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NUCLEAR REGULATORY COMMISSION

'87 JUN -8 P4:05

Before the Atomic Safety and Licensing BoardOFFICE OF SECRETARY
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In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station,)	
Unit 1))	

**LILCO'S ANSWER TO "RENEWED SUFFOLK COUNTY MOTION
FOR LEAVE TO FILE REBUTTAL TESTIMONY" OF MAY 27, 1987 AND
MOTION TO STRIKE PORTIONS OF MINOR/SHOLLY REBUTTAL TESTIMONY**

This is LILCO's response to the "Renewed Suffolk County Motion for Leave to File Rebuttal Testimony," dated May 27, 1987. This is also LILCO's motion to strike portions of the "Rebuttal Testimony of Gregory C. Minor and Steven C. Sholly on Behalf of Suffolk County Regarding LILCO's Reception Centers (Addressing Testimony of Lewis G. Hulman)," also dated May 27, 1987.

LILCO does not oppose the motion to file the rebuttal testimony.

However, LILCO does move to strike two passages of the rebuttal testimony because they attempt to reopen the issue of wind shift, which was already litigated. The passages of testimony that LILCO moves to strike on this ground are the following:

Page 5, line 1, beginning with "As we testified" and ending on page 5, line 9, with "over any given four-hour period."

Page 8, line 20, beginning with "As we stated in our direct" and ending on page 9, line 3, with "portion of the population."

These passages attempt to establish that the wind shifts frequently on Long Island. As argued in LILCO's original motion to strike the testimony of Messrs. Minor and Sholly, the issue of wind shift was already litigated. See LILCO's Motion to Strike Testimony of Stephen Cole, et al., Apr. 18, 1987, at 26-27; Cordaro et al., ff Tr. 8760, at

D503

35-43. The Intervenor had a full opportunity to present evidence on wind shift at that time, and they failed to do so, although they did address the issue in their cross-examination. See, for example, Tr. 8925-29 (cross-examination by Suffolk County) and 8950-72 (by the State). Indeed, New York State initially proposed to present witnesses on Contention 64 but withdrew them after depositions revealed that the State witnesses did not agree with the County contention. When LILCO attempted to introduce portions of the depositions, the Intervenor objected and the evidence was excluded. Tr. 8274. Also, when LILCO argued that Contention 64 did not cover such phenomena as "sea breezes," the Board took a more expansive view of what was at issue:

JUDGE LAURENSEN: Well, I think the contention is a little bit broader than LILCO is reading it also. The second paragraph says: Intervenor [sic] contend that given wind conditions on Long Island, in the event any evacuation due to a radiological emergency is required ... and then it goes on, LILCO must evacuate at least a radius of five to seven miles around the plant.

I think that raises the issue of wind conditions on Long Island which would, as I understand it, encompass the sea breeze questions that we are into now.

MS. McCLESKEY: Yes, sir, but the wind conditions in that second paragraph is referring to what was described in the first paragraph, which is the wind shifting quickly at approximately ten miles an hour.

JUDGE LAURENSEN: I think it is not necessarily read that narrowly. The objection is overruled.

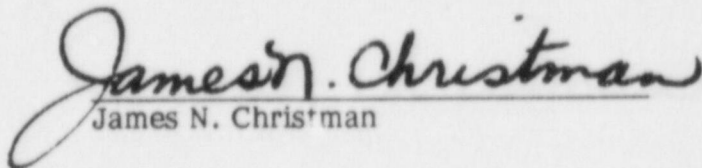
Tr. 8960-61. Intervenor ought not be allowed now to relitigate the issue of how much the wind shifts on Long Island.

Suffolk County argued, in its "Response of Suffolk County to LILCO's Motion to Strike the Testimony of Stephen Cole, Et Al.," dated April 30, 1987, that the statement that the issue of wind shifts was previously litigated is a "distortion of the record." The County's rationale for this claim is apparently that Contention 64 had to do with protective action recommendations, while the present issue has to do with the number of

people who might be in a plume. This argument misses the essential point of LILCO's argument, which is that the Intervenor as part of their case on Contention 64 were trying to prove exactly the same thing about frequency of wind shift that they are trying to prove now: that the wind shifts frequently. Certainly the Intervenor should be allowed now to argue that the shifting winds, as established on the existing record, may have implications for deciding how many people might be in a plume. LILCO has not moved to strike such testimony, only the testimony that tries to reopen the facts about frequency of wind shift. Presenting new evidence on the meteorology of Long Island cannot now be justified.

Accordingly, LILCO moves to strike the above-cited passages of the Minor/Sholly rebuttal testimony of May 27, 1987.

Respectfully submitted,


James N. Christman

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: June 4, 1987

LILCO, June 4, 1987

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I hereby certify that copies of LILCO'S ANSWER TO "RENEWED SUFFOLK COUNTY MOTION FOR LEAVE TO FILE REBUTTAL TESTIMONY" OF MAY 27, 1987 AND MOTION TO STRIKE PORTIONS OF MINOR/SOLLY 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.

Morton B. Margulies, Chairman **
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers, Rm. 407
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Jerry R. Kline **
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon **
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
East-West Towers, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Secretary of the Commission
Attention Docketing and Service
Section
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard G. Bachmann, Esq. **
George E. Johnson, Esq.
U.S. Nuclear Regulatory Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Herbert H. Brown, Esq. **
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick & Lockhart
South Lobby - 9th Floor
1800 M Street, N.W.
Washington, D.C. 20036-5891

Fabian G. Palomino, Esq. **
Richard J. Zahnleuter, Esq.
Special Counsel to the Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Mary Gundrum, Esq.
Assistant Attorney General
120 Broadway
Third Floor, Room 3-116
New York, New York 10271

Spence W. Perry, Esq. **
William R. Cumming, Esq.
Federal Emergency Management
Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stephen B. Latham, Esq. **
Twomey, Latham & Shea
33 West Second Street
P.O. Box 298
Riverhead, New York 11901

Mr. Philip McIntire
Federal Emergency Management
Agency
26 Federal Plaza
New York, New York 10278

Jonathan D. Feinberg, Esq.
New York State Department of
Public Service, Staff Counsel
Three Rockefeller Plaza
Albany, New York 12223

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Martin Bradley Ashare, Esq. **
Eugene R. Kelly, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11787

Dr. Monroe Schneider
North Shore Committee
P.O. Box 231
Wading River, NY 11792


James N. Christman

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: June 4, 1987