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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing BoardOFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322-0L-5
) (EP Exercise)
(Shoreham Nuclear Power Station)
Unit 1))

**LILCO'S MOTION TO STRIKE PORTIONS
OF THE TESTIMONY OF DAVID HARRIS AND MARTIN MAYER
CONCERNING CONTENTION EX 47 (REGISTRATION, MONITORING,
AND DECONTAMINATION OF SPECIAL FACILITY EVACUEES) AND
CONTENTIONS EX 22.A AND 49 (MONITORING AT THE NASSAU COLISEUM)**

Long Island Lighting Company ("LILCO") hereby moves to strike portions of the direct testimony of David Harris and Martin Mayer on behalf of Suffolk County regarding Contention EX 47, dealing with registration, monitoring, and decontamination of special facility evacuees, and regarding Contentions EX 22.A and EX 49, dealing with monitoring at Nassau Coliseum. ("Harris and Mayer Testimony"). The reasons why specific portions of the testimony must be struck are set forth below.

I. CERTAIN PORTIONS OF THE HARRIS AND MAYER TESTIMONY ARE
OUTSIDE THE SCOPE OF THE CONTENTION

Pursuant to Section 2.743(c) of the NRC's Rules of Practice, LILCO moves to strike certain portions of the Harris and Mayer Testimony on the ground that it is not relevant to the issues in contention. Irrelevant testimony is the proper subject of a motion to strike. 10 C.F.R. Part 2 Appendix A, V.(d)(7). The Licensing Board's authority to grant such motions is provided in 10 C.F.R. § 2.757(b), "[t]o prevent unnecessary delays or an unnecessarily large record. . . ." The exercise of this authority is

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particularly appropriate where, as here, the proceeding is expedited, the issues in controversy are narrowly focused on one day's events, and collateral planning issues have been extensively litigated in a prior proceeding.

LILCO moves to strike the specific portions of testimony detailed below because they are outside the scope of Contention EX 47 and are therefore irrelevant. The only issues raised by Contention EX 47 are whether LILCO demonstrated the ability to register, monitor, and decontaminate special facility populations during the February 13, 1986 Exercise, and whether provisions of Revision 7 of the LILCO Plan are sufficient to protect the special facility population during an emergency. The objectionable portions of the Harris and Mayer Testimony shed no light on LILCO's ability during the February 13 Exercise to register, monitor, and decontaminate special facility evacuees. Instead, the testimony speculates on matters not fairly raised by the contention and raises planning issues already resolved during the litigation of the LILCO Plan. Accordingly, the following references should be stricken:

Page and Line Reference

page 16, line 9 - page 17, line 4

Text to be Stricken

"In general, LILCO proposes to recommend sheltering for hospital patients, even if an evacuation is recommended for all other individuals in the EPZ. If a decision is made to evacuate the hospitals, however, under the LILCO Plan LILCO would provide necessary transportation for such evacuation on an ad hoc basis, after all the other special facility residents and individuals requiring transportation assistance had been evacuated and the necessary vehicles had become available. See OPIPs 3.6.1; 3.6.5. Further, according to the Plan as exercised, patients evacuated from hospitals would be transported to reception hospitals. But, such hospitals are not identified in the Plan; instead the Plan merely contains the note "(filled in at time of emergency)" for the "reception centers" for hospitals. OPIP 3.6.5, Attachment 2. So, even though LILCO

Text to be Stricken, Cont'd

acknowledges the potential need to evacuate hospital patients, and the need, in the event of such an evacuation, to transport patient evacuees to reception hospitals, the LILCO Plan as exercised provides no basis to determine that such reception hospitals exist, nor is there any provision for the registration, radiological monitoring, or decontamination of patient evacuees at the unidentified reception facilities."

The hospital evacuation procedures discussed in this answer are in no way implicated by events occurring during the Exercise. On the day of the Exercise, the scenario called for sheltering of hospital patients, not evacuation.

