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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning)
(Shoreham Nuclear Power Station,)	(Hospital Evacuation Time
Unit 1))	Estimates)

LILCO's MOTION TO STRIKE DIRECT TESTIMONY
OF THE STATE OF NEW YORK'S WITNESS DAVID T. HARTGEN
REGARDING HOSPITAL EVACUATION TIME ESTIMATES

Long Island Lighting Company (LILCO) hereby moves to strike portions of the "Direct Testimony of David T. Hartgen, Ph.D, P.E., on Behalf of the State of New York Regarding Hospital Evacuation Time Estimates," dated April 13, 1988 (hereinafter "Hartgen"). The arguments for striking this testimony are:

- A. The testimony seeks to reopen already-litigated issues regarding the assumptions which form the bases of the special facility and hospital evacuation time estimates. Testimony regarding such previously-litigated issues is thus outside the scope of the remanded issue of LILCO's hospital ETes.
- B. In several places, the Hartgen testimony asserts that possible future changes in the number of persons to be evacuated or resources utilized in the evacuation render the hospital ETes inaccurate. The regulations do not require emergency planners to speculate about such future changes; rather, such changes are matters for the continuing planning process.
- C. The testimony seeks to litigate minute planning details, which are not required by the regulations.

We will discuss each of these four arguments in general before addressing the specific portions of the testimony that should be stricken.

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ARGUMENTS FOR STRIKING TESTIMONY

A. Previously-Litigated Assumptions

The principal basis for LILCO's motion to strike portions of the Hartgen testimony is that it seeks to re-litigate some of the assumptions that were litigated in 1983-84 and/or in 1987. To some extent this new testimony duplicates or supplements arguments made previously by Intervenor witnesses. Specifically, most of the assumptions on which LILCO's hospital evacuation time estimates are based are either identical or substantially similar to assumptions on which LILCO's general population or special facility evacuation time estimates were based. These assumptions have been litigated and acknowledged by the Board to be reasonable. See PID at 836-37 ("We find that LILCO's calculations of evacuation times for special facilities that rely on ambulances and ambulettes are based on realistic assumptions and are consistent with calculations of evacuation times for the entire EPZ."). Additionally, the Hartgen testimony seeks to reopen the issue of reception center capacity, litigated in 1987. (See Hartgen p. 24).

B. Future Developments

In several places the Hartgen testimony discusses possible future, but as yet unplanned and unscheduled, changes in the existence or size of special facilities in the EPZ (Hartgen, p. 27), the number of hospital patients to be evacuated (Hartgen pp. 20, 24, 27), the existence of reception hospitals (Hartgen p. 21), and the number of vehicles available (Hartgen p. 26). Analyses and arguments that attempt to show that the present bases of the hospital evacuation time estimates might not be accurate for future populations or resources are outside the scope of the remanded issue. Emergency planning is a continuing process. If future developments, such as changes in

the number of hospital patients to be evacuated or a change in the existence of reception hospitals and their resources, in fact alter emergency planning needs, those are matters to be addressed in the future. The LILCO Plan requires annual review and updating of the Plan and its provisions. OPIP 5.4.1 "Document Control." Thus, possible future developments are not obstacles to obtaining an operating license. In short, emergency planners need not anticipate all potential or conceivable contingencies and build current plans around them, as the Hartgen testimony suggests.

C. Attempt to Litigate Minute Details

Contrary to the Waterford decision, portions of the Hartgen testimony seeks to analyze minute details of the implementation of LILCO's emergency plan. Louisiana Power and Light Co. (Waterford Steam Elec. Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04, 1106-07 (1983) (Licensing Boards should concentrate on planning issues and not the details of implementation.). See also PID at 653. For example, the Hartgen testimony states that "the two ambulances involved in the longest evacuation time" cover distances of 138.52 miles. Hartgen p. 10. In later testimony, he states that LILCO's calculations contained errors resulting in a "+1.52-mile difference." Hartgen p. 29. Thus, the Hartgen testimony seeks to litigate route distances to within 1%.

SPECIFIC PORTIONS OF THE HARTGEN
TESTIMONY THAT SHOULD BE STRICKEN

LILCO moves to strike the following portions of the Hartgen testimony on the bases noted, all of which are discussed in more detail above:

1. Hartgen p. 8, line 10

LILCO moves to strike "(such as traffic speed)" on the basis that the traffic speed component of LILCO's hospital ETES has been litigated previously in connection with the general population and special facilities ETES.

2. Hartgen section 1 (p. 12, line 12 through p. 18)

LILCO moves to strike all of Section 1 on pages 12-18 on the basis that the assumptions relating to speeds of evacuating vehicles have been litigated previously, and found to be reasonable and realistic by the Board:

We find that LILCO's calculations of evacuation times for special facilities that rely on ambulances and ambulettes are based on realistic assumptions and are consistent with calculations of evacuation times for the entire EPZ. . . . [T]he County's concern for traffic congestion is unfounded because the calculation of evacuation times takes account of the fact that traffic will be congested during the overall EPZ evacuation.

