

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'88 MAY -9 P8:37

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
05-164

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

**LILCO'S ANSWER OPPOSING INTERVENORS'
MOTION TO STRIKE LILCO'S TESTIMONY**

LILCO responds here to the "Government's Motion to Strike a Portion of LILCO's Testimony Regarding Contention 25.C," dated April 20, 1988 (hereinafter "Motion"). The Intervenor's move to strike one question and answer of LILCO's testimony:

- Q. Do you know anything about how schools are evacuated in the counties around the other nuclear power plants in New York?
- A. [Crocker] Yes. I asked one of LILCO's consultants, Mr. Richard Watts, to call all of the counties within the 10-mile EPZ's of the other nuclear power plants in New York State to find out how they evacuate schools in their EPZ's. The planners he talked with are from Monroe, Oswego, Orange, Putnam, Rockland, Wayne, and Westchester counties. Mr. Watts discovered that all counties evacuate schools in a single wave using both the school districts' regular school bus drivers and other available bus drivers from other bus companies that do not normally serve those schools. Mr. Watts also asked the counties if the additional "non-school" bus drivers were approved by the school districts. Basically, they responded that they had never heard of any requirement that the extra drivers needed the school districts' approval before driving during a radiological emergency.

Testimony of Crocker et al. on the Remanded Issue of "Role Conflict" of School Bus Drivers ("LILCO Testimony") at 58 (April 13, 1988). The Intervenor's claim that this testimony is irrelevant and unreliable. The Intervenor's arguments have all been made before and rejected by the Board. For the reasons stated below, the Intervenor's motion should be denied and LILCO's testimony should be admitted.

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I. LILCO's Testimony About School
Evacuation Plans at Other
Nuclear Power Plants is Relevant

The Intervenors' first argument goes to relevance. The Intervenors object to the testimony quoted above, claiming that it is not relevant to the issue of "role conflict" of school bus drivers or to the "assessment of the adequacy of LILCO's new auxiliary school bus driver proposal." Motion at 2-3. They also argue that the Board is precluded from considering other plans by the Commission's new emergency planning rule that governs utility-only plans. Id. at 3.

The Intervenors' argument that what happens at other nuclear facilities is irrelevant has been rejected repeatedly in this proceeding. See, e.g., Memorandum and Order (Ruling on Governments' Motion to Strike Portions of LILCO's Testimony on the Suitability of Reception Centers) at 8 (May 7, 1987); Memorandum and Order (Ruling on LILCO's March 18, 1987 Motion to Compel) slip op. at 4 (Mar. 25, 1987); Memorandum Memorializing Ruling on Motion to Compel Response to LILCO's Interrogatories and to Produce Documents (Mar. 17, 1987); Memorandum and Order (Ruling on LILCO's Motions to Compel New York State to Answer LILCO's First Set of Interrogatories and for a Protective Order) at 5-6 (Dec. 19, 1986); Order Granting LILCO's Motion to Compel Expedited Production of the New York State Emergency Preparedness Plan at 4 (Feb. 28, 1984); Tr. 3697-98, 7890-92. In fact, the Board heard extensive testimony during the 1987 Reception Centers remand proceeding about the emergency plans for the counties surrounding other nuclear power plants in the State. See Tr. 18,066 et seq. (Baranski, Czech, Papile); Tr. 18,417-18 (Keller); Tr. 18,454-460 (Husar, Keller).

In particular, the testimony that the Intervenors seek to strike is relevant because it refutes an argument they have made in their own testimony. The Intervenors claim that LILCO's plan is inadequate because LERO bus drivers have not been approved by school districts. The LILCO testimony suggests that this alleged legal problem is nonexistent, because it does not appear to exist at other nuclear plants in the same state.

The situation is reminiscent of the litigation over LILCO's reception centers, in which the Intervenors at first claimed that there were various legal objections to LILCO's method of collecting contaminated washwater. They later withdrew their claims in the face of evidence that the alleged legal problems were being asserted only with respect to Shoreham.