The LILCO Plan procedures for the sheltering and evacuation of hospital patients were thoroughly reviewed in the Plan litigation. Without criticizing the evacuation procedures, the Licensing Board approved sheltering as a first-choice protective action and concluded:

LILCO's preference for sheltering of hospital patients is well-founded, both because of the likelihood that radiation levels near the 10-mile EPZ boundary will not be excessive in most accidents and because of the specially sensitive nature of hospital patients who require special care. PID at 846.

LILCO's evacuation procedures for hospitals have already been approved; they were not used on the day of the Exercise because the Exercise scenario did not call for it. Thus, LILCO's ability to evacuate hospitals and the procedures for accomplishing that evacuation are unrelated to any fact in issue in this proceeding.

Page and Line References

page 19, line 14 - page 20, line 4

Text to be Stricken

The paragraph "Registration is essential for several reasons. First, families and loved ones must be able to locate special facility residents after an accident.

Text to be Stricken, Cont'd

Second, records must be kept concerning the effects of the accident, the evacuation process, and subsequent care and treatment of special facility residents on preexisting health conditions. Third, records must be kept on radiological exposures and contamination to permit the necessary medical follow-up on individuals who have been contaminated. In addition, such records are an invaluable source for epidemiological evaluations conducted after a radiological accident to understand its consequences and make future policies."

This portion of the testimony purports to explain the reasons behind the registration requirements of NUREG 0654. It assumes an elaborate system of medical recordkeeping requirements where none exists. The testimony then suggests that epidemiological evaluations be made on the basis of this data.

The assumption is erroneous as are the conclusions following from it. NRC regulations do not require LILCO to keep medical records. Further, medical records and epidemiological studies bear no relation to events that occurred at the February 13 Exercise.

This portion of the testimony also seeks to raise planning issues. LILCO Plan procedures for the protection of special facility populations were extensively reviewed, and resolved, in the Plan litigation and therefore are outside the scope of this proceeding. See PID at 835.

Page and Line Reference

page 20, lines 8-11

Text to be Stricken

The sentence "Such fears and anxieties may be particularly great among individuals with special needs and their families."

Without providing any factual basis, the testimony speculates that fears of contamination will be greater among the special facility populations and their families. Nowhere does the testimony explain why this might be so. Nor does the testimony relate to the issues raised by the contention: whether LILCO can in the future or did on February 13, 1986, register, monitor, and decontaminate special facility evacuees. Therefore, this sentence is irrelevant and must be stricken.

Page and Line Reference

Text to be Stricken

page 21, lines 10-19

The sentences "First, in our professional opinion, responsible officials of special facilities -- be they adult homes, nursing homes, facilities for the handicapped, or schools -- would never permit their patients to be evacuated absent a prior demonstration of adequate facilities and procedures for the registration, monitoring, decontamination, housing and care of their patients or charges. Since LILCO failed to provide such a demonstration, we conclude that LILCO lacks the capability to implement the protective action of evacuation of special facility residents."

Whether special facility administrators would allow their residents to be evacuated has nothing to do with the allegation in the contention that LERO workers can not register, monitor, and decontaminate those evacuees. Moreover, that precise issue was decided in the litigation of the LILCO Plan. There, the Licensing Board rejected the view that LILCO must coerce the cooperation of special facility administrators, and stated:

The only action expected of these organizations is to act in their own interest to protect themselves from radiation by either sheltering or evacuation. They require assistance in determining whether to shelter or evacuate, and if evacuation is ordered, for the necessary transportation. LILCO has provided for transportation for these facilities. Furthermore, it has conducted discussions with these facilities to inform them about the options of sheltering or evacuation and it has provided adequately for notification of these facilities.

...

LILCO's responsibility in this matter is to provide assistance and advice which would enable people with ordinary incentives for self-protection to take appropriate actions. PID at 835.

Finally, there are no facts in the testimony that support this conclusion about attitudes of special facility administrators. For all of these reasons, these statements are irrelevant and must be stricken.