PID at 836-37. In fact, at several points in the Hartgen testimony, reference is made to prior testimony on the same subject. See Hartgen p. 12, lines 21-24 and footnote 1, p. 13.

Those speeds for areas west of the EPZ, which differ slightly from the speeds approved in the PID, were modified to reflect updated speeds used in LILCO's testimony in the reception centers remand proceeding. See, e.g., LILCO Exhibit 1 ("Written Testimony of Douglas M. Crocker, Dale E. Donaldson, Diane P. Dreikorn, Edward B. Lieberman, Roger E. Linneman, Michael K. Lindell, Dennis S. Mileti, and Richard J. Watts on the Suitability of Reception Centers"), ff. Tr. 17,421 at 7-8.

Moreover, the passage on pages 14-15 regarding Mr. Lieberman's article concerning modification of a computer model of freeway traffic flow to reflect congestion, is outside the scope of this remand proceeding and therefore irrelevant to the narrow issue of the "accuracy and bases of the [hospital] evacuation time estimates." Memorandum and Order (Ruling on LILCO's Motion for Summary Disposition of the Hospital Evacuation Issue), Feb. 24, 1988 at 12 (hereinafter "Feb. 24, 1988 Order"). As discussed above, the Board determined that the Governments'

concerns regarding the effect of congestion on LILCO's assumed speeds are "unfounded" because LILCO accounted for congestion in its speeds. PID at 837.

The remainder of this section regarding travel speeds should be stricken for the additional reason that such arguments should have been raised in prior litigation. Since the Board found LILCO's assumptions to be reasonable, these arguments may not be renewed here.

3. Hartgen p. 20

LILCO moves to strike the last two sentences of the second answer on page 20 beginning on line 16 with "However" and ending on line 18 with "could become longer." Future growth is a matter for the continuing planning process, and is not a factor that may be used at present to block an operating license. See PID at 653 ("Boards do not need to inquire into the details of implementing procedures. . . . [T]he Board need find only reasonable assurance that adequate measures can and will be taken.")

4. Hartgen pp. 20-22

LILCO moves to strike the first question and answer in Section 3 beginning on line 19 at the bottom of page 20 and ending with "evacuation times." on line 4 of page 22. This passage discusses the existence of reception hospitals listed in Attachment 5 of OPIP 3.6.5 of the LILCO Plan, and is outside the scope of this remand proceeding. In its February 24, 1988 Order, the Board stated explicitly that "[w]e have reviewed Revision 9 and we believe it answers the matters of identifying the reception hospitals and their resources. . . . Determining whether these hospitals and their resources exist are matters we believe to be clearly ministerial matters properly left to the Staff." Feb. 24, 1988 Order at 10. Furthermore, this passage deals with changes in the existence of reception hospitals which the Board said is a matter for the continuing planning process.

5. Hartgen p. 24

LILCO moves to strike the passage on page 24 beginning on line 6 with "A. Yes. Assuming" and ending on line 17 with "increase in evacuation time." The bases for striking this passage are that (1) it is outside the scope of this remand proceeding; (2) it seeks to reopen the previously-litigated issue of reception center capacity; and (3) future growth is a matter for the continuing planning process. As discussed above, the Board determined that the existence of reception hospitals and their resources is a matter for Staff confirmation. Feb. 24, 1988 Order at 10. Additionally, the sentence beginning on line 14 of page 24 with "A slight increase" concerns the number of patients to be evacuated. This, too, is outside the scope of the remanded issue because in granting LILCO's motion for summary disposition, the Board noted that "whether the number of patients in the EPZ has been properly estimated" is a question whose resolution is "of the nature of [an] ultimate finding[]" and will be addressed in the Board's initial decision. Feb. 24, 1988 Order at 9-10.

Furthermore, the assertion on lines 15-17 that there might be a "reduction in reception center capacity" should be stricken for the additional reasons that there is no basis for it, and the capacity of reception centers was previously litigated. If this passage refers to reception hospitals, as opposed to reception center capacity, then it should be stricken because the Board explicitly precluded further litigation regarding LILCO's assumption of 14% availability for reception hospitals.

We also note in particular that the Governments have repeatedly questioned one specific number relied upon by LILCO, the figure of 14% availability for space in the receiving hospitals. We agree that the method by which this figure was obtained may not be entirely sound. We note, however, that such a figure is, at best, a crude guess. Indeed, the important number is the number of beds which would be free at some indeterminate time in the speculative future during the occurrence of an unlikely event. The best one can hope for in planning is to gain some notion of the

number and size of the hospitals which must be presently identified for future use. We are satisfied that use under the present circumstances of 14% (or indeed one-seventh, or even "something less than 20%") provides a reasonable planning basis for the purpose. Pursuing another significant figure with the full panoply of an administrative hearing seems to us a waste of resources.

