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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

NRC STAFF'S RESPONSE TO LILCO'S
MOTION TO STRIKE DIRECT TESTIMONY OF
CHARLES C. PERRY, III AND GREGORY C. MINOR
REGARDING LILCO'S EMERGENCY BROADCAST SYSTEM

On April 20, 1988 LILCO filed a Motion to Strike portions of the testimony of Charles Perry and Gregory Minor filed by Suffolk County Regarding LILCO's Emergency Broadcast System ("Motion"). For the reasons stated below, the NRC Staff supports in part and opposes in part the motion.

DISCUSSION

A. General Objections

The Staff agrees with Applicant that those portions of the testimony which address matters that were specifically barred by the Board in its Orders of February 24, 1988 and April 14, 1988 ^{1/} should be stricken. Specifically, these areas are:

- 1) portions of the testimony that address EBS coverage beyond the 10 mile EPZ;

1/ Memorandum and Order (Ruling on Contentions Relating to LILCO's Emergency Broadcast System), February 24, 1988; and Board Memorandum and Order (Ruling on Intervenors' Motion for reconsideration of Board's Memorandum and Order on Contentions Relating to LILCO's EBS System), April 14, 1988.

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- 2) portions of the testimony that concern WALK radio;
- 3) portions of the testimony that address listenership rate and credibility of the ERS stations.

However, the Staff does not agree that other portions of the testimony should be stricken, or that Mr. Minor should be struck as an expert witness. Applicant's argument that portions of the testimony are speculative and devoid of facts or evidence to support the allegations in the contention goes to the weight to be accorded such testimony, not its admissibility. Similarly, although Mr. Minor does not appear to possess the same expertise in this area as Mr. Perry, nevertheless he has been an expert witness on many technical issues in the Shoreham proceeding for several years.^{2/} It does not appear that his sponsorship, or lack thereof, would impact the admissible portions of the testimony jointly provided by Mr. Minor and Mr. Perry.

B. Specific Portions of the Testimony

The Staff agrees with Applicant's numbered objections 2, 3, 7, and 13, in its Motion but opposes the motion to strike other numbered portions of the testimony. Each of these areas will be addressed seriatim.

Item 2 deals with a passage that compares the new system with the earlier system, and as the Board stated in its ruling on contentions,

^{2/} This is amply demonstrated by a review of Mr. Minor's Professional Qualifications (Attachment 3 to Direct Testimony of Charles G. Perry, III and Gregory C. Minor on Behalf of Suffolk County, April 13, 1988). Pages 5-9 of the Qualifications statement recount 18 separate pieces of testimony filed by Mr. Minor in all phases of the Shoreham case, covering a wide range of issues over which Mr. Minor has provided engineering analysis and support.

"the issues to be contested in this proceeding only concern the ability of LILCO's present system to meet regulatory requirements and criteria, and not standards set by a part of the EBS no longer existing in its emergency plan." Order, February 24, 1988 at 4. Thus, this portion should be stricken as outside the permissible scope of the contention.

Items 3 and 13 both deal with portions of the testimony that address coverage of areas beyond the 10 mile EPZ. As the Board noted in its Order regarding reconsideration, "the regulations do not impose a requirement for communicating EBS messages to the public outside the EPZ." Order, April 14, 1988 at 2. Hence, both of these portions of the testimony should be stricken.

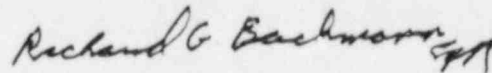
Item 7 address the issue of listenership and market share, matters that the Board specifically ruled irrelevant and outside the scope of admitted issues. Order, April 14, 1988 at 2. This testimony should be stricken.

The Staff does not agree that other numbered items in Applicant's motion raise matters that are beyond the scope of the contention or are irrelevant. The objections to those portions of the testimony all go to the weight to be accorded this testimony, not to its admissibility, including the objections to Mr. Minor's sponsorship of the testimony.

CONCLUSION

Applicant's motion to strike portions of the testimony noted as item numbers 2, 3, 7 and 13 should be granted. In all other respects the motion should be denied.

Respectfully submitted,



Richard Bachmann
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of April, 1988