Likewise, the Intervenors' reliance on the new NRC rule to support their motion to strike is misplaced. In their motion to strike the Intervenors only quote part of a sentence from the new rule (that part is highlighted below) to support their claim that the rule prohibits comparisons with other plans. As the full passage from the rule shows, the Intervenors' characterization is incorrect:

The Commission, in its 1986 LILCO decision, stressed the need for flexibility in the evaluation of emergency plans. In that decision, the Commission observed that it "might look favorably" on a utility plan "if there was reasonable assurance that it was capable of achieving dose reductions in the event of an accident that are generally is comparable to what might be accomplished with government cooperation." 24 NRC 22, 30. We do not find that decision as requiring a finding of the precise dose reductions that would be accomplished either by the utility's plan or by a hypothetical plan that had full state and local participation: such findings are never a requirement in the evaluation of emergency plans. The final rule makes clear that every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan.

52 Fed. Reg. 42078, 42084 (Nov. 3, 1987). The only issue addressed in this part of the new rule concerns whether a utility plan with full state and local participation should be required to provide equivalent protection, that is, equivalent dose savings. It does not imply, as the Intervenors would have it, that procedures for implementing protective actions or measures in a utility plan cannot be compared to other plans in an effort to understand how acceptable emergency plans work. The Intervenors' argument is without merit.

II. LILCO's Testimony on How
County's in New York State
Evacuate Schools is Reliable

Intervenors also argue that LILCO's testimony on how other EPZ counties evacuate schools is unreliable as "double hearsay."^{1/} Motion at 4. Intervenors' pleading does not tell the whole story.

The Intervenors' motion suggests that they are unable to conduct their own investigation into the reliability of the data included in LILCO's testimony on the school evacuation plans for counties surrounding other nuclear facilities in the State. However, they have known for sometime that LILCO was collecting information on this subject. In fact, LILCO promptly provided them with all the background material underlying the disputed testimony. Mr. Crocker told Intervenors during his deposition that one of LILCO's consultants, Richard Watts, was collecting data on how other counties evacuate schools. Deposition transcript of Douglas M. Crocker (Feb. 2, 1988) at 252-54. On March 22, LILCO provided the Intervenors with the written documentation of the information collected by Mr. Watts. This documentation included a draft and a final report. The letter transmitting the documents and the documents themselves are Attachment 1 to this pleading. Contrary to what the Intervenors want the Board to believe,^{2/} these documents list the names of the planners contacted and their

^{1/} This is not the first time the Intervenors have made this argument. For example, in 1984 they made the following argument:

The assertion [in LILCO's Testimony on Contentions 24.E, 24.F.2, 24.F.3, 24.M, 61.C and 68-71 (Schools)] that some unidentified school administrators made alleged determinations is double hearsay, based solely on an out-of-court written statement of an unidentified County employee, which purports to repeat out-of-court expressions of the opinions of unidentified school administrators. There is no basis for a finding that the statements by LILCO's witnesses are reliable.

Suffolk County Motion to Strike Portions of LILCO's Group II-B Testimony at 19 (Mar. 28, 1984). This motion to strike was denied. Tr. 9145.

^{2/} In their motion to strike, Intervenors claim that Mr. Watts telephoned "unnamed and unidentified" planners for the counties surrounding the other nuclear facilities. Mo-

positions with the counties surrounding the other nuclear facilities in the State. These two documents, in addition to conversations with Mr. Watts, form the basis for Mr. Crocker's testimony. The Intervenor's are plainly wrong that his testimony is based only on "a general and ambiguous summary of his recollection of what Mr. Watts told him." Motion at 4.

Intervenor's claim that the testimony should be stricken because Mr. Watts and the planners he contacted are not witnesses and are not subject to cross-examination. Id. The Intervenor's position is incorrect for two reasons. First, hearsay is ordinarily admissible in administrative proceedings,^{3/} and has been admitted many times in this one. Tr. 14,925 (Judge Laurenson). The County's objection goes to weight, not admissibility. The Board can decide to give the testimony little weight, if it wishes; but it should not exclude the testimony altogether.