Page and Line Reference

Text to be Stricken

page 27, lines 4-8

The sentence "But, in general, the types of facilities which could be appropriate for this purpose are not set up or laid out to include sheltered areas either outside their buildings, or in foyers, where monitoring of large numbers of persons with special needs could be performed."

After admitting that they have no identified facility in mind, the witnesses speculate as to why the unnamed facility will be flawed. Conjecture about facilities that LILCO does not use cannot assist the trier of fact in determining the adequacy of LILCO's February 13, 1986 performance or the efficacy of its Plan. The testimony is not probative of any material fact and must be stricken.

II. THE WITNESSES ARE NOT QUALIFIED TO RENDER CERTAIN OPINIONS

LILCO moves to strike portions of the Harris and Mayer Testimony on the ground that Drs. Harris and Mayer are not qualified to testify as experts in the areas of radiological monitoring and decontamination, or in the area of radiation health effects. Health physics, the scientific rubric under which radiological monitoring, decontamination, and radiation health effects fall, is a highly technical and well-defined specialty. It is not an area on which Drs. Harris and Mayer, as public health physicians, can reliably opine.

The resume attached to Dr. Harris's testimony indicates that he has no education or experience in health physics. The description of his current position as Suffolk County's Commissioner of Health Services lists no duties that require or make use of a health physics background. Nor do his past positions or professional activities include this type of expertise. The focus of Dr. Harris' professional career has been public health and pediatrics.

Only one of Dr. Harris's publications, "Total Body Irradiation," published in 1961, has any relationship to radiological medicine. This paper discussed irradiation as a method for destroying leukemic bone marrow in order to substitute healthy bone marrow. It has nothing to do with the potential health effects of radiation releases from nuclear power plants. A copy of that portion of Dr. Harris's 1983 deposition transcript from the litigation of the LILCO Plan which describes this paper is attached hereto (Attachment A).

Similarly, Dr. Mayer's resume lists no education or experience in the science of health physics. After completing an internship in pathology, Dr. Mayer obtained a master's degree in public health in 1972. Since that time he has worked at the Suffolk County Department of Health Services.

These witnesses' lack of expertise is confirmed by their deposition testimony. During Dr. Harris's deposition he testified:

Q. Dr. Harris, do you consider yourself an expert in radiological monitoring or decontamination?

A. No.

Q. And you don't claim to be an expert in nuclear or radiological medicine?

A. No, I do not.

Deposition of David Harris, M.D. and Martin David Mayer, M.D., February 6, 1987, at 16. (The deposition pages cited throughout this motion are collected in Attachment B.)

Dr. Harris further testified that he had never participated in any training related to radiological monitoring:

Q. Does the Department of Health Services conduct training of any of its employees in radiological monitoring?

A. It does not conduct it, but it sends members of its staff to training programs that are held, for example, by the State and I believe sometimes by the Federal Government.

...

Q. Have you personally taken that training?

A. No.

Deposition Transcript of David Harris, M.D. and Martin David Mayer, M.D., February 6, 1987 at 17 (Attachment 2).

Similarly, at deposition Dr. Mayer testified:

Q. Do you consider yourself an expert in radiological monitoring?

A. No.

Q. In radiological decontamination?

A. No.

Q. Have you been trained in either area?

A. No.

Q. Have you taken any courses on radiation sources or measurement or monitoring?

A. I'm an engineer by original training in an engineering school. I'm a chemical engineer. I may have had a course, and I would have to go back and look at a transcript, on radiation as part of a chemical engineering course back in the late 50's. I can't recall specifically, but otherwise, nothing.

Deposition Transcript of David Harris, M.D. and Martin David Mayer, M.D., February 6, 1987, at 24-25 (Attachment 2).

Drs. Harris and Mayer's lack of training, knowledge, or experience in health physics renders them incompetent to testify on such issues. Their medical knowledge of the detection and spread of disease is in no way comparable to the health physics principles that explain the detection and spread of contamination. Consequently, the portions of the testimony specifically identified below are incompetent and unreliable and should be stricken on that basis.

