

August 16, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 50-322-1
(OL)

NRC STAFF RESPONSE TO LILCO'S MOTION TO STRIKE
PORTIONS OF THE JOINT TESTIMONY OF DR. ROBERT N. ANDERSON,
PROFESSOR STANLEY G. CHRISTENSEN, G. DENNIS ELEY,
ANEESH BAKSHI, DALE G. BRIDENBAUGH AND RICHARD B. HUBBARD

I. INTRODUCTION

On August 7, 1984 Long Island Lighting Company (LILCO) filed a motion to strike portions of the testimony filed by Suffolk County on July 31, 1984. The NRC staff below responds to the motion to strike.

II. DISCUSSION

By regulation, this Board may grant a motion to strike testimony that is "argumentative, repetitious, cumulative or irrelevant." 10 C.F.R. § 2.757(b). These are the standards that must be applied to the motion filed by LILCO.

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III. OVERVIEW

LILCO's motion sets out several general "evidentiary deficiencies warranting the exclusion of proffered testimony" on pages 2 through 8 of its Motion to Strike. The Staff sets out here its response to these general statements by LILCO.

1. LILCO states that much of the testimony is beyond the scope of the contention admitted for litigation in this proceeding as set forth by the Board rulings of July 5, 1984 (Tr. 21, 878-96) and the Order of July 17, 1984. The Staff generally agrees, but notes that in some cases LILCO and the Staff differ as to what is properly within the scope of the contention.

2. LILCO asserts that the testimony lacks foundation and is unsupported by data or calculations. This argument more properly goes to the weight to be accorded the testimony, not its admissibility. LILCO is free to develop more fully on cross-examination the lack of underlying foundation for the testimony.

3. LILCO also asserts the witnesses fail to support their opinions with calculations or other data and hence the testimony is speculation and conjecture. Again, this argument goes to the weight to be accorded the testimony and does not address the standards for admissibility.

4. LILCO asserts as a general deficiency that the witnesses have not established that they are qualified to testify as to matters addressed in their testimony. The Staff notes this is premature until such time as the identity of particular sponsors of each part of the testimony are provided by Suffolk County (see Board Order granting

LILCO's motion to compel the identification of witnesses, August 8, 1984). Upon voir dire, LILCO may or may not then wish to renew that portion of the motion to strike dealing with witness qualifications.

5. LILCO moves to strike all references to partial extracts of depositions of non-parties as inadmissible under Fed. R. Civ. P. 32(a). Admissibility of evidence in NRC proceedings is governed by 10 C.F.R. § 2.743(c) which provides that "only relevant, material, and reliable evidence which is not unduly repetitious will be admitted." Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-717, 17 NRC 346, 366 (1983); Duke Power Company (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 477 (1982). Absent a showing by LILCO that the depositions are inherently unreliable, they should be admitted. The Staff has no objection, however, to the admission of the full text of the deposition as requested by LILCO in the alternative, subject to the requirement that such testimony is relevant, material, reliable and not unduly repetitious.

6. LILCO asserts that discussion of the TDI Owners' Group Program, including the Phase I and Phase II reports, should be excluded except to the extent that it is specifically related to one of the four components being litigated in this proceeding. The Staff agrees.

7. LILCO also asserts the FaAA reports should likewise be limited to the portions of the reports that relate solely to the four components involved in this litigation. The Staff agrees.

8. LILCO also moves to strike all references to the Task Description for the Component Design Reviews as irrelevant to the

Shoreham EDGs. The Staff disagrees and finds that this reference is within the scope of the admitted contention with regard to the four critical components.

IV. SPECIFIC TESTIMONY

A. Preliminary Matters

LILCO moves to strike several portions of this testimony on the grounds that the testimony is beyond the scope of the contention admitted in this proceeding. The Staff supports this motion in part and opposes it in part.

1. LILCO moves to strike the final question and answer and accompanying footnote 1 on p. 12, on the grounds that the response goes beyond the scope of the contention admitted in this proceeding in that it is not limited to solely the four components admitted for litigation. The Staff does not agree that the whole response should be stricken, but that the second full sentence, beginning with "These deficiencies...." and ending with "including the EDGs.1/" should be stricken as beyond the scope of the contention.

2. As to the question and answers on pp. 13-14 regarding the TDI Diesel Generator Owner's Group Program Plan, the Staff agrees that this issue is beyond the scope of the admitted contention and was specifically excluded by the Board ruling of July 5, 1984 at 21,891-93, wherein the Board stated it would not litigate the adequacy of the Owners' Group Program.

3. LILCO moves to strike the second question and answer on pages 17 to 18 and the footnote 9 on the grounds that it is speculation and conjecture. The Staff disagrees in part and does not support LILCO's

motion in entirety. LILCO's arguments are more appropriately directed toward the weight to be accorded the testimony and should not be stricken as to the first part of the answer, but the Staff does agree that the reference to "The usual practice for diesel engines in non-nuclear electric generator plants" to the end of that paragraph and the footnote should be stricken as lacking adequate nexus to Shoreham, thus rendering the testimony irrelevant.

