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April 29, 1987

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'87 MAY -4 A10:44

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
ADMINISTRATIVE & 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 PORTIONS OF LILCO'S TESTIMONY

I. INTRODUCTION

On April 20, 1987, Intervenors filed "Suffolk County, State of New York and Town of Southampton Motion to Strike Portions of LILCO's Testimony on the Suitability of Reception Centers" ("Motion"). Intervenors have moved to strike portions of the testimony of Messrs. Dale E. Donaldson and Charles A. Daverio. For the reasons given below, the Staff opposes the Motion as it applies to Mr. Donaldson. The Staff takes no position with regard to Mr. Daverio's testimony.

II. DISCUSSION

Intervenors argue that the portion of Mr. Donaldson's testimony which refers to the "precursor" document to NUREG-0654 is irrelevant, immaterial, and prejudicial to Intervenors. Motion at 2. Moreover, they

invoke the "best evidence" rule to bar reference to the document. Id. at 5.

There can be no argument that the interpretation of Section J.12 of NUREG-0654 is relevant to the determination of compliance with 10 C.F.R. § 50.47(b). Its guidance is at the heart of the planning basis for the number of people to be monitored by LILCO in the event of an accident at Shoreham. Part of Mr. Donaldson's testimony is based on his early involvement in the creation of NUREG-0654, and it is this part Intervenor's want stricken. It is difficult to see how such testimony could not be relevant to the issues before the Board.

As far as the nonexistence of the "precursor" document and possible prejudice to the Intervenor's is concerned, the question here is not what was contained in the "precursor" document, but rather it is the light Mr. Donaldson might be able to shed on the meaning and origins of Section J.12. <sup>1/</sup> The fact that Mr. Donaldson contributed to the writing of a particular document serves to place into context his recollections of the intent of the participants in the early development of NUREG-0654. If Intervenor's Motion is granted, the Board and parties would be foreclosed from examining Mr. Donaldson in this area. In the Staff's view, the testimony at issue fulfills the Appeal Board's criteria for admissibility: it will assist the trier of fact and it is rendered by a properly qualified witness. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1091 (1983).

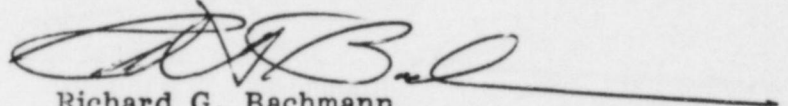
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<sup>1/</sup> The "best evidence" rule is not relevant where there is no showing that there is any better evidence of the contents of the document than the testimony of Mr. Donaldson.

III. CONCLUSION

For the reasons discussed above, the Board should deny Intervenor's Motion insofar as it seeks to strike the testimony of Dale E. Donaldson.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'R. G. Bachmann', with a long horizontal line extending to the right.

Richard G. Bachmann  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 29th day of April, 1987



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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION TO STRIKE PORTIONS OF LILCO'S TESTIMONY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of April, 1987:

Morton B. Margulies, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Joel Blau, Esq.  
Director, Utility Intervention  
Suite 1020  
99 Washington Avenue  
Albany, NY 12210

Jerry R. Kline\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Fabian G. Palomino, Esq.  
Richard J. Zahnleuter, Esq.  
Executive Chamber  
State Capitol  
Albany, NY 12224

Frederick J. Shon\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Jonathan D. Feinberg, Esq.  
New York State Department of  
Public Service  
Three Empire State Plaza  
Albany, NY 12223

Philip McIntire  
Federal Emergency Management  
Agency  
26 Federal Plaza  
Room 1349  
New York, NY 10278

James N. Christman, Esq.  
Donald P. Irwin, Esq.  
Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, VA 23212

Douglas J. Hynes, Councilman  
Town Board of Oyster Bay  
Town Hall  
Oyster Bay, New York 11771

Stephen B. Latham, Esq.  
Twomey, Latham & Shea  
Attorneys at Law  
33 West Second Street  
Riverhead, NY 11901

Atomic Safety and Licensing  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing  
Appeal Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Martin Bradley Ashare, Esq.  
Suffolk County Attorney  
H. Lee Dennison Building  
Veteran's Memorial Highway  
Hauppauge, NY 11788

Dr. Monroe Schneider  
North Shore Committee  
P.O. Box 231  
Wading River, NY 11792

Ms. Nora Bredes  
Shoreham Opponents Coalition  
195 East Main Street  
Smithtown, NY 11787

Anthony F. Earley, Jr.  
General Counsel  
Long Island Lighting Company  
175 East Old Country Road  
Hicksville, NY 11801

Dr. Robert Hoffman  
Long Island Coalition for Safe  
Living  
P.O. Box 1355  
Massapequa, NY 11758

Mary M. Gundrum, Esq.  
New York State Department of Law  
120 Broadway  
3rd Floor, Room 3-116  
New York, NY 10271

Christopher M. Murray, Esq.  
David T. Case, Esq.  
Kirkpatrick & Lockhart  
South Lobby - 9th Floor  
1800 M Street, NW  
Washington, DC 20036-5891

Jay Dunkleberger  
New York State Energy  
Office  
Agency Building 2  
Empire State Plaza  
Albany, NY 12223

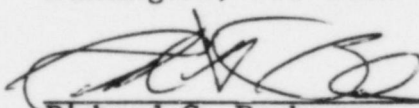
Spence W. Perry, Esq.  
General Counsel  
Federal Emergency Management  
Agency  
500 C Street, SW  
Washington, DC 20472

Robert Abrams, Esq.  
Attorney General of the State  
of New York  
Attn: Peter Bienstock, Esq.  
Department of Law  
State of New York  
Two World Trade Center  
Room 46-14  
New York, NY 10047

William R. Cumming, Esq.  
Office of General Counsel  
Federal Emergency Management  
Agency  
500 C Street, SW  
Washington, DC 20472

Docketing and Service Section\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Barbara Newman  
Director, Environmental Health  
Coalition for Safe Living  
Box 944  
Huntington, New York 11743

  
Richard G. Bachmann  
Counsel for NRC Staff