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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 MAY -3 P6:37

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 RESPONSE TO INTERVENORS'
MOTION TO STRIKE A PORTION OF LILCO'S TESTIMONY

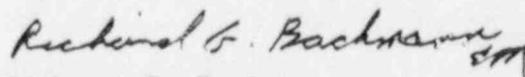
On April 20, 1988, Intervenors filed Governments' Motion to Strike a Portion of LILCO's Testimony Regarding Contention 25.C ("Motion"). Intervenors have moved to strike a portion of the Testimony of Douglas M. Crocker, Robert B. Kelly, Michael K. Lindell, and Dennis S. Mileti, on the Remanded Issue of "Role Conflict" of School Bus Drivers, dated April 13, 1988 ("Crocker testimony").

Intervenors argue that the portion of the Crocker testimony which refers to the evacuation of schools in the EPZs of New York State nuclear plants other than Shoreham is irrelevant, inherently unreliable, and would deprive Intervenors of their right to cross-examination. Motion at 1-2. The testimony purports to relate the results of telephone calls made by a LILCO consultant, not a sponsor of the Crocker testimony, to unnamed county planners. The Staff agrees that the testimony is unreliable, and for that reason supports the motion to strike.

The testimony at issue arguably fulfills the Appeal Board's criteria for admissibility: that it will assist the trier of fact and it is rendered by a properly qualified witness. See Louisiana Power and Light Co.

(Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 (1983). However, only reliable evidence may be admitted in NRC proceedings. 10 C.F.R. § 2.743(c). As the Appeal Board has stated, "[e]xpert testimony in hearsay form from someone unknown is most unreliable." Tennessee Valley Authority (Hartsville Nuclear Plant Units 1A, 2A, 1B and 2B), ALAB-367, 5 NRC 92, 121 (1977). The portion of the Crocker testimony fits this description and should be stricken.

Respectfully submitted,



Richard G. Bachmann
Counsel for NRC Staff

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