4. LILCO next moves to strike the question on page 18 and continuing testimony to page 25 as beyond the scope of the contention admitted in this proceeding. The Staff agrees in part with LILCO as to testimony on page 18 through page 21. However, the testimony from pages 22 to 25 relates to the components admitted for litigation and to the extent it relates to the problems with these four components, the testimony should not be stricken. (See July 5 ruling Tr. 21,890-91).

B. Model AE Pistons

1. Preliminary Matters

The Staff supports LILCO's motion to limit the admission of Exhibit 8, the FaAA Piston Report referenced in footnote 23, to only those portions which relate specifically to the piston issues admitted in this proceeding.

2. Cracking of AE Piston Skirts

The Staff supports LILCO's motion to strike the reference to the Initial FaAA Piston Report in footnote 27 for the reasons stated.

LILCO next moves to strike the testimony concerning finite element analysis as incompetent. LILCO's arguments are more appropriately

made toward the weight to be accorded the testimony, and hence this testimony should not be stricken.

LILCO also moves to strike the testimony from pages 31 to 36 on crack initiation as speculative, and again the Staff disagrees. LILCO's arguments go to the weight to be accorded the testimony and this testimony should not, therefore, be stricken.

LILCO moves to strike the discussion of TDI casting practices on pages 36 to 37 as beyond the scope of the admitted contention. The Staff agrees that such portion of the answer on page 36 beginning with "TDI does not use vacuum processes" and continuing to page 37 ending at "...the TDI QA system was ineffective.^{45/}," including the referenced footnote 45, should be stricken as beyond the scope of the admitted contention. However, the remainder of the answer on page 37 and continuing to page 39 should be admitted. Once again LILCO's arguments go to the weight to be accorded the testimony, and not admissibility.

LILCO moves to strike all the testimony from page 41 to page 46 on the grounds this was expressly excluded by the Board's Order of July 17 at page 5. The Staff disagrees. As LILCO states, the contention admitted is the validity of FaAA's analysis, and whether the testing and inspection discussed on page 41 to 46 contradicts the FaAA analysis is an argument that goes to the weight to be accorded the testimony, not its admissibility. The Staff would agree, however, that one portion of the answer on page 42 referencing Mr. William Foster and the footnoted deposition (exhibit 13) should be struck, as the question of TDI's QA program is beyond the scope of the contention. (This is the sentence beginning "Mr. William Foster, the NRC staff official" and ending with

"would not identify all defects.51/" and both footnote 50 & 51). The Staff would note also that LILCO's motion to strike the testimony on pages 47 and 48 on the grounds that the witnesses lack expertise in this area is premature until the witnesses' qualifications are explored during voir dire, at which time LILCO may or may not wish to renew this portion of the motion to strike. In any case, it should not be granted at this time.

3. Excessive Piston Side Thrust

LILCO moves to strike the testimony from page 46 to page 56 as speculation. The Staff disagrees. LILCO's arguments go to the weight to be accorded such testimony, not its admissibility. The Staff supports, however, the motion to strike the first question and answer on page 56 regarding the TDI R-5 and DSRV-16-4 engine as beyond the scope of the admitted contention. The remainder of the testimony, however, should not be stricken.

4. Tin Plating of the AE Piston Skirt

LILCO seeks to strike this testimony as conjecture and unfounded. This is again an argument that goes to weight and not admissibility and represents an area that is properly left to cross-examination. The testimony should not be stricken.

C. Replacement Cylinder Heads

1. Preliminary Matters

LILCO seeks to strike the testimony on pages 62-64 as unsupported conclusions, once again arguments that go to the weight not admissibility of the testimony. However, the Staff does support the motion to the extent it moves the Board to strike the second half of page 64, including footnote 69, as not relevant to the admitted contention. This testimony relates to the previous cylinder heads and not the ones currently in place at Shoreham. Therefore, the testimony from the second half of page 64 to the end of the first full paragraph on page 66 should be stricken. The Staff also agrees that the first question and answer on page 67 regarding the original Shoreham heads should be stricken.

2. Inadequate Design

LILCO next moves to strike the second paragraph of the response dealing with cylinder heads predating 1980 on page 68 continuing to page 70, first paragraph, as beyond the scope of the admitted contention in this proceeding. The Staff agrees, and this testimony should be stricken.

LILCO also moves to strike the response on page 71 and page 73 as conjectural. The Staff disagrees. These arguments go to weight, not admissibility.

LILCO moves to strike that portion of the response on page 74 which begins with "and the TDI Owner's Group..." through the conclusion of the response as irrelevant. The staff agrees this is beyond the scope of the admitted contention and should be stricken. See Tr. 21,892-894.

3. Changes in Manufacturing Techniques

LILCO seeks to strike the testimony on page 76 and 77 through 80 as the interjection of issues excluded by the Board's July 5 Order. The Staff disagrees. The testimony here deals with changes in manufacturing techniques and is squarely within the admitted Contention 3.(a) as set forth in the Board Order of July 17 at page 4. This testimony should be admitted.

LILCO also seeks to strike the references on page 84 to footnote 102 and the reference to Grand Gulf TDI heads. The staff disagrees as to the first issue, but agrees that the reference to Grand Gulf (the last sentence of the response on page 84) should be stricken as irrelevant to the issue in this proceeding, lacking any nexus to the Shoreham heads.

