5 days from the date of filing of the motion. Replies thereto shall not be received without leave of the Board.

6. The Board imposes the following limits on discovery, which shall not be exceeded without leave of the Board.

(a) Interrogatories shall be limited to two rounds per sponsoring side against any other side. The first round, including subparts, shall be limited to 50 questions. The second round shall consist solely of follow-up questions to the first round and shall be limited to 25 questions, including subparts.

(b) Each side shall be limited to 7 "deposition days" of depositions noticed by it against any other side. A deposition day is a working day (not to exceed 6 hours of examination excluding breaks) of depositions taken by any side, rounded off in units of not less than one hour, and with a minimum time of one hour. The number of persons being deposed together should not affect the computation. Thus one deposition

day could consist of, for example, (a) one day-long deposition of one person, (b) one day-long deposition of more than one person, or (c) three (3) two hour depositions of individuals or panels.

7. Maximum progress shall be made toward hearings notwithstanding FEMA's scheduling difficulties. The parties shall, by COB October 6, notify FEMA in writing of all personnel they wish to depose during the week of October 14-17. FEMA must submit any objections to any such requests to the Board in writing by COB on October 8. The Board recognizes FEMA's resource limitations and scheduling constraints. The Board also urges FEMA to allocate as much of its resources as possible to this proceeding, since if FEMA is unable to file direct testimony until mid-February 1987, the result will be both to delay consideration of FEMA's views considerably relative to those of other parties, and to bring about an inevitable need to consider an exemption from Appendix E to 10 CFR Part 50.

II. SCHEDULE^{2/}

(1) Commencement of Schedule

The Prehearing Conference Order Admitting Contentions shall serve as the triggering event for this schedule.

(2) Witness Designation

- (a) All parties shall serve on the Board and other parties a list of their proposed witnesses and, to the extent known, the general subject-matter of their direct testimony within 7 days of the Order Admitting Contentions. All parties shall seasonably

^{2/} This schedule would result in the commencement of hearings approximately 75 days after issuance of the Order Admitting Contentions. A comparison may be made with the low power proceeding in this operating license docket (Docket 50-322-OL-4), where the Commission set a schedule (which was adhered to) leading to hearings 55 days from the commencement of active prehearing events. CLI-84-8 (May 16, 1984). An earlier, more rapid schedule initially proposed by the Licensing Board had been stayed by the U.S. District Court for the District of Columbia Circuit.

update such witness list without need for request by any other party. No new witness shall be designated later than 10 days prior to the close of discovery except by leave of the Board.

(3) **Interrogatories, Requests for Production of Documents and Requests for Admission**

- (a) First round of interrogatories/requests for production/ requests for admission must be filed at any time not later than 10 days after the Order Admitting Contentions.
- (b) Responses to first round requests must be filed within 15 days of request;*
- (c) Follow-up interrogatories, requests for production or admission must be filed not more than 7 days after applicable response to first round;
- (d) Responses to follow-up requests must be filed within 10 days of request;*
- (e) The period for filing interrogatories/requests for production or admission closes 42 days after the issuance of the Order Admitting Contentions. Any specific items pending because of disputes timely brought to the Board shall be resolved on a schedule to be issued by the Board.

(4) **Depositions**

- (a) Each side shall take as many depositions, limited to 7 deposition days against any other side as defined in Part I of this Order, as it chooses.
- (b) All sides shall accommodate each other to the maximum extent possible in making proposed witnesses available.
- (c) The deadline for taking depositions expires 50 days after the Order Admitting Contentions.

(5) **Close of Discovery**

Except as may be modified by this Board, discovery shall close 50 days after issuance of the Order Admitting Contentions.

* Any objections to discovery requests must be made in writing within 3 days of the discovery request. Replies are also due 3 days thereafter.

(6) Summary Disposition Motions

- (a) Summary disposition motions may be filed at any time beginning with and not later than 60 days after the Order Admitting Contentions.
- (b) Responses to summary disposition motions must be filed within 20 days of receipt of the motion.
- (c) All parties shall notify the Board and other parties in writing, not later than 45 days after the Order Admitting Contentions, of any contentions on which they have not yet filed summary disposition motions but anticipate doing so. Any changes to this list shall be promptly communicated to the Board and other parties.
- (d) All parties shall conduct the maximum amount of discovery possible of FEMA personnel (except on Revisions 7 and 8) during the discovery period. FEMA is expected to make appropriate personnel available for deposition during the period October 14-17 and to the maximum extent possible at other times during the discovery period. Any party unable to complete desired deposition discovery (including discovery regarding Revisions 7 and 8) during the normal discovery period shall so notify the Board and the other parties in writing prior to its close, with an estimate of the further discovery desired and its basis. Parties will be expected to include any depositions on Revisions 7 and 8 within their quota of 7 "deposition days."

(7) Testimony Filing

- (a) Direct testimony on contentions not the subject of summary disposition motions is due by simultaneous filing by all parties 60 days after the Order Admitting Contentions.
- (b) Direct testimony on contentions subject to summary disposition motions, to the extent they are denied, is due 15 days after the Board's ruling on the motion.
- (c) Motions to strike testimony are due within 7 days of testimony filing.
- (d) Replies to motions to strike are due within 3 days of receipt of motion.
- (e) Testimony filings by FEMA will be made on the same schedule as that for other parties except to the extent that FEMA notifies the Board and parties in writing, at least 30 days in advance, of its inability to comply with this schedule. FEMA

is requested to use its best efforts to conform to this schedule so as not to delay this proceeding or any aspect of it.

8. Hearings

Hearings will begin 15 days after receipt of the first set of direct testimony. Additional issues will be ready for hearings 15 days after the filing of direct testimony on those issues.

IT IS SO ORDERED.

Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE

Jerry R. Kline
ADMINISTRATIVE JUDGE

Frederick J. Shon
ADMINISTRATIVE JUDGE

DATED: October ____, 1986

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that copies of LILCO's Motion and Proposed Form of Order Respecting Schedule for Exercise Hearings, with attachment, 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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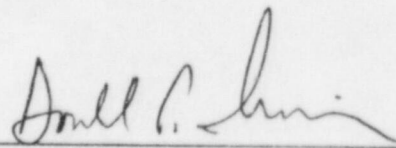
DATED: October 1, 1986

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