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LILCO, April 27, 1987

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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 APR 29 P4:41

Before the Atomic Safety and Licensing BoardOFFICE OF SECRETARY
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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))Docket No. 50-322-OL-3
(Emergency Planning)LILCO'S RESPONSE TO STATE OF
NEW YORK MOTION FOR LEAVE TO
FILE REBUTTAL TESTIMONY

On April 16, 1987, the State of New York filed a motion seeking leave to present limited rebuttal testimony on materials it received seven days before its testimony was due. See State of New York Motion for Leave to File Rebuttal Testimony (April 16, 1987). As explained more fully below, with certain limitations, LILCO does not oppose the State's motion, but does oppose a general cut-off for rebuttal testimony of May 4.

The State seeks leave to file rebuttal testimony concerning certain documents that were produced to the State on April 6, 1987, seven days before the State's testimony was due. These documents are computer print-outs and worksheets underlying a traffic capacity analysis ("KLD TR-201") which was attached to LILCO's March 30, 1987 testimony.^{1/} According to the State's

1/ As the State points out in its motion, LILCO also relies on an earlier capacity analysis ("KLD TR-192"). LILCO does not read the State's motion to seek rebuttal testimony on this analysis, on which the State had had ample discovery long before any direct testimony was filed in this proceeding.

motion, these documents were received too late for the State's traffic witnesses to address in their direct testimony. In addition, asserts the State, while that direct testimony did contain some analysis of KLD TR-201 itself, a complete analysis was not possible without the underlying documents.^{2/} Thus, concludes the State, it has "good cause" to file rebuttal testimony.

Without first seeing the rebuttal testimony the State seeks to file, it is impossible to determine whether "good cause" exists for filing it. The State may have "good cause" to file some limited rebuttal testimony on the documents produced on April 6. Indeed, LILCO has found itself in a similar predicament. LILCO did not receive the State's traffic analyses until after LILCO's testimony was filed. To the extent that the testimony is otherwise admissible, then, LILCO would not object to limited rebuttal on material issues raised by the documents provided on April 6, if the rebuttal could not reasonably have been filed with the State's direct case. However, LILCO does not waive its right, upon reviewing the rebuttal testimony actually filed, to move to strike inappropriate testimony. One ground for doing so, for

2/ LILCO does not read the State's motion to suggest that rebuttal testimony is necessary on KLD TR-201 itself, except to the extent that the State's analysis of that report was hampered by the lack of underlying data. The State indicates that "where possible" it has addressed the report in its direct testimony, including an attack on the assumptions contained in that report. Moreover, the State received the report 14 days before its testimony was due. Thus, except to the extent that the underlying data were necessary, the State had ample time to analyze the report.

example, would be that the testimony does not turn on the documents produced on April 6, and, therefore, could have been submitted earlier.

While LILCO agrees that the State may be entitled to certain limited rebuttal, LILCO opposes the timetable for rebuttal set out in Suffolk County's April 13, 1987 letter to the Board and endorsed by the State in footnote 5 on page 6 of its Motion for Leave to File Rebuttal Testimony.^{3/} This schedule is unfair to LILCO. LILCO filed its testimony on March 30, 1987. Thus, under the schedule proposed by Suffolk County, intervenors would have five weeks to prepare rebuttal testimony. Intervenors' testimony, however, was not filed until April 13, 1987, leaving LILCO only three weeks to file rebuttal testimony. This is substantially less time than that allotted the Intervenors.

Moreover, since LILCO filed its testimony first, Intervenors have already had an opportunity in their direct testimony (filed on April 13) to rebut LILCO's case. The amount of rebuttal remaining to be prepared by Intervenors, therefore, is quite limited. LILCO, on the other hand, has not yet had any opportunity to rebut Intervenors' case. Thus, in the time remaining under Suffolk County's proposed schedule (now less than two weeks) LILCO would probably have more to prepare.

3/ Under that schedule, rebuttal testimony would be due on May 4, 1987, motions to strike would be due on May 11, 1987, and responses to motions to strike would be due on May 18, 1987.

Furthermore, much of LILCO's rebuttal testimony will likely be presented by Edward Lieberman, LILCO's witness on traffic issues. Mr. Lieberman has competing demands on his time (among other things, demands from another NRC proceeding in which he is a witness) and may not be able to complete his rebuttal testimony by May 4.

Finally, there does not appear to be any reason to proceed under the schedule proposed by the Intervenors. The hearing has been scheduled, as an interim matter, to begin June 15, with a status report due May 20. LILCO will advise the Board by May 4, of when it will be able to file rebuttal testimony. In the meantime, LILCO believes a May 4 cut-off of LILCO's right to file rebuttal would be unjustified.

Respectfully submitted,



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DATED: April 27, 1987

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LILCO, April 27, 1987
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CERTIFICATE OF SERVICE

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(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO'S RESPONSE TO STATE OF NEW YORK MOTION FOR LEAVE TO FILE REBUTTAL TESTIMONY 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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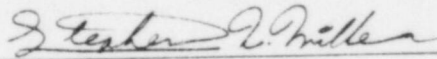
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DATED: April 27, 1987