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LILCO, September 11, 1987

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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-3  
 ) (Emergency Planning)  
(Shoreham Nuclear Power Station, )  
Unit 1) )

LILCO'S VIEWS ON THE PRIORITY OF  
THE REMAINING ISSUES BEFORE THE BOARD

In its "Notice to the Parties" of August 31, 1987, the Board asked the parties' views on the various matters before it. The Notice points out that the Board has pending on its docket the remands in CLI-86-13, CLI-87-05, ALAB-832, and ALAB-847, as well as LILCO's Second Renewed Motion for Summary Disposition of the "Legal Authority" Issues Contentions EP 1-10) and a related LILCO motion for leave to file a reply, plus LILCO's request for approval to operate Shoreham at 25 percent power. The Notice asks asked for the parties' views as follows:

In order to be able to timely consider the matters pending before this Board, we are requesting the views of the parties on prioritizing the docketed matters, whether there is a need to assign discrete issues to another Board, and if so, to identify the issues that can be assigned; and whether the provisions of 10 C.F.R. 2.722 can be usefully employed.

Notice to the Parties, at 2 (August 31, 1987). The Board asked for the comments of the parties by September 14, 1987, and provided that responses may be filed by September 21, 1987.

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# I. The Priorities to be Given to the Various Issues

The Board has the following issues before it:

1. The Reception Center issues (ALAB-832, ALAB-847, ALAB-855)
2. The "Legal Authority" issues, including "Realism" and "Immateriality" (CLI-86-13)
3. The School Bus Drivers Availability issue (ALAB-832)
4. Contention 92, the "Absence of State Plan" issue (ALAB-847)
5. The Emergency Broadcast System (EBS) issue (a subpart of the Realism issue) (CLI-87-05)
6. The 25 percent power issue (LILCO's application)

All of the first five of these six issues need to be decided before a full-power license can be issued. The sixth, the 25 percent power issue, is also pressing: power shortages on Long Island may occur as soon as the weather turns warm again, beginning next May or June. From the applicant's point of view, then, all of the issues are pressing, and so LILCO has no basis for assigning priorities based on urgency. There is, however, a basis for assigning priorities based on the relationships of the issues and the most logical way to go about deciding them. By "priorities" here we mean simply an order for addressing the issues; in truth, all of them need to be decided as soon as possible.

In the first place, there is a distinction between the first five issues (the remand issues) and the 25 percent power issue. As LILCO has already said, it believes that this Board should decide the five remand issues and that another Board should be assigned to decide the 25 percent power issue.

As for how the five remand issues should be decided, LILCO proposes the following. First, the Reception Center issues are already on a schedule, with the last pleading due October 1. Of the remaining remand issues, the Legal Authority issues, the State Plan issue, and the EBS issue are all of one piece. The Appeal Board's remand of Contention 92 makes it clear that the Board is to reconsider the issue in light of the

Commission's "Realism" decision, CLI-86-13, and today LILCO is filing its views on the proper resolution of Contention 92. The EBS issue is also related to the realism issue. Indeed, by the terms of LILCO's motion for summary disposition of the Realism issue, information is already before the Board sufficient to decide the EBS issue. That is, the Realism motion relies on the existing State EBS and on LILCO's plan to secure permission from the authorities to use it. See LILCO's Second Renewed Motion for Summary Disposition of the "Legal Authority" Issues (Contentions EP 1-10), at 11-16 (Mar. 20, 1987).

The Board should be aware, however, that LILCO has nearly completed arrangements for a supplementary EBS. LILCO plans to provide the information about this system to the Board and parties by October 1, 1987. Accordingly, LILCO urges the Board to consider this soon-to-be-filed information, and responses by the other parties, and then to decide the Legal Authority, the State Plan, and the EBS issues together. In LILCO's view the Board's decision should resolve all three issues in LILCO's favor on the pleadings. But if the Board concludes otherwise, then it should resolve those issues that can be summarily disposed of and specify what issues, if any, remain for hearing.<sup>1/</sup> This Board should retain jurisdiction over any such hearing.