Page and Line References

Text to be Stricken

page 31, lines 14-17

The sentence "Depending upon the type of contamination involved, a delay in decontamination procedures could increase the exposure of the individual, and thereby increase the potential for harmful health effects."

page 31, line 18-page 32, line 1

The sentence "Furthermore, from a medical point of view, the decontamination process should be initiated as soon as possible not only to minimize the health threat to the exposed individual, but also to minimize the potential of exposing others, such as those whom LILCO proposes to be in the buses or other vehicles with the contaminated persons, those who would be in those vehicles subsequently, and others who may come in contact with the contaminated individual."

page 33, lines 26-page 34, lines 1-4

The sentence "Accordingly, it is essential that they be monitored as soon as possible not only for their own protection, but to reduce the likelihood that any contamination they might have would be spread or dispersed, thereby endangering others."

page 49, lines 6-19

The sentences "If the pressure of knowing there has been a real radiological accident, or the "pressure" caused by knowing there are thousands of individuals in line demanding to be monitored, made LILCO monitors go faster, we would be very concerned about the accuracy and adequacy of the monitoring. If anything, knowing that people really were contaminated should make monitors be more careful, and take longer, rather than causing them to speed up."

III. CONCLUSION

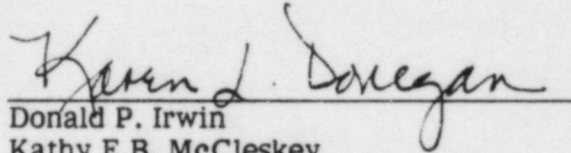
For the reasons stated above, LILCO respectfully requests that this Board strike:

- 1) Page 16, line 9 - Page 17, line 4;
- 2) Page 19, line 14 - Page 20, line 4;
- 3) Page 20, lines 8 - 11;
- 4) Page 21, lines 10 - 19;
- 5) Page 27, lines 4 - 8;
- 6) Page 31, lines 14-17;
- 7) Page 31, line 18 - Page 32, line 1;
- 8) Page 33, line 22-26 - Page 34, lines 1 - 4; and
- 9) Page 49, line 16-19

of the "Testimony of David Harris and Martin Mayer on Behalf of Suffolk County Concerning Contention EX 47."

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY



Donald P. Irwin
Kathy E.B. McCleskey
Karen L. Donegan

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Richmond, Virginia 23212

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 Before the Atomic Safety and Licensing Board

3 -----x

4 In the matter of:
5 LONG ISLAND LIGHTING COMPANY Docket No.
6 (Shoreham Nuclear Power Station, 50-322-OL-3
7 Unit 1) (Emergency
8 Planning)

6 -----x

7 Hauppauge, N.Y.

8 Friday, October 14, 1983

9

10 DEPOSITION OF DAVID HARRIS, called for
11 examination by counsel for LILCO in the above-entitled
12 action, pursuant to notice, the witness having been duly
13 sworn by NICHOLAS J. TORRE, a Notary Public in and for
14 the State of New York, at the offices of the Suffolk
15 County Executive, H. Lee Dannison Building, Veterans
16 Highway, Hauppauge, New York, at 1:35 p.m., the
17 proceedings being taken down by Stenotype by NICHOLAS J.
18 TORRE, and transcribed under his direction.

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1 enforcement and setting of standards are clearly state.
2 There was a time, during my tenure, when the department
3 was delegated the responsibility for doing the
4 inspections, but that delegation was withdrawn several
5 years ago.

6 In that case, the state took on the
7 responsibility for the inspections in the hospitals,
8 which we used to do.

9 Q In your resume, sir, I have noticed a
10 number of papers and presentations in each of the
11 pediatric and public health areas, generally.

