

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. George A. Ferguson
Dr. Peter A. Morris

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket No. 50-322-0L

SERVED FEB 12 1985

February 11, 1985

MEMORANDUM AND ORDER RULING ON MOTIONS TO STRIKE
PORTIONS OF SUFFOLK COUNTY AND LILCO TESTIMONY

By motion dated January 22, 1985, Suffolk County moved to strike portions of LILCO's proposed written direct testimony. LILCO filed its opposition on January 29. By motions dated February 1, 1985, LILCO moved to strike portions of the County's proposed direct testimony. In separate pleadings dated February 8 ^{*/}, the County and NRC Staff supported in part, but opposed in large part, LILCO's motions to strike. The Board finds that, except as noted below, the proposed testimony is sufficiently relevant, material, reliable and non-repetitious so as to

^{*/} At the Board's oral request on February 4, counsel for the County and the Staff agreed to accelerate the filing of their answers from the original date for receipt by the Board of February 11, to the morning of February 8. The Board appreciates this accommodation by counsel.

withstand the motions to strike. Parts of LILCO's motions to strike portions of the County's testimony are granted, as follows:

A. County testimony of Bridenbaugh regarding the cylinder blocks

1. Page 7, Q. & A.7. This bare reference to the earlier testimony of Drs. Anderson and Bush is not probative and is incapable of effective cross-examination. Dr. Bush is again being offered as a Staff witness with written direct testimony on this precise point, and can testify for himself about whether the further tests affect his previous conclusion regarding the need for inservice measuring or monitoring of the cam gallery. To the extent the County believes it will have findings supported by the record as to why Dr. Anderson's previous testimony would not be changed by the later evidence of further tests, it may propose such findings. Mr. Bridenbaugh's so stating adds nothing. It certainly would have been better for the County to present further testimony by Dr. Anderson to support such a finding. Additionally, although not the basis for our decision to strike this testimony, the Board has doubts that Mr. Bridenbaugh's expertise entitles his testimony on the cylinder blocks to the weight we attach to the testimony of metallurgical experts such as Drs. Anderson, Bush, Rau and Wachob.

B. County testimony of Bridenbaugh and Minor regarding the EDG load

1. Page 15, A.14, beginning with second sentence "Moreover," to page 17, up to the end of A.15 (including note 15), and including exhibit 3 and page 5 of exhibit 4. Pages 20-21, A.21, first two sentences ending with "reliability." These portions of the testimony would lead to consideration of the margin at other nuclear plants. As set forth in our January 18, 1985 Order ruling on the admissibility of the EDG load contention, at 5, such litigation would be ". . . at least so remotely collateral to the material issues before us as to be digressive without any redeeming usefulness." That reasoning applies directly to and, indeed, is buttressed by these portions of the testimony which we are striking. We are not striking other portions of the County's testimony which LILCO's motion placed in this same category, and in the apparently related category denominated by LILCO's motion as "Overload Rating." It is relevant to the admitted portions of the contention, particularly (a)(i), and not digressively collateral, for the County to proffer testimony that the general industry practice is to bound intermittent and cyclic loads by a short-term overload rating for the EDG's. Unless another party disputes this, there should be no need to embark on the collateral path of examining details of operation at other nuclear plants.

2. The Board strikes the following portions of the County testimony because they are not relevant to the specific, admitted

portions of the contention. Rather, these portions are bare references to degraded plant conditions, modeling errors (presumably in system testing), inaccuracies in the predicted accident scenario, and other similar references. This testimony would only be relevant to parts (a)(v) and (a)(vi) of the contention which were not admitted as issues for litigation for reasons stated in our January 18 Order, at 6-7. These reasons are both applicable to and reinforced by these portions of the County's testimony. To the extent the references to "uncertainties" include the specific areas placed in controversy by the admitted portions of the contention, such as cyclic loads or load meter instrument error, these subjects are addressed directly and more specifically elsewhere in the County's testimony. The portions of the testimony struck are:

- a. Page 8, A.7, paragraph (1), the word "uncertainties."
- b. Page 12, A.11, the phrase "after allowing a minimal but reasonable degree of margin for uncertainties, modeling error, system degradation, etc."
- c. Page 13, A.11, the phrase "all of the uncertainties plus."
- d. Page 21, A.21, "and none to provide for the modeling, calculational and other uncertainties inherent in the accident scenario forecast."

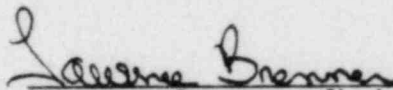
e. Page 30, A.31, the clause "or for any inaccuracies which may exist in the predicted accident scenarios, modeling or loading conditions."

f. Page 15, A.14, "taking into account the modeling and other uncertainties inherent in predicting the accident condition, . . ."

3. The County has withdrawn Q. & A.18 on page 19 in answer to the motion to strike.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
February 11, 1985