Second, Mr. Crocker, who manages both the onsite and offsite emergency response organizations for LILCO, must be permitted to rely upon his staff and consultants to further the operations he oversees. This is standard practice in NRC proceedings. It is not possible for Mr. Crocker personally to seek out all of the information he must rely upon to make decisions in his position as manager and to give testimony in this proceeding.

(footnote continued)

tion at 4. While it is true that LILCO did not identify the planners in its testimony, it did provide Suffolk County the names during discovery over a month ago.

^{3/} See Memorandum and Order (Ruling on Governments' Motion to Strike Portions of LILCO's Testimony on the Suitability of Reception Centers) at 8 (May 7, 1987) ("Hearsay testimony is admissible in administrative proceedings where it is accompanied by sufficient indicia of reliability."); Philadelphia Electric Co. (Limmerick Generating Station, Units 1 and 2), ALAB-863, 25 NRC 273, 279 (1987); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plants, Units 1 and 2), 21 NRC 490, 501 n. 61 (1985) ("[T]he Commission's Rules of Practice do not prohibit the admission of hearsay evidence."); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 411-12 (1976).

Furthermore, the Intervenors have had this information for over a full month. See Attachment 1. During that time, the Intervenors could have made their own inquiry into this matter and could have talked with the same people LILCO contacted. The Intervenors then could have presented their own testimony on the school evacuation plans of counties at other nuclear facilities in the State. The Intervenors chose not to do so.

LILCO's position is further supported by the Board's resolution of a similar dispute during the Reception Center remand proceeding. During that proceeding, LILCO presented evidence gathered by one of its consultants who was not a witness about the monitoring capabilities of counties surrounding other nuclear power plants in the State. Since LILCO did not provide the Intervenors with the names of the county planners it had contacted, the Intervenors moved to compel the source of the data. See Suffolk County and State of New York Motion to Compel LILCO to Provide Sources of Data Relied Upon in Testimony (April 13, 1987). When LILCO refused to provide the data, Suffolk County moved to strike the testimony. See Suffolk County, State of New York and Town of Southampton Motion to Strike Portions of LILCO's Testimony on the Suitability of Reception Centers (April 20, 1987). The Board ruled on the Intervenors' motion to compel on April 30, 1987 stating that LILCO should make available to the Intervenors "the identities of the individuals that furnished the data." Memorandum and Order (Ruling on County and State Motion to Compel, of April 13, 1987) at 8 (April 30, 1987). The Board reasoned that "[t]he source of the data is critical to determining its reliability and validity. . . . If the testimony is to be part of the record Intervenors should be provided with the information as to who provided the data."^{4/} *Id.* at 6. In

^{4/} The Board granted LILCO's request for a protective order ruling that there was "good cause for the entry of a protective order" due to the "acrimonious atmosphere" of the Shoreham litigation and because "[e]xtensive pressure has been brought upon individuals, groups and organizations that cooperate and participate with LILCO in the emergency plan. Participants have succumbed to such pressures to LILCO's detriment." April 30 Memorandum and Order at 8. LILCO decided to withdraw the testimony rather than turn over the names of LILCO's contacts to the Intervenors.

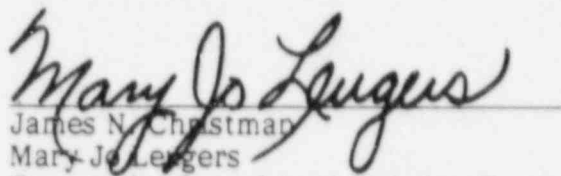
ruling on the intervenors' motion to strike, the Board decided that if LILCO produced the source of the data, the "Intervenors' cause for complaint" would be removed and that "[i]t should permit them 'the opportunity they desire to conduct an appropriate investigation of the basis of the [data] for effective cross-examination.'" Memorandum and Order (Ruling on Governments' Motion to Strike Portions of LILCO's Testimony on the Suitability of Reception Centers) at 8 (May 7, 1987).

