

April 30, 1987

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 )

(Shoreham Nuclear Power Station, )  
Unit 1) )

) Docket No. 50-322-OL-3  
) (Emergency Planning)  
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)

RESPONSE OF SUFFOLK COUNTY TO THE LILCO MOTION  
TO STRIKE DIRECT TESTIMONY OF JOHNSON AND SAEGERT

On April 13, 1987, Suffolk County submitted the Direct Testimony of James H. Johnson, Jr. and Susan C. Saegert ("Johnson and Saegert Testimony") on evacuation behavior and the impact of that behavior on the effective operation of LILCO's reception centers. LILCO's Motion to Strike Direct Testimony of Johnson and Saegert, dated April 18, 1987 ("Motion to Strike") seeks the exclusion of sections of the Johnson and Saegert Testimony which allegedly address issues previously litigated.

For the reasons set forth below, LILCO's Motion to Strike must be denied.

## BACKGROUND

The Johnson and Saegert Testimony addresses three points.

They are:

- (1) The location of the reception centers will lead to a large evacuation shadow;
- (2) The reception centers themselves will be perceived by some nearby residents as dangerous. This may cause some of them to evacuate, thus increasing background traffic; and
- (3) Evacuees will not necessarily follow the evacuation routes assigned, nor go to the specifically designated reception centers.

See Johnson and Saegert Testimony at 23.

The testimony is offered to address issues specified by the Board in its Order reopening the hearings on Contention 24.0, including:

- (1) Whether transportation and traffic problems might develop as a result of the reception centers' location and their distance from the plume EPZ;
- (2) Whether the reception centers' locations might create problems in regard to the evacuation shadow phenomenon;
- (3) The adequacy of the evacuation routes to the three reception centers; and
- (4) Whether the proposal to send evacuees to LILCO parking lots could or would ever be implemented in a way to protect public health and safety.

See Memorandum and Order (Rulings on LILCO Motion to Reopen Record and Remand of Coliseum Issue) (Dec. 11, 1986), at 7, 18-19 ("Dec. 11 Memorandum and Order").

LILCO's principal argument in seeking to strike portions of the Johnson and Saegert Testimony is that the County is attempting to relitigate issues previously addressed in the earlier emergency planning proceedings. As discussed below, LILCO supports this argument by mischaracterizing both: (1) the purposes for which the Johnson and Saegert Testimony is presented; and (2) the issues resolved in previous proceedings. In addition, LILCO advances numerous secondary points, also in error, in support of exclusion of portions of the testimony.

#### DISCUSSION

##### A. LILCO's Assumptions Concerning Evacuation Routes

LILCO's first objection pertains to testimony offered at pages 6-7 stating that LILCO has erred in assuming that evacuees will necessarily follow LILCO's complex evacuation routes in traveling from the EPZ to designated reception centers. LILCO alleges that the testimony seeks to relitigate the issue of evacuees' inability and unwillingness to follow emergency advisories. Motion to Strike at 1.

LILCO's objection is unfounded. In the previous litigation the County's experts testified that LILCO's evacuation time estimates were too short because those estimates assumed that all people would follow their pre-assigned routes out of the EPZ when



in fact many would deviate from those assigned paths. The Board found in LILCO's favor on this issue, relying particularly on certain sensitivity studies conducted by LILCO's traffic experts which demonstrated that deviations from the assigned paths out of the EPZ would not substantially increase evacuation times. PID, 21 NRC 644, 792-794 (1985). The Board did not conclude that there would not be deviation from assigned paths or that route deviation would never have an adverse impact on any activity. Rather, the Board's opinion was narrowly focused on the evidence presented.

In the present case, the issue and the evidence are not the same as in the earlier proceeding. Here, the County's witnesses attack the highway capacity analysis conducted by LILCO's experts which concludes that the evacuation routes leading to the reception centers (some 30 miles west of the EPZ) can handle all evacuation traffic going to the reception centers. The analysis, however, assumes no deviation from evacuees' assigned paths between the EPZ and the reception centers, and LILCO has offered no sensitivity studies demonstrating that such deviation will have no consequences. The States' DOT witnesses (Hartgen and Millspaugh), on the other hand, have conducted such analyses which demonstrate that such deviations will cause significant additional congestion on various paths to the reception centers.

The Board's previous finding that route deviation would not substantially alter evacuation times (i.e., the time required to cross the EPZ border) simply has no bearing on the present issue which concerns different roads, different destinations and different evidence. The testimony at issue clearly addresses traffic routing issues which could not have been addressed in earlier proceedings. LILCO's latest proposal to use three reception centers gives rise to destination and route choices which have not previously been addressed. The choice of three reception centers allows evacuees to exercise independent judgment not available under earlier versions of the LILCO Plan. See Johnson and Saegert Testimony at 6.<sup>1</sup>/ LILCO has ignored this factor in analyzing traffic flow and road capacity.

LILCO also objects to the witnesses' qualifications to refer to the testimony of New York's traffic experts. Motion to Strike at 1. The testimony in question is perfectly proper; it simply cites to the testimony of the State's traffic experts as further evidence to support the witnesses' conclusion that KLD's analysis overlooks the congestion which will result when evacuees exercise the independent choices the LILCO Plan permits. The conclusion

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<sup>1</sup>/ In fact, previously the Board noted that evacuees' information-processing capability would not be highly taxed since an evacuation would present "few decisional options available to individual drivers who are caught in slow-moving traffic streams." PID, 21 NRC at 800. However, LILCO's adoption of three centers with different routes of access has created the very "decisional options" which were not previously available in the evacuation scenario.

follows directly from their expert opinion regarding evacuation behavior; it merely states that one of the consequences of the behavior will be traffic congestion which LILCO has not contemplated.

B. "Background Testimony" Concerning