12 A All right.

13 Q There are literally dozens of them I
14 didn't notice any, though, that related particularly
15 either to nuclear medicine or radioactive areas of
16 interest, or to any kinds of, call it, disaster or
17 contingency planning, to the extent that is a public
18 health phenomenon.

19 Are there any such entries in your resume
20 that come to mind, immediately?

21 A Well, you are quite correct, when you say
22 that you don't notice many, if you said that. There is

1 just one paper, which I wrote in my youth, when I was in
2 Washington, D.C.

3 This was done at the National Naval
4 Medical Center, entitled "Tctal Body Irradiation."

5 That is part of a report that my
6 colleagues and I made on our experience with total body
7 irradiation.

8 It was used then on an experimental
9 basis, for the treatment of desperately ill children
10 with leukemia.

11 Our work had to do with the use of total
12 body irradiation in what would have been lethal doses,
13 to destroy leukemic cells and leukemic bone marrow, so
14 that the person would be receptive to bone marrow
15 transplantation.

16 That is the only part of my published
17 work that bears on radiation and radiation biology, that
18 I recall, and I don't recall any other papers or
19 presentations not here, that bear on it.

20 That is with the exception, say, of my
21 association of my name with the final report of the
22 Sandia Labs on the transportation of the wastes.

TRANSCRIPT OF PROCEEDINGS

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

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In the Matter of: :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-5
 : (EP Exercise)
(Shoreham Nuclear Power Station, :
Unit 1) : (ASLBP No. 86-533-01-OL)
----- -x

DEPOSITION OF DAVID HARRIS, M.D. and MARTIN DAVID MAYER, M.D.

Long Island, New York

Friday, February 6, 1987

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marysimons 1 see on page 3. I very recently resigned from the New York
2 State Advisory Council on Mental Retardation and
3 Developmental Disabilities because of -- I just had too much
4 work to do and was unable to unable to keep up with the
5 press of work and that still shows me as being a member.

6 What is missing from the professional activities
7 -- that's correct. I thought I saw something wrong. No,
8 it's correct. Other than that, it's correct.

9 Q Dr. Harris, do you consider yourself an expert in
10 radiological monitoring or decontamination?

11 A (Witness Harris) No.

12 Q And you don't claim to be an expert in nuclear or
13 radiological medicine?

14 A (Witness Harris) No, I do not.

15 Q I have just a few questions about your duties as
16 a Health Commissioner. I see in the first paragraph, the
17 first big paragraph under Commissioner of Health Services
18 that you've listed environmental health services. What do
19 you mean when you refer to that? Do you see that?

20 A (Witness Harris) Where do you see that?

21 Q It's in about the middle of the paragraph.

22 A (Witness Harris) Oh, it's not the first thing

marysimons 1 listed. You threw me off with that. It's one of a number
2 of things listed.

3 Environmental health services refers to those
4 activities in the Department of Health Services in Suffolk
5 County which protective individuals in the population from
6 hazards, polluted water, polluted air, bad housing,
7 unsanitary food and the like.

8 Q Does the Department of Health Services conduct
9 training of any of its employees in radiological monitoring?

10 A (Witness Harris) It does not conduct it, but it
11 sends members of its staff to training programs that are
12 held, for example, by the State and I believe sometimes by
13 the Federal Government.

14 Q ^{Why} What would you say that the Health Department
15 sends its employees for that kind of training?

16 A (Witness Harris) One, because that kind of
17 training is made available, it's of high quality, and we do
18 not have the kind of staff who can train themselves. They
19 require a little expertise which is not available within the
20 Department. Those are the reasons.

21 Q Have you personally taken that training?

22 A (Witness Harris) No.

marysimons 1

2 Q And I take it you have never personally trained
any of your employees?

3 A (Witness Harris) No, not in that aspect.

4 Q Let's take a jump over to the second page,
5 Academic Appointments. Could you tell me what the New
6 School for Social Research is?

7 A (Witness Harris) The New School for Social
8 Research is an institution of higher education licensed in
9 the State of New York to confer undergraduate and graduate
10 degrees. It's headquarters is in the City of New York, but
11 it operates on many campuses throughout the State, Suffolk
12 County being one.