Feb. 24, 1988 Order at 11. See also Board Memorandum and Order (Ruling on Intervenors' Motion for Reconsideration of Board Order on Summary Disposition of Hospital Evacuation Issue), April 14, 1988 at 3. As argued above, possible future growth is a matter for the continuing planning process, and should not be an obstacle to a current operating license. See PID at 653.

6. Hartgen Section 4 (p. 25, line 19 through p. 28, line 8)

LILCO moves to strike the entire section 4 on pages 25-28, which discusses vehicle and vehicle driver availability. This section seeks to re-open the already-litigated issue of the availability of sufficient vehicles to effect an evacuation of special facilities and hospitals in the Shoreham EPZ. In rejecting Contention 24.F.2, the Board concluded "that LILCO has planned adequately for evacuation of the non-automobile-owning public [including the homebound, nursing and adult home residents, nursery school students, and hospital patients] and has an adequate number of buses committed to it by contract to accomplish such an evacuation." PID at 825-27. Furthermore, the Board concluded that LILCO's contracts with ambulance companies to supply 63 ambulances and 130 ambulettes "are adequate and provide reasonable assurance that the handicapped at home, and in nursing homes and adult homes could be evacuated in the event of an emergency," and that LILCO has the "physical capability for evacuating hospital patients," using the same vehicles. PID at 830-31.

Paragraph 1 at the bottom of page 26 (lines 23-26), and paragraph 2 at the top of page 27 (lines 1-2) should be stricken because they concern speculative future changes in the number of vehicles which each facility could provide to evacuate or the population of the special facilities. Such future developments are matters to be addressed in the future, as part of the continuing process of emergency planning. Speculation about such contingencies may not be used to block an operating license. See PID at 653, 798.

Paragraph 3 on page 27 (lines 3-5) also should be stricken because there is no basis for the assertion, and because the number of ambulances and ambulettes available to LILCO under contract has already been litigated. See PID at 830-31.

The paragraph in the middle of page 27 beginning on line 6 with "Furthermore" seeks to re-open already litigated issues. See PID at 837 ("LILCO's calculations of evacuation times for special facilities that rely on ambulances and ambulettes are based on realistic assumptions.")

7. Hartgen p. 29

LILCO moves to strike paragraph 2 on page 29 regarding determination of route lengths. The basis for this is the Waterford case, which instructs licensing boards to concentrate on planning issues and not the details of implementation. See PID at 653. As discussed earlier, the Hartgen testimony attempts to litigate 1% differences in route lengths over a total distance of more than 130 miles. Clearly, differences of 1% are within normal ranges of error.

8. Hartgen p. 31, line 18

LILCO moves to strike the phrase "largely arbitrary and unsupported" on line 18 of page 31, referring to LILCO's assumptions, because it is contrary to the Board's prior ruling; the Board has concluded that LILCO's assumptions are "realistic." PID at 837.

9. Hartgen p. 34

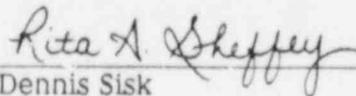
LILCO moves to strike the following passages on page 34 on the ground that they already have been litigated, and therefore are outside the scope of this remand proceeding: line 3 "highway speeds"; lines 4-5 "destination hospitals, patient loading and unloading times,,"; line 12 beginning with "The most critical" through line 19 ending with "LILCO's numbers.,"; line 22 beginning with "Errors concerning" and ending on line 24 with "LILCO's time estimates.,"; lines 25-26 "vehicle and vehicle driver availability,".

ATTACHMENTS

LILCO moves to strike the following Attachments to the Hartgen testimony.

- Attachment 7: previously litigated; outside scope
- Attachment 8: previously litigated; outside scope
- Attachments 9-16: outside scope
- Attachment 17: previously litigated; outside scope; future developments
- Attachment 18: previously litigated; outside scope; future developments
- Attachment 20: previously litigated; outside scope
- Attachment 21: Waterford decision
- Attachment 22: Waterford decision

Respectfully submitted,



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Date: April 20, 1988

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LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO's Motion to Strike Direct Testimony of the State of New York's Witness David T. Hartgen Regarding Hospital Evacuation Time Estimates were served this date upon the following by Federal Express as indicated by one asterisk, or by first-class mail, postage prepaid.

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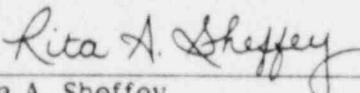
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