

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

Before the Atomic Safety and Licensing Board

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In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-4
	)	(Low Power)
(Shoreham Nuclear Power Station,	)	
Unit 1)	)	

LILCO'S MOTION TO STRIKE DIRECT TESTIMONY OF  
RICHARD KESSEL ON BEHALF OF THE STATE OF NEW YORK

Pursuant to 10 CFR § 2.743(c), the Long Island Lighting Company ("LILCO") moves to strike the "Direct Testimony of Richard Kessel on Behalf of the State of New York" (Kessel Testimony) on the following grounds:

1. Paragraph 1.1/ (a) In this paragraph, Kessel alleges that it is not in the public interest to permit contamination of the nuclear facility before uncertainty surrounding its future operation had been resolved. (Kessel Testimony at 4-5). The question of uncertainty concerning the ultimate licensing of Shoreham is not an issue in these proceedings. The Commission has held on at least two occasions that any uncertainty attendant to whether LILCO may receive a full power license for Shoreham does not preclude low power testing. Long Island Lighting Company (Shoreham

1/ The paragraph designations in this motion refer to the numbered paragraphs forming the "several bases for [Kessel's] opposition to LILCO's requested exemption." Kessel Testimony at 4. The number paragraphs begin on page 4 of Kessel's pre-filed testimony.

Nuclear Power Station, Unit 1), CLI-84-9, 19 NRC \_\_\_\_ (1984); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-83-17, 17 NRC 1032 (1983). As a consequence, Kessel's testimony, which addresses the uncertainty that a full power license will be granted and the possible cost of decommissioning Shoreham is immaterial and irrelevant to the "public interest" issue.

(b) Additionally and alternatively, Kessel is not competent to testify about the costs of decommissioning Shoreham or the salvage value of fuel or equipment in that he has no background or experience in the nuclear field, engineering or finances. He purports to have no personal knowledge of these facts and is not competent "by knowledge, skill, experience, training or education" to testify as an expert. Fed R. Evid. 702. Prior to becoming head of the New York Consumer Protection Board, Kessel had received degrees in political science, had taught "consumer economics" and had spent his career as a consumer advocate. According to his biographical sketch, attached to his testimony, he has spent much of his career organizing surveys about the prices of candy, flowers and turkeys. Nothing in his testimony indicates any expertise in the issues before this Board.

2. Paragraphs 2 and 3. (a) Kessel is not competent to offer the testimony contained in these paragraphs. In ¶ 2, Kessel asserts that "LILCO's proposal to accelerate low power testing will probably require additional funds which the Company will

obtain by reducing non-nuclear related costs, thereby impairing its already diminished quality of service." In ¶ 3 Kessel asserts "New York does not require Shoreham's capacity now nor for many years in the future." Neither Kessel's biographical sketch nor the summary of his professional qualifications contained in this testimony at pages 1-2 provides any basis for Kessel's offering opinion or factual testimony on the effect of LILCO's nuclear-related costs on LILCO's non-nuclear operations nor on the need of New York State for power in the future. As stated above, Kessel has no background in the nuclear industry, the utility industry, engineering or the provision of electric service.

(b) Moreover, Kessel's testimony provides no foundation for any opinion by him that low power testing at Shoreham will affect in any way the Company's service to its customers.

(c) Finally, these paragraphs contain and rely upon inadmissible hearsay. Kessel has no personal knowledge of or expertise concerning the quality of LILCO's service as affected by Shoreham or New York State's energy needs. Nor does the Consumer Protection Board have any responsibility for forecasting energy demands, electrical load or the like.<sup>2/</sup> To the extent Kessel is relying on reports or opinions of others, his lack of expertise in this area makes it impossible to cross-examine him.

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<sup>2/</sup> For example, conspicuously absent from Kessel's testimony is any mention of the New York State Energy Master Plan.

3. Paragraphs 4 and 6. (a) In ¶¶ 4 and 6 of Kessel's testimony, he testifies that LILCO has mismanaged the Shoreham project and, therefore, it would not be in the public interest to grant LILCO an exemption "particularly when a prudent utility would have replaced the defective TDI diesels with safety grade equipment many years ago." Kessel Testimony at 8. The prudence or imprudence of LILCO's management of the Shoreham project is not at issue here. The Commission indicated in its Order of May 16, 1984, that good faith efforts to comply with GDC 17 would be relevant to these proceedings. The Commission did not require LILCO to demonstrate that it had done everything right in attempting to comply with GDC 17. Such a demonstration of good faith is not dependent upon a hindsight evaluation by an incompetent witness that more could have been done to avoid the problems ultimately discovered with the TDI diesel generators. The testimony proffered by Kessel is not relevant to the issue of good faith or any other aspect of public interest which it purports to address.

(b) Additionally and alternatively, nothing in Kessel's testimony or professional qualifications indicates any engineering, nuclear, financial or business background which would qualify him to express an opinion on the prudence of management decisions by LILCO concerning the TDI diesel generators or other matters pertaining to Shoreham's construction or operation. In particular, he has no experience, training, education or skill in the

operation, maintenance, design, manufacture or procurement of diesel generators that would permit him to draw any conclusions about the significance or foreseeability of problems with the TDI diesel generators.

4. Paragraph 5. (a) In this paragraph, Kessel asserts "it is inconsistent with the public interest to allow a financially weakened and nearly bankrupt company to operate a nuclear facility." Kessel Testimony at 8. This testimony is nothing more than a bald attempt to inject the issue of LILCO's financial qualifications into the low power licensing proceeding. This Board has ruled unequivocally that

general, detailed financial information is not relevant to this inquiry (Tr. 712). The financial or economic hardships referred to under the category of "equities" in the Commission's May 16 Order (CLI-84-8, fn.3), is limited to those which the Board is charged with looking at in this proceeding. Those matters include financial or economic impacts of the earlier commencement of activities under a low-power license, compared or contrasted with the later time that low-power operations could commence as a result of the final decisions of other Boards.

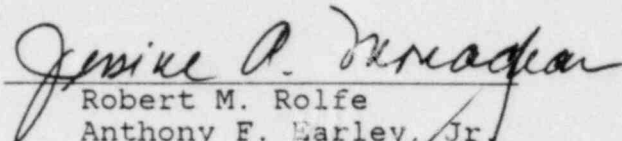
Order Regarding Discovery Rulings, June 27, 1984, at 2-3.

(b) Additionally and alternatively, Kessel has no nuclear, financial or business expertise that would qualify him to render expert or factual testimony concerning the funds necessary to operate a nuclear plant at low power levels or the impact of LILCO's financial condition on its consumers and employees.



For the reasons stated above, LILCO respectfully requests that this Board strike the Testimony of Richard Kessel.<sup>3/</sup>

Respectfully submitted,  
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<sup>3/</sup> In the interest of efficiency, this motion is submitted in advance of Kessel's appearance on the stand and is based solely on the matters appearing in Kessel's pre-filed testimony. If the Board permits Kessel to testify, LILCO may raise additional grounds for striking the testimony following voir dire and cross-examination of the witness.