13 Q What do you teach there?

14 A (Witness Harris) I teach two courses from time
15 to time. One is called health in the community, which is a
16 basic course for master's candidates on the essentials of
17 epidemiology and on the basic principles and approaches of
18 public health.

19 The other course that I teach is an entry level
20 survey course of United States health care institutions. I
21 think it's called the United States Health Care System or
22 something like that. The name of the course varies.

marysimons 1

2 What about the last paper listed there? Can you
3 tell me the gist of what that's about?

4 A (Witness Harris) That was along the same lines.
5 People who had read my editorial asked me if I would go to
6 the preventive medicine meeting called Prevention '85 to
7 give an expansion of some of the things I expressed in the
8 editorial, and I said I would be glad to. So it was along
9 the same lines.

10 Q Dr. Mayer, I'm going to spare you questions on
11 your resume. I just have a few general questions.

12 Do you consider yourself an expert in
13 radiological monitoring?

14 A (Witness Mayer) No.

15 Q In radiological decontamination?

16 A (Witness Mayer) No.

17 Q Have you been trained in either area?

18 A (Witness Mayer) No.

19 Q Have you taken any courses on radiation sources
20 or measurement or monitoring?

21 A (Witness Mayer) I'm an engineer by original
22 training in an engineering school. I'm a chemical
engineer. I may have had a course, and I would have to go

marysimons 1 back and look at a transcript, on radiation as part of a
2 chemical engineering course back in the late 50's. I can't
3 recall specifically, but otherwise, nothing.

4 Q The rest of these questions are to both of you.

5 When did you first see the contentions that were
6 filed in this proceeding?

7 A (Witness Harris) Let me think. I believe the
8 first time I saw them was when they were mailed to me, but
9 them I put them aside, and though I saw them, I didn't pick
10 them up really and look at them carefully until that week or
11 10 days or so ago that I mentioned before. They sat in my
12 bedroom near my arm chair.

13 A (Witness Mayer) In my case that sat on a
14 bookcase in my office until about approximately the same
15 time. When I noticed on my calendar that this was coming
16 up, I picked them up off the bookcase about 10 days or two
17 weeks ago, approximately that time, and started reading
18 them.

19 Q You said you were mailed the contentions. Were
20 you mailed the whole set or just the few that you might
21 testify or what?

22 A (Witness Harris) I was mailed two certainly of

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I have read the foregoing pages
through , inclusive, which
contain a correct transcript of
the answers made by me to the
questions therein recorded.
Signature is subject to
corrections.

DAVID HARRIS, M.D.

MARTIN DAVID MAYER, M.D.

* * * * *

I, , Notary Public in and
for the , do hereby certify that I am
notarizing and witnessing signatures for the Deposition of
DAVID HARRIS, M.D. and MARTIN DAVID MAYER, M.D. on
this day of , 19 .

Notary Public in and for the
My Commission expires

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CERTIFICATE OF SERVICE

'87 MAR 23 P12:32

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Under Construction)
Docket No. 50-322-OL-5

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that copies of LILCO'S MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF DAVID HARRIS AND MARTIN MAYER CONCERNING CONTENTION EX 47 (REGISTRATION, MONITORING, AND DECONTAMINATION OF SPECIAL FACILITY EVACUEES) AND CONTENTIONS EX 22.A AND 49 (MONITORING AT THE NASSAU COLISEUM) were served this date upon the following by Federal Express as indicated by an asterisk, or by first-class mail, postage prepaid.

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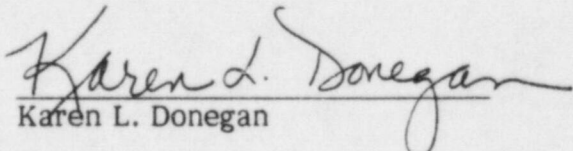
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DATED: March 19, 1987


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