

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'86 DEC 11 P1:47

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

**LILCO'S MOTION TO FILE A REPLY TO NEW YORK
STATE'S OPPOSITION TO LILCO'S MOTION TO COMPEL**

On November 3, LILCO propounded its "First Set of Interrogatories and Requests for Production of Documents" on New York State. New York State refused to answer any of those interrogatories or requests, claiming instead that they were irrelevant, overly broad and unduly burdensome.^{1/} New York State's response contained only the barest notice of the bases for these claims. Specifically, with respect to the relevance objection, the response contained an unadorned recitation of a portion of the Board's October 3 Prehearing Conference Order and the unelaborated but sweeping claim "that matters involving other exercises at other nuclear power plants are irrelevant to this proceeding." NYS Response at 2-3 (emphasis in original). With regard to the "overly broad and unduly burdensome" objections, New York State made no effort at all to explain either objection. See NYS Response at 2.

On November 24, LILCO moved to compel New York State to respond to LILCO's interrogatories. Out of necessity, that motion attempted to divine and then respond to each of New York State's objections.

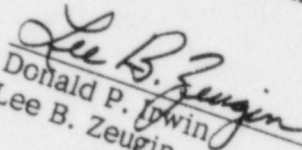
^{1/} State of New York's Response to LILCO's First Set of Interrogatories and Requests for Production of Documents, pp. 2-3 (November 19, 1986) (hereinafter "NYS Response").

On December 4, an Opposition filed in the name of New York State responded to LILCO's motion to compel.^{2/} That Opposition advances three arguments that LILCO believes could not have been reasonably inferred from New York State's prior "Response" and that are of sufficient import to warrant a reply. First, the Opposition goes well beyond New York State's earlier reliance on the language of this Board's October 3 Prehearing Conference Order, to argue essentially that every exercise is unique and therefore that no meaningful comparisons can be drawn among exercises. As a result, New York State would have this Board decide in Contentions EX 15 and 16 whether the February 13 exercise constituted a full participation exercise for purpose of 10 CFR Part 50, Appendix E without the aid of any objective factors. Instead, New York State would apparently have the Board conduct a free-form examination of the proper scope of "full participation" exercise. Second, New York State suggests that even if LILCO were to demonstrate that the Shoreham exercise was equal to or greater than other FEMA exercises, LILCO would still not have answered the question of the proper scope of a "Shoreham-specific exercise." NYS Opposition at 6. Thus, New York State is arguing that what is good enough for other plants is not good enough for Shoreham. This argument finds no support either in the NRC regulations or case law. Finally, New York State argues that LILCO's requests are overly broad and unduly burdensome because of LILCO's definition of "New York State" and "New York State personnel." NYS Opposition at 10. New York State's attempt to rationalize its objections is inconsistent with earlier New York State discovery responses where no such objection was voiced to the identical definition and with definitions contained in interrogatories posed by a fellow Intervenor (i.e. Suffolk County) to LILCO, FEMA and the NRC staff.

^{2/} State of New York's Opposition to LILCO's Motion to Compel, December 4, 1986 (hereinafter "NYS Opposition").

Fairness dictates that LILCO be given an opportunity to respond to each of these arguments, which were not foreshadowed or even hinted at in New York State's "Response" to LILCO's motion to compel. Accordingly, LILCO requests this Board to grant this motion and to consider the attached reply in ruling on LILCO's motion to compel.

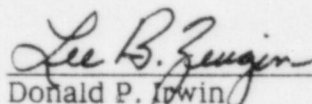
Respectfully submitted,


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Fairness dictates that LILCO be given an opportunity to respond to each of these arguments, which were not foreshadowed or even hinted at in New York State's "Response" to LILCO's motion to compel. Accordingly, LILCO requests this Board to grant this motion and to consider the attached reply in ruling on LILCO's motion to compel.

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I hereby certify that copies of LILCO'S MOTION TO FILE A REPLY TO NEW YORK STATE'S OPPOSITION TO LILCO'S MOTION TO COMPEL and LILCO'S REPLY TO NEW YORK STATE'S OPPOSITION TO LILCO'S MOTION TO COMPEL were served this date upon the following by telecopied as indicated by an asterisk (*), federal express as indicated by a two asterisks (**), or by first-class mail, postage prepaid.

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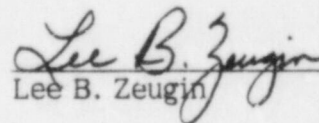
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