The Board's reasoning in the Reception Center remand proceeding is instructive here. During that proceeding, the Board found that the information would be admissible if LILCO provided the intervenors with the source of the data. Here, LILCO provided the intervenors with the source of the data over a month ago. Therefore, they have the information they need "to conduct an appropriate investigation of the basis of the [data] for effective cross-examination." Id.

III. Conclusion

For the reasons cited above, the intervenors' April 20, 1987 motion to strike LILCO's testimony should be denied.

Respectfully submitted,


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DATED: April 27, 1988

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March 22, 1988

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BY TELECOPY

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School Bus Driver Discovery

Dear Mike:

Notwithstanding the fact that the enclosed information is protected by the attorney client privilege and the work product doctrine, I am providing you with Richard Watt's documentation of the data he collected about how counties evacuate schools at other nuclear power plants in New York State. As you know, the data was collected by Mr. Watts at the direction of Doug Crocker and LILCO's attorneys in preparation of LILCO's case concerning "role conflict" of school bus drivers. By providing the enclosed documents, LILCO does not waive its claim of privilege.

Sincerely yours,

Mary Jo
Mary Jo Leugers

MJL/d1

	<u>EVACUATION NAME</u>	<u>NUMBER OF BUSES</u>	<u>EQUIPMENT</u>	<u>TRAINING</u>	<u>CONTACT</u>
NEARDE	SINGLE NAME	WENTZER S.D. MAY'L SCHOOL BUS (CONTRACT) FAIRPORT S.D. (ALTERNATE)	SCHOOL DISTRICT DRIVERS ISSUED TLNG, MORNETERS, KT, MAPS AT BUS GARAGE; BUS CO. DRIVERS PICK UP KITS AT ASSIGNED SCHOOLS. EACH BUS HAS RADIO.	ANNUAL 2-HR CLASS ON EMERGENCY WORKER ASPECTS	JIM REINHOLD (NEARDE SHELTER & & EVAC OFFICER); W.L. B-BELL (WENTZER S.D. TRANSPORT. DIR) (2/14/88)
WAYNE	SINGLE NAME	WAYNE CENTRAL S.D. PARISH S.D. VILLIAMSON S.D. PEWFIELD S.D. (ALTERNATE)	DRIVERS PICK UP KITS AT SCHOOLS; SOME BUSES HAVE RADIOS, OTHERS ARE ESCORTED BY POLICE.	ANNUAL EMERGENCY WORKER TRAINING	THELMA WIDEMAN (DIRECTOR, WAYNE EMERG MGMT OFFICE) (2/28/88)
OSWEGO	SINGLE NAME	OSWEGO S.D. MEXICO S.D. GOLDEN SUN CENTRO GIBSON BUS SERVICE OSWEGO CO BOCES	BUS DRIVER KIT AT BUS GARAGES; SOME BUSES HAVE RADIOS, OTHERS ASSISTED BY R.A.C.E.S.	ANNUAL EMERGENCY WORKER TRAINING (APPROX. 8 HRS)	GEO. BRODER (DIRECTOR, OSWEGO EMERG. MGMT OFFICE) (2/29/88)
PUTNAM	SINGLE NAME	PUTNAM VALLEY S.D. HIDDEN VALLEY BUS CO. HARRIS S.D. HILBANE S.D. GARRISON S.D.	BUS KITS AVAILABLE AT BUS CO. OR AT BUS GARAGE. BUSES HAVE RADIO CONTACT TO BUS GARAGES.	ANNUAL EMERGENCY WORKER TRAINING (2-3 HOURS)	MARIO RAMPOLA (DEP. DIRECTOR PUTNAM CO. CO) (3/9/88)
ORANGE	SINGLE NAME	WEST POINT TOURS BOUCH BUS CO. CARROLL BUS CO.	BUS KITS AT BUS CO. BUSES HAVE RADIOS.	ANNUAL EMERGENCY WORKER TRAINING PROVIDED BY W.POINT TOURS & COUNTY	PHIL SCHNER (ASST DIR, ORANGE EMERG MGMT OFFICE) (3/11/88) JERRY BRISMAN (WEST PT TOURS)