The School Bus Driver issue is different from the other remand issues in that it is not as closely connected to the "Realism" issue. In LILCO's view the School Bus Driver issue can be resolved quickly by simply taking into account the evidence that the Appeal Board ordered to be heard. However, since this appears to be the last issue that may delay the issuance of a full-power license, LILCO is considering measures to increase the assurance of availability of bus drivers in an emergency. LILCO hopes to

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<sup>1/</sup> It may or may not be necessary to have a hearing on the "Immateriality" issue. If a hearing is necessary, then it should be part of the same hearing that addresses the other remand issues.



advise the Board of these measures, if any, by October 1, 1987. Upon receiving that information, and responses from the other parties, LILCO believes that the Board will be in a position to resolve the School Bus Driver issue. If any issues of school bus driver availability are deemed to deserve a hearing, it should be made part of the hearing, if any, on the Legal Authority and EBS issues.

In short, LILCO believes that the Board should decide the Reception Center issues on the schedule already established; should decide the Legal Authority issues, the State Plan issue, and the EBS issue as soon as LILCO supplies the additional information it plans to provide by October 1 and the other parties have responded; and should resolve the School Bus Driver Availability issue as soon as its schedule permits after resolving the other issues. If a hearing is necessary, all remaining factual issues should be included in it.

## II. Who Should Decide

As has been indicated above, LILCO believes that this Board should decide the remand issues itself. It believes that a separate Board should be appointed to decide the 25 percent power issue. As LILCO said in its motion to appoint a Board for the 25 percent issues, those issues are considerably different from, and relatively unrelated to, the other issues.

The Board has asked whether the provisions of 10 CFR § 2.722, authorizing the use of "special assistants" to the presiding officer, can be usefully employed. LILCO's answer is that special assistants may prove helpful, depending on the exact nature of the issues to be heard. In particular, § 2.722(a)(2) provides that:

such special assistants may function as:

....

(2) Upon consent of all the parties, Special Masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of

the record. . . . Special Masters' reports are advisory only; the presiding officer shall retain final authority with respect to the issues heard by the Special Master; . . .

10 CFR § 2.722(a)(2) (1987).

LILCO does not believe that further evidentiary hearings will be necessary on the remand issues, because it believes that the issues are susceptible of summary disposition as a means of expediting closure of the remaining issues in this docket, which has now been in process some four and a half years. However, in the event that the Board does identify certain specific issues that deserve hearing, then LILCO believes that the use of one or more Special Masters to hear certain issues as they become defined might be desirable.

Of the remaining remand issues, it appears preliminarily that several could benefit from the use of a Special Master, assuming a hearing were to be held. The School Bus Drivers Availability issue is a narrow issue that could be heard by a Special Master. The State Plan issue requires no further evidence. The EBS issue is, again, a fairly narrow issue, and one with which familiarity with the past record would not be particularly helpful; the issue with respect to the EBS earlier in this proceeding was simply whether WALK could broadcast at night, and the record on the issue is a relatively short one.

LILCO doubts that the other forms of special assistance provided under § 2.722 -- technical interrogators, consultants, and the like -- will prove necessary or would expedite completion of this proceeding.

One other procedure available to the Board that might be beneficial, however, is the use of "evidentiary depositions," initially proposed by the Brenner Board in the onsite portion of this proceeding in 1982 and upheld by the Appeal Board. ALAB-788, 20 NRC 1102, 1178 (1984).<sup>2/</sup> This technique is designed to economize on actual hearing

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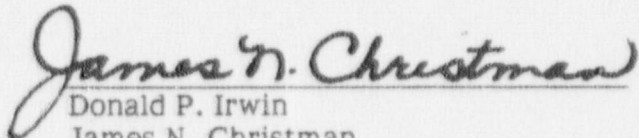
<sup>2/</sup> Suffolk County, at that point the only active intervenor on emergency planning matters, refused to participate in proceedings using evidentiary depositions and was held in default by the Board. ALAB-788, 20 NRC 1102, 1177 (1984).

time by having the parties assemble and condense the record, including prefiled written testimony, answers to questions on it, and evidentiary motions, for an abbreviated hearing, upon review of those submissions, by the Board itself.

### III. Summary

In summary, LILCO urges the Board to (1) request a separate Board for the 25 percent power issue; (2) decide the reception centers issue on the already-established schedule; (3) decide the Legal Authority (Realism), State Plan, and EBS issues together as soon as its workload permits; and (4) decide the school bus driver availability issue as soon after that as its workload permits. To the extent that the Board identifies specific litigable issues still remaining, focusing and expediting techniques, such as the use of Special Masters or evidentiary depositions, should be employed.

Respectfully submitted,

  
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DATED: September 11, 1987



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

I hereby certify that copies of LILCO'S VIEWS ON THE PRIORITY OF THE REMAINING ISSUES BEFORE THE BOARD 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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