

July 15, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))
_____)

Docket No. 50-322 O.L.

SUFFOLK COUNTY RESPONSE TO LILCO MOTIONS TO
STRIKE PORTIONS OF TESTIMONY ON
SC CONTENTIONS 3, 21, and 27

In accordance with this Board's oral request, Suffolk County sets forth on separate pages its position with respect to LILCO's motions to strike portions of the Suffolk County testimony on SC Contentions 3, 21 and 27. The following responses will be supplemented during oral presentation on July 16, 1982, if requested by the Board.

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SC CONTENTION 3

LILCO moves to strike those portions of pages 13 and 14 of the County testimony which deal with GDC 24 and 35. The basis for LILCO's position is that the Contention does not explicitly allege violations of these GDC and that this testimony thus "materially" expands the issues without notice to other parties. Suffolk County opposes the motion.

1. The citation of additional regulations which may be violated does not "materially" expand the Contention. The same facts which demonstrate the inadequacy of the present instrumentation and which allegedly constitute violations of GDC 13 and 10 C.F.R. § 50.55a(h) are alleged to constitute the violation of GDC 24 and 35. Thus there is no expansion of the basic subject matter presented. Rather, as we presume the Board would desire, the witnesses have brought to the Board's attention their professional opinion that still additional regulations may not be satisfied by LILCO's water level system.

2. The citation of GDC 24 can hardly constitute a material expansion of the Contention since the Michelson Memorandum (SC Ex. 1) is already in evidence and itself makes the point that GDC 24 may be violated. This exhibit (which directly relates to water level indicators) was provided to the parties during the first week of testimony in early May, 1982. The fact that LILCO witnesses do not cite it in their SC 3 testimony makes the subject matter no less relevant to this issue. Certainly, no surprise can reasonably be claimed.

3. As LILCO notes in its motion, the Board itself has expressed in its questioning concern for the adequacy of the LILCO water level system, particularly as relates to SC Ex. 1 and the possible violation of GDC 24. The Board has indicated that it intends to pursue this examination when SC Contention 3 is heard. LILCO seems to argue, however, that only oral testimony in response to that concern is proper. Thus, LILCO would strike the County's written testimony but presumably would not object to Board questions covering the same basis subject matter. The County submits that it is far more beneficial to have the testimony prefiled as the County has done herein.

SC CONTENTION 21

LILCO has moved to strike the following portions of Mr. Bridenbaugh's testimony concerning SC Contention 21: ^{*/}

- Point (b) of paragraph 5 on page 5
- Section III.C. (paragraph 10 on pages 9-11)
- Point (b) of paragraph 12 on page 13
- Points (b) and (d) of paragraph "10" (a typographical error which should read "13"), on pages 13-14

The stated basis for LILCO's motion is that the referenced testimony is irrelevant because it does not address issues raised in subparts (a) or (d) of SC Contention 21. Suffolk County opposes the motion.

The testimony which LILCO seeks to strike clearly is relevant to SC Contention 21. In the referenced portions of his testimony Mr. Bridenbaugh directly addresses the adequacy and quality of the containment design review performed at Shoreham. Whether or not the testimony at issue is directly related to subparts (a) or (d) of the Contention is of no consequence. The testimony is unquestionably pertinent to subpart (e) of SC Contention 21.

The County does not understand LILCO's assertion, at page 2 of its motion, that subpart (e) of SC Contention 21 is "not germane" to its motion because that subpart relates to "quality assurance." Regardless of LILCO's characterization of the

^{*/} LILCO's motion also makes reference to a portion of Mr. Bridenbaugh's summary outline of his testimony. (See LILCO's Motion at pp. 2 and 4, where reference is made to page (i) of Mr. Bridenbaugh's testimony.) Since, as the Board has ruled, a witness' summary does not rise to the level of testimony, LILCO's motion to strike portions of the summary is inappropriate.

focus of subpart (e), the fact remains that the concerns expressed in that subpart have been admitted by this Board as part of the Contention to be litigated in this proceeding. It is apparent that the testimony which LILCO seeks to strike, which discusses acceptance criteria, design review, and the quality of Shoreham's design verification, is relevant testimony to support the concerns expressed in subpart (e) of SC Contention 21.

The only apparent basis for LILCO's motion is its wholly unjustified exclusion of the concerns expressed in subpart (e) from its definition of "relevance" for purposes of its motion. Any fair reading of SC Contention 21 in its entirety reveals the relevance of the testimony at issue. Suffolk County submits that the motion to strike should be denied.

SC CONTENTION 27

LILCO has moved to strike portions of the Suffolk County testimony on Contention 27. The basis for the motion is that the Contention is limited to 11 specific deficiencies with respect to Regulatory Guide 1.97, Revision 2, and accordingly, any discussion of issues beyond those 11 specified items is not relevant to the Contention. Suffolk County opposes the motion.

LILCO's view of the scope of Contention 27 is unduly limited. The overall thrust of the Contention is that there has been no demonstration by LILCO that it will comply with Regulatory Guide 1.97 within the time frame specified by that Guide. It is relevant in support of the Contention to show the status of LILCO's overall implementation of the Regulatory Guide. If that overall implementation is seriously delayed, then this is evidence supporting the testimony that LILCO will not comply with the Regulatory Guide for the 11 items enumerated in the Contention.

By presenting testimony on LILCO's overall compliance with Regulatory Guide 1.97, the County is not attempting to litigate LILCO's compliance with any items beyond the 11 specified in the Contention. Rather, the County is merely setting forth the status of compliance with that Regulatory Guide (as specified by LILCO in its own papers) so that the overall compliance may be judged. The County submits that this is relevant to Contention 27 as stated.

Even if the Contention were not viewed so broadly, certain of the materials which LILCO seeks to have stricken should not be deleted as requested by LILCO. For example, LILCO seeks to have portions of answer 10, pages 13 and 14, deleted because they allegedly address overall status of LILCO's compliance with Regulatory Guide 1.97, rather than the status of the 11 items which are (in LILCO's view) the sole subject of the Contention. However, this discussion does deal also with these 11 items. For example, of the 12 issues waiting for the BWR Owners' Group resolution, five from the specified list in this Contention are in that category. Accordingly, this discussion is relevant to the Contention even as narrowly construed by LILCO.

Finally, LILCO objects to the answer to question 15 where reference is made to Shoreham's emergency planning. The County does not believe that this is outside the scope of the Contention or that it raises emergency planning issues. The Regulatory Guide items do pertain to emergency planning and thus to the overall licensing of the Shoreham plant. This does not add additional facts in controversy but brings to the Board and other parties' attention that these matters may not be viewed solely in isolation, but rather that these items have importance beyond the narrow focus that LILCO would suggest.

Respectfully submitted

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NUCLEAR REGULATORY COMMISSION

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) Docket No. 50-322 (O.L.)

CERTIFICATE OF SERVICE

I hereby certify that this 15th day of July, 1982, copies of Suffolk County Response to LILCO Motions to Strike Portions of Testimony on SC Contention 3, 21 and 27 were mailed, first class, postage prepaid to the parties listed below and hand-delivered to those indicated by an asterisk:

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