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LILCO, December 24, 1987

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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BRANCH

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO'S RESPONSE TO INTERVENORS' REQUEST FOR A
QUARTER OF A YEAR TO ANSWER LILCO'S DECEMBER 18 FILINGS

Pursuant to the Board's telephone order, LILCO replies to Intervenor's December 23 motion for a 75-day extension of the 20-day period provided by Commission regulations, 10 CFR § 2.749(a), for response to LILCO's summary disposition motions, filed December 18, 1987, concerning legal authority-related issues remaining in this case.^{1/} Intervenor's motion, if granted, would forgive them from responding to LILCO's motions until March 28, 1988.

LILCO agrees with Intervenor that the issues raised by LILCO's motion are serious and that enough time ought to be provided to enable Intervenor to respond fully and forthrightly to them, so that summary disposition can serve its intended purpose of eliminating, narrowing and clarifying issues. However, Intervenor has not justified an extension of anything like the length that they have requested, and that a three-week extension -- until February 1 -- is the most that can be justified. Intervenor's arguments are dealt with briefly below.

^{1/} LILCO obviously disagrees with, but does not reply to, Intervenor's characterization of the background legal framework of this proceeding (Intervenor's Motion at 2), and their reclamoring of issues already decided by this Board (*id.* at 2-4).

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1. Length of LILCO's Filing: LILCO does not disagree that its December 18 filing is substantial; it was intended to be a complete enough treatment of issues to provide a basis for decision. However, Intervenor's characterization of LILCO's papers as 495 pages of undifferentiated new material is inaccurate in fact and highly misleading for purposes of assessing the time needed to come to grips with it. As is more fully shown on the attached Table 1, nearly two-thirds of the filing -- 303 pages -- consists of attachments that, with one six-page exception, are either already in the record of this case or are official documents for other New York State nuclear plants. The motions filed by LILCO total 124 pages in length; the affidavits total 39 pages; and statements of material facts total 29. The remaining 303 pages are all familiar attachments.

Even that tally overstates the amount of material related to legal authority/realism issues. Fully one quarter of LILCO's pleading has been necessitated by Intervenor's indication of intent, however frivolous, to challenge LILCO's showings under 10 CFR § 50.47(c)(i) and (ii) of good-faith efforts to obtain governmental cooperation.^{2/} In assessing the effect of filing length on response time, the 126 pages of materials dedicated to this issue should be laid at Intervenor's door, not LILCO's.

In short, the amount of material directly entailed by the legal authority/realism issues consists of an 18-page introductory memorandum; six motions for summary disposition totaling 91 pages; six affidavits totaling 39 pages; six statements of material facts totaling 28 pages; and attachments, almost all of them long since familiar, totaling 186 pages.

^{2/} See pleadings cited in LILCO's Motion for Summary Disposition of Contentions 1-10 With Respect to 10 CFR § 50.47(c)(i) and (ii), December 18, 1987, at 2.

2. Familiarity of Issues: Intervenors are correct in stating that they have never spoken in substantive detail in this docket to the issue raised in LILCO's papers: how the State of New York and Suffolk County would respond in the event of an emergency at Shoreham. But that does not mean that the issue is not or should not be familiar to Intervenors. The functions at issue, according to Intervenors' repeated arguments in this and other forums, lie at the heart of their governmental purposes. Further, as the documentation attached to LILCO's December 18 papers illustrates, public officials of New York State and Suffolk County have repeatedly taken positions, at Shoreham and elsewhere, concerning their response to exactly the types of accident circumstances posited in LILCO's filings. The New York State personnel who have functioned as witnesses and consultants repeatedly in this case over the years -- Messrs. Baransky, Czech, Papile, et al. -- are and have long been principal figures in the State's Radiological Emergency Preparedness Group, which oversees the emergency response capability of every nuclear plant in the state.

The same is true for the familiarity of counsel. The same counsel have been involved for both the County and State throughout the course of this litigation. Counsel for Suffolk County have represented the County's interests and been pivotal in shaping the County's positions on Shoreham-related issues, including emergency preparedness, ever since the spring of 1982, when the County first began to renege on its previous commitment to cooperate with LILCO on emergency preparedness.

Finally, it is indisputable that Intervenors are long since on explicit notice. The Board informed Intervenors in September that it expected them to be forthcoming with regard to New York State and Suffolk County responses in an actual emergency. Memorandum and Order (September 17, 1987) at 29. And LILCO put Intervenors on notice a month ago, in its November 17 Supplemental Brief on the New Emergency Planning

Rule, not only of the general types of arguments it intended to make but also, frequently, its specific arguments and documentation for them.