SCHOOL BUS EVACUATION SURVEY REV. 1

<u>County</u>	<u>Evacuation Mode</u>	<u>Source of Buses</u>	<u>Equipment</u>	<u>Training</u>	<u>Contact</u>
Monroe	Single Wave	Webster S.D. Nat'l School Bus (Contract) Fairport S.D.	School district drivers issued TLDs, dosimeters, KI, maps at bus garage; bus co. drivers pick up kits at assigned schools. Each bus has radio.	Annual 2-hr class on emergency worker aspects	Jim Reinhold (Monroe Shelter & Evac Officer); Wm. O'Dell (Webster, S.D. Transp. Dir) (2/25/88)
Wayne	Single Wave	Wayne Central S.D. Marion S.D. Williamson S.D. Penfield S.D. (Alternate)	Drivers pick up kits at schools; some buses have radios, others are escorted by police.	Annual emergency worker training	Thelma Wideman (Director, Wayne Emerg Mgmt Office) (2/25/88)
Oswego	Single Wave	Oswego S.D. Mexico S.D. Golden Sun Centro Gibson Bus Service Oswego Co. BOCES	Bus driver kit at bus garages, some buses have radios, others assisted by R.A.C.E.S.	Annual emergency worker training (approx. 8 hrs)	Geo. Brower (Director, Oswego Emerg Mgmt Office) (2/29/88)
Putnam	Single Wave	Putnam Valley S.D. Hudson Valley Bus Co. Mahopac S.D. Haldane S.D. Garrison S.D.	Bus kits available at bus co. or at bus garage. Buses have radio contact to bus garages.	Annual emergency worker training (2-3 hours)	Mario Rampola (Dep. Director Putnam Co. CD) (3/9/88)
Orange	Single Wave	West Point Tours Bosch Bus Co. Carroll Bus Co.	Bus kits at bus co. Buses have radios.	Annual emergency worker training provided by W. Point tours & county	Phil Schmer (Asst Dir, Orange Emerg Night Office); (3/11/88) Jerry Brisman (West Pt Tours)

<u>County</u>	<u>Evacuation Mode</u>	<u>Source of Buses</u>	<u>Equipment</u>	<u>Training</u>	<u>Contact</u>
Rockland	Single Wave	School Districts and other bus companies; coordinated through dept. of public transportation.	Bus kits TLDs, dosimeters, KI, maps; kept at EOC.	Annual 4-hr class on emergency worker aspects	Susan Rutledge (Public Info Coord-also does school planning) (2/17/88)
West-chester	Single Wave	School districts and other bus companies; coordinated through Co. EOC; county does not check out bus drivers.	Kits distributed at S.D. garages and bus companies. Some buses have radios; those without travel with buses that do. Use R.A.C.E.S.	Annual 3-hr class on emergency worker aspects	Ed Nullett (Dir. of Co. Office of Emergency Services) (2/17/88) William Murphy (Radiological Preparedness Coordinator) (2/18/88)

LILCO, April 27, 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 ANSWER OPPOSING INTERVENORS' MOTION TO STRIKE LILCO'S TESTIMONY 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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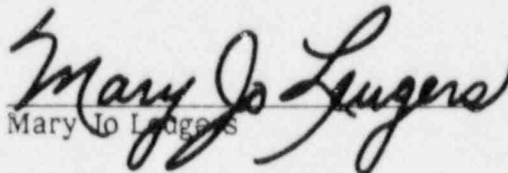
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