4. Inspection of Replacement Heads

LILCO seeks to strike the reference to TDI's "ineffective QA/QC programs" on page 90 and continuing through a quote from a letter (Exhibit 33), as well as the exhibit. The Staff supports LILCO's motion in this regard as TDI's QA/QC program is not an issue admitted for litigation in this proceeding and hence such references are beyond the scope of the admitted contention. For this reason, footnote 115 should also be stricken as part of this testimony.

LILCO also seeks to strike the first question and answer on page 93 dealing with the TDI Owners' Group as beyond the scope of the admitted contention. The Staff agrees. See Tr. 21,891.

5. Cracks in Replacement Heads

LILCO seeks to strike all the testimony on pages 93-105 as lacking a necessary foundation. The Staff disagrees. These arguments properly go to the weight to be accorded the testimony, not its admissibility. Consequently, the testimony should not be stricken.

D. Replacement Crankshafts

1. Standards for Crankshaft Designs

LILCO moves to strike all the testimony on pages 109-133 as irrelevant to the issue concerning Shoreham EDG crankshafts admitted in this proceeding. The Staff disagrees with the majority of LILCO's arguments in this regard. The arguments properly go to weight and the merits of the contention, not the admissibility of the testimony. The single exception in this regard is the reference to Nippon Kaiji Kyokai (NKK) on page 109, 122 (first q & r), 128 (sentence beginning with "in addition, TDI was informed by Kobe Steel...."), which was specifically excluded by the Board ruling of July 5. See Tr. 21,878. The Staff also supports LILCO's motion in one other instance, that is the question and answer regarding speculation as the ABS's future course of action on page 132 to the top of page 133. This testimony is irrelevant and should be stricken.

2. Crankshaft Shotpeening

LILCO seeks to strike a portion of the answer on page 138 regarding the X-ray differentiation process. This is arguably relevant and should be admitted. The Staff also disagrees with LILCO's motion to strike the

testimony on page 138 to 140 dealing with the interpretation of photographs of the crankshaft shotpeening. These arguments go to weight, not admissibility.

E. Cylinder Blocks

The Staff agrees with LILCO that only those portions of the FaAA block report (Exhibit 7) which relate to Shoreham may be admissible. (footnote 162)

LILCO moves to strike the testimony on page 148 referring to the Task Description for the Component Design Review. This testimony is arguably relevant and should be admitted. (See overview #8)

LILCO also moves to strike the reference to the Colt EDG's in the question on page 149. The Staff disagrees, as the reference to the Colts is only in connection with the time the Owners Group acceptance criterion is intended to be applied to qualify the current EDG's and is therefore, arguably relevant and should be admitted for this limited purpose.

LILCO next moves to strike the testimony on page 152 to 153 regarding possible failure of cylinder blocks as lacking foundation. Again, the Staff disagrees. These arguments go to the weight to be accorded the testimony, not its admissibility. Hence, the testimony should not be stricken.

LILCO moves to strike the references to the M.V. Gott, M.V. Columbia, St. Cloud, Copper Valley, Homestead and Bhiel engines on pages 157 through 159 as failing to establish a nexus to the Shoreham engines.

This testimony is arguably relevant (see Tr. 21,752-54 and 21,757) and should be admitted.

LILCO next seeks to strike footnote 199 and Exhibit 64. The Staff disagrees. The testimony is arguably relevant and should be admitted. See Tr. 21,751.

LILCO moves to strike a portion of the testimony on page 168 as lacking foundation. This again is an argument that goes to the weight, and not admissibility of the testimony. Likewise, the Staff disagrees with LILCO's motion to strike the testimony on pages 169, 170 and 173 for the same reason.

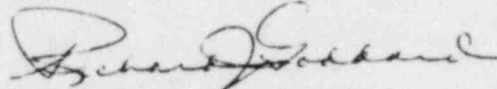
LILCO moves to strike testimony on pages 178 to 180 for lack of any supporting calculations. This testimony is relevant to the contention concerning the unproven design (Cont. 2) and should be admitted. The lack of calculations goes to the weight to be accorded this testimony, not its admissibility.

LILCO also moves to strike the testimony on pages 183-184 as lacking foundation. Again, these arguments go to weight and not admissibility, and the testimony should be admitted. Nor does the Staff agree with LILCO's assertion that the final sentence in the response on page 184 could be construed as a motion for leave to file supplemental testimony, and hence this sentence should be allowed to stand.

V. CONCLUSION

For the reasons stated above, the Staff supports in part and opposes in part the motion to strike diesel generator testimony filed by LILCO.

Respectfully submitted,



Richard J. Goddard
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 16th day of August, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LILCO'S MOTION TO STRIKE PORTIONS OF THE JOINT TESTIMONY OF DR. ROBERT N. ANDERSON, PROFESSOR STANLEY G. CHRISTENSEN, G. DENNIS ELEY, ANEESH BAKSHI, DALE G. BRIDENBAUGH AND RICHARD B. HUBBARD" 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 16th day of August, 1984:

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