

July 10, 1984

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'84 JUL 18 A11:09

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

OFFICE OF SECRETARY
DOCKETED
Docket No. 50-322-OL-3
(Emergency Planning)

NRC STAFF RESPONSE TO "SUFFOLK COUNTY
MOTION TO STRIKE LILCO DIRECT TESTIMONY
AND SUPPLEMENTAL TESTIMONY ON CONTENTIONS
74 AND 75 (RELOCATION CENTERS)"

I. INTRODUCTION

Pursuant to a schedule set by the Licensing Board on June 8, 1984 (Tr. 10,973), Intervenor Suffolk County filed a motion on June 26, 1984 to strike all of LILCO's direct testimony and supplemental testimony on Contentions 74 and 75 (Relocation Centers). In the alternative, the County moved to strike selected portions of the testimony in question. Set out below is the NRC staff's response to both aspects of the County's motion.

II. DISCUSSION

This Board may grant a motion to strike testimony if the testimony in question is "argumentative, repetitious, cumulative or irrelevant." 10 C.F.R. § 2.757(b). These are the standards that should be applied to the County's recent motion.

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A. Suffolk County's Motion to Strike LILCO's Supplemental Testimony in its Entirety

1. The County moves to strike LILCO's Supplemental Testimony in its entirety principally asserting that it is comprised of unreliable hearsay and that LILCO's witnesses are not competent to provide the testimony proffered. The County argues that it is clear from a review of LILCO's Supplemental Testimony that this testimony concerns matters within the primary knowledge of unidentified representatives of the Red Cross. It argues that the LILCO Supplemental Testimony on these matters is for the most part nothing but second hand unidentified hearsay information, and should be stricken as hearsay since those with first hand information, or knowledge, should be produced to testify concerning the relocation centers reported in the Supplemental Testimony.

The Staff does not support the County's motion. There is no attempt by the County to show that the LILCO testimony in question is argumentative, repetitious, cumulative or irrelevant. Instead the County's arguments go to the weight, if any, that the Board could give to the testimony in question if it is admitted. Questions as to whether LILCO has the ability to answer questions on this testimony, i.e. be cross-examined upon it, must await such cross-examination. There is presently no showing that LILCO does not know the capacities of and the facilities available at the relocation shelters.

2. As a secondary ground for striking the LILCO testimony in its entirety, the County argues that LILCO has not revised its interim plan to reflect the changes in the designation of relocation centers. Since LILCO on July 2, 1984, filed Revision 4 to the plan, which includes

current designated relocation center locations, the County's argument appears to be moot. In any event, the County's argument is without merit since LILCO has put the County on actual notice as to the current status of relocation center locations. The fact that this notice comes from testimony as opposed to a formal revision to the plan should not be grounds for striking testimony in question.

B. Suffolk County's Motion to Strike Portions of LILCO's Direct and Supplemental Testimony on Contentions 74 and 75

1. LILCO's Direct Testimony on Contention 74

- a. Page 5, last line beginning with the inserted language "At the time . . ." through page 6, line 10 (ending with "centers")

The County argues that this testimony on LILCO's understanding of what centers the Red Cross was considering for purposes of providing shelter in the event of an emergency at Shoreham is not probative or reliable and should be stricken. The County's arguments go to the weight, if any, that the Board could give to the testimony if admitted. The Board has consistently held in this proceeding that such arguments do not constitute a basis on which to strike testimony. The Board should so rule in the present circumstance as the testimony seems to provide relevant background to the designation of the Red Cross shelters.

- b. Page 6, line 19 through page 7, line 8 and Attachments 3 and 4

For the reasons advanced by the County, the Staff agrees that this portion of the testimony, which discusses numerous relocation centers not

designated in the LILCO plan, should be stricken. Such testimony is irrelevant and not probative.

- c. Pages 7-12, questions and answers 8-11.1 and Attachments 6-11

The Staff agrees with the County that this testimony is no longer relevant in light of the supplemental testimony filed by LILCO and therefore this should be stricken.

- d. Page 12, lines 4-10 (last two sentences of Answer 11)

The Staff opposes this aspect of the County's motion which seeks to strike two citations to decisions of other licensing boards in emergency planning proceedings. The arguments advanced by the County, concerning relevance and appropriateness, go to the weight, if any, which could be given to this testimony and not its admissibility. The Board on several past occasions has admitted this type of testimony.

- e. Page 13, lines 1-6 (first three sentences)

The testimony in question here discusses LILCO's possible reliance on unspecified relocation centers in Nassau County. The Staff does not oppose the County's motion regarding this testimony for the reasons noted in B.1.b above.

2. LILCO's Direct Testimony on Contention 75

- a. Page 5, line 17 through page 6, line 20 (first two paragraphs of Answer 6 and Attachments 1 and 2)

and

- b. Page 5, line 17 through pages 6, line 26 (first two paragraphs of Answer 6 and Attachments 1 and 2)

The Staff opposes the County's motion as to these two matters which challenge the LILCO witnesses' competence to make legal interpretations and their expertise in social science or psychology. The discussion in opposition to B.1.d above is equally applicable here. In sum, the arguments advanced by the County go to weight of the testimony and not its admissibility.

- c. Page 6, last paragraph and Attachment 3

The Staff agrees with County that this testimony concerning SC planning is irrelevant to Contention 75 and should be stricken.

- d. Page 8, line 19 through page 9, line 2 (beginning with "And in" and ending with "center."')

The Staff opposes this aspect of the motion which objects to LILCO's interpretation of NRC case law. (See B.1.d and B.2.b above which is applicable here).