3. Adequacy of Resources: Papers and appearances of record demonstrate that five partners in the firm which represents Suffolk County (Messrs. Brown, Lanpher, Miller, McMurray, Ms. Letsche) have been continuously involved in the Commission's emergency planning proceeding from its start in 1982. Another (Mr. Brownlee) has been similarly involved in the related court litigation. At least a half dozen associates from the same firm are currently or have been recently involved in the emergency planning proceeding. The State has had continuous representation since the State's entrance in late 1983 from Messrs. Zahnleuter and Palomino, with additional assistance as needed, and has in any event consolidated most of its efforts with Suffolk County.

Officials from both State and County governments have been routinely available throughout this proceeding, principally from the Suffolk County Police Department and the State Radiological Emergency Preparedness Group. It is hard to understand why, as Intervenors argue, the materials filed by LILCO should require the retention of experts since they involve the anticipated responses of government officials themselves.^{3/}

4. Previous Commitments and Conflicts: The number of attorneys available to Intervenors in the past (para. 3 above) suggests the availability of adequate resources to handle matters arising here. Intervenors' allegations of previous commitments and conflicts are not particularized by date and obligation. However, overall familiarity

^{3/} Indeed, Intervenors' apparent preoccupation with the record (Intervenors' Motion at 4) is puzzling since the point of the present exercise is less to engage the hagiology of this proceeding than the hitherto undisclosed specifics of Intervenors' actual intentions.

with this case suggests that numerous of the matters cited by Intervenors as previous commitments (including appeals in the federal First and Second Circuits, and in the New York Court of Appeals) involve Shoreham-related litigation occasioned entirely by Intervenors' refusal to undertake the same participation at Shoreham as they accord to every other nuclear plant in New York. Intervenors cannot expect to create the major issues that exist in this case because of their policies and then have too many other pre-existing priorities elsewhere to permit their timely resolution here.

In any event, parties are expected to staff their cases adequately to permit licensing proceedings to move with expedition. Claims of paucity of resources, particularly from litigants as experienced and well-heeled as major governments, ring hollow. As the Commission stated in its 1981 Statement of Policy on Conduct of Licensing Proceedings, CLI-81-6, 13 NRC 452, 454 (1981):

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a Board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have pursued other obligations or possess fewer resources than others to the proceeding does not relieve that party of its hearing obligations.

The Statement of Policy has been consistently applied. See, e.g., Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-82-18, 15 NRC 598 (1982). There is absolutely no reason not to apply it here, where there can be no serious argument from Intervenors about lack of resources and many of the conflicts they cite are one of their own making associated with this litigation.

As to personal commitments over the holidays, LILCO is sensitive to Intervenors' arguments.^{4/} However, the extension LILCO is willing to agree to -- to February 1 -- would put Intervenors' filing date well past any holiday conflicts.

5. Integrity of Proceeding: Amply endowed Intervenors ask this Board to give them over a quarter of a year to answer motions dealing with intimately familiar subject matter, supported by attachments consisting almost entirely of documents authored by them or their coordinate governments, or already available to them in this litigation. The request is plainly excessive.

Indeed, the length of time requested by Intervenors -- or anything of its order of magnitude -- threatens serious disruption of this proceeding. It would definitionally delay discovery, testimony and trial of any issues that may not be summarily resolved, so that hearings might not even begin on them until late in the coming calendar year.

A primary reason why the issues now being addressed still exist is the resolute and repeated refusal of Intervenors to specify their intentions for years now. Fairness to the other parties and to the integrity of this proceeding dictates that the processes of disclosure of information or governmental response, and of clarification, refinement and elimination of issues, be delayed no longer.

Further, in this the sixth year of this proceeding, time is no longer a neutral factor. Intervenors, who control New York State processes, have invoked them in two fashions calculated to manipulate mere delay in this proceeding into a means of ultimate victory for them. First, the Long Island Power Authority, created in the summer of 1986 by special New York state legislation, is empowered to take over LILCO by any

^{4/} Intervenors felt no such humanitarian delicacy in 1985, however, when on Christmas Eve they launched a surprise campaign to attempt to stop the February 13, 1986 graded exercise. See Suffolk County, State of New York and Town of Southampton Motion for Cancellation of Emergency Planning Exercise, December 24, 1985.

of a variety of means if it concludes (making use of tax-exempt financing) that it can produce less expensive power for Long Island than can LILCO. If LIPA acquires control of LILCO it is committed to prevent Shoreham from ever operating. The longer Shoreham is held in thrall in NRC proceedings, the more likely such a takeover attempt inevitably becomes. Second, the New York Public Service Commission has recently -- on December 3 -- issued an order threatening to begin to use its rate processes in ways likely to compel LILCO to abandon Shoreham unless LILCO can provide it, by April 1988, with "high assurance" that no substantial obstacles remain in the way of the plant's entering commercial service in time for the summer 1989 peak load season. Again, obviously, the longer these proceedings are in their preliminary stages, the more immediate becomes the PSC's threat. In short, delay in this proceeding enhances the likelihood that Intervenor will be able to harness state-law processes within their control to kill Shoreham, LILCO or both. Intervenor thus has a stake in delay in this proceeding, and, sad to say, any request for delay by them must be viewed by now with a jaundiced eye.

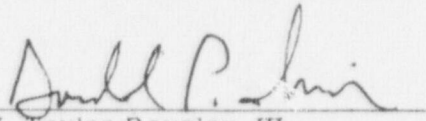
Finally, the issues raised by the current motions are important. They deserve the serious commitment of the parties' resources befitting their gravity. This implies devotion of priority as well as quantity of attention.

CONCLUSION

Intervenor's request that this Board nearly quintuple the amount of time given them by the rules to respond to LILCO's summary disposition motion is not justified. Equally important, at this phase of this proceeding, all efforts should be bent to resolving remaining issues in the quickest possible fashion consistent with fairness to the parties. Because of the size of LILCO's December 18 filing and the importance for

the serious issues raised by it of obtaining answers of the most illuminating quality, LILCO would not object to a three-week extension of the response deadline, to February 1, 1988, though LILCO believes, on the basis of experience in this case, that Intervenors have the resources to deal with the issues raised by LILCO's December 18 filing far more promptly. This doubling of the normal response period is more than adequate to account for the various factors cited by Intervenors.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Donald P. Irwin", written over a horizontal line.

W. Taylor Reveley, III
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DATED: December 24, 1987

TABLE 1

Summary of LILCO's December 18 Pleadings

<u>Document</u>	<u>Pages in: Motion</u>	<u>Material Facts</u>	<u>Attachments</u>
Memorandum of Law	18	N/A	0
Contention(s) 5 and 6	25	10	6
Contention(s) 1 and 2	10	2	1
Contention(s) 10	9	1	12
Contention(s) 4 and 9	6	1	77
Contention(s) 7 and 8	27	13	90
Immateriality	14	1	0
§ 50.47(c)(i) and (ii)	15	1	110
<u>Sub-total</u>	124	29	296
<u>Affidavits</u>			
Crocker	7	N/A	0
Daverio	9	N/A	0
Devlin	3	N/A	0
Kessler	10	N/A	5
Leonard	5	N/A	2
Lieberman	5	N/A	0
<u>Sub-total</u>	39	N/A	7
<u>TOTAL</u>	163	29	303

"New" v. "Old" Material in Attachments

<u>Document</u>	<u>Pages of "New" Material</u>	<u>Pages of Old" Material</u>	<u>Explanation</u>
Contention(s) 5 and 6	6	0	Rev. 9 Interface Procedure
Contention(s) 1 and 2	1	0	Record material (Intervenor testimony and Plan changes in new chart form)
Contention(s) 10	0	12	Police witness testimony
Contention(s) 4 and 9	0	77	OPIP 3.6.3 (Rev. 8)
Contention(s) 7 and 8	0	90	OPIP 3.6.6 (Rev. 8) OPIP 3.10.1 (Rev. 8) Excerpts from NY State Rad. Emerg. Prep. Plan Excerpts from Westchester Co. Plan Excerpts from Monroe Co. Plan Excerpts from Oswego Co. Plan Excerpts from Wayne Co. Plan
§ 50.47(c)(i) and (ii)	0	110	LILCO's Presentation to SC Legislature (1/14/83) Letter: Cordaro to Gallagher Cordaro Summary (9/30/83)

			Letter: Pierce to Cuomo
			Letter: Reveley to Ashare
			Letter: Cohalan to Reveley
			Memo: McQueen (REPG) to Dreikorn
			Letter: Renz to Roberts
Kessler Affidavit	5	0	LILCO gas leak procedures
Leonard Affidavit	0	2	NYPA/DPC passes for Rockland County Exercise
<u>Sub-total</u>	12	291	

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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 INTERVENORS' REQUEST FOR A QUARTER OF A YEAR TO ANSWER LILCO'S DECEMBER 18 FILINGS 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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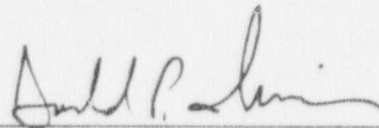
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