- e. Page 9, lines 7-13 (beginning with "No" and ending with inserted language "9,000 persons") and Attachments 6, 7 and 8

Staff agrees with the County that testimony concerning relocation centers no longer relied on by LILCO is irrelevant and should be stricken.

- f. Page 10, the paragraph inserted after the second line (beginning with "In addition" and ending with "arise")

and

- g. Pages 10-11, Questions and Answers 10 and 11; Page 12, line 3 (the words "and Nassau") and lines 11-22 (beginning with "In addition" and ending with "if needed"); and Attachments 11 and 12

For the reasons noted by the County, the Staff agrees that this testimony, concerning additional facilities in Suffolk and Nassau Counties, which have not been designated by LILCO in its plan or in testimony as primary or secondary relocation centers, is irrelevant to Contention 74.

3. LILCO Supplemental Testimony

- a. Page 3, lines 19-27 (last two sentences on page)

The County argues that this testimony, which asserts that if the four centers designated in the LILCO testimony become full, the Red Cross will send evacuees to other buildings nearby as the need arises, is not relevant to the contentions in issue and is speculative. The Staff is of the view that the testimony is arguably relevant and should be admitted. Whether or not the testimony is in fact speculative is a matter which the County can probe on cross-examination of the LILCO witnesses.

- b. Pages 4-5, Question and Answer 6

The Staff supports the County's motion and agrees that this testimony is no longer relevant since SCCC and SUNY-Stonybrook are no longer relied on as relocation centers in the LILCO plan.

c. Page 6, Question and Answer 10

Staff response in B.3.a above is applicable here. Whether the testimony in speculative can be probed upon cross-examination. It should not be stricken.

d. Page 7, lines 2-11 (beginning with "Experience" and ending with "essential services")

Because of context in which this testimony appear, it may not be cumulative. Thus, the Staff does not support the County's motion to strike this testimony.

e. Page 7, line 12 through page 8, line 2; page 8, lines 8-17 (beginning with "Another" and ending with "85,000"); page 9, lines 2-11 (beginning with "and" and ending with "Suffolk County"); and page 15, lines 2-10 (beginning with "in addition" and ending with "centers")

The Staff response set out in B.3.d above is applicable here. The testimony may not be repetitions because of the context in which it appears. It should not be stricken.

f. The County asserts that all inserts on pages 10-14 which are stricken as a result of the Board's rulings on Parts [SC] III.A and [SC] III.B should also be stricken from pages 10-14, of the LILCO Supplemental Testimony. If the Board rules in the County's favor as to the above designated parts of LILCO's testimony, the Staff agrees that the inserts in question should likewise be stricken.

III. CONCLUSION

For the reasons set out above, the NRC staff opposes the County's motion to strike, in toto, LILCO's testimony on relocation centers. As to the County's alternative motion to strike portions of this same testimony, the Staff supports in part and opposes in part the County's motion.

Respectfully submitted,

Bernard M. Bordenick
Bernard M. Bordenick
Counsel for NRC Staff *BMB*

Dated at Bethesda, Maryland
this 10th day of July, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO 'SUFFOLK COUNTY MOTION TO STRIKE LILCO DIRECT TESTIMONY AND SUPPLEMENTAL TESTIMONY ON CONTENTIONS 74 AND 75 (RELOCATION CENTERS)'" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 10th day of July, 1984:

James A. Laurenson, Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Fabian G. Palomino, Esq.
Special Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dr. Jerry R. Kline*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, NY 11801

Mr. Frederick J. Shon*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

W. Taylor Reveley III, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, VA 23212

Jonathan D. Feinberg, Esq.
New York State Department of
Public Service
Three Empire State Plaza
Albany, NY 12223

Cherif Sedkey, Esq.
Kirkpatrick, Lockhart, Johnson
& Hutchison
1500 Oliver Building
Pittsburgh, PA 15222

Stephen B. Latham, Esq.
John F. Shea, III, Esq.
Twomey, Latham & Shea
Attorneys at Law
P.O. Box 398
33 West Second Street
Riverhead, NY 11901

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

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

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Room 840
500 C Street, S.W.
Washington, D.C. 20472

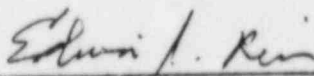
Gerald C. Crotty, Esq.
Ben Wiles, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Herbert H. Brown, Esq.
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
8th Floor
Washington, D.C. 20036

Eleanor L. Frucci, Esq.*
Attorney
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

Stewart M. Glass, Esq.
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza
Room 1349
New York, NY 10278


Edwin J. Reis
Assistant Chief Hearing Counsel

COURTESY COPY LIST

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old County Road
Mineola, NY 11501

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, NY 11792

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, MA 02154

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veteran's Memorial Highway
Hauppauge, NY 11788

Ken Robinson, Esq.
N.Y. State Dept. of Law
2 World Trade Center
Room 4615
New York, NY 10047

Leon Friedman, Esq.
Costigan, Hyman & Hyman
120 Mineola Boulevard
Mineola, NY 11501

Chris Nolin
New York State Assembly
Energy Committee
626 Legislative Office Building
Albany, New York 12248

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, CA 95125

Hon. Peter Cohalan
Suffolk County Executive
County Executive/Legislative Bldg.
Veteran's Memorial Highway
Hauppauge, NY 11788

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

Ms. Nora Bredes
Shoreham Opponents Coalition
195 East Main Street
Smithtown, NY 11787

Norman L. Greene, Esq.
Guggenheimer & Untermyer
80 Pine Street
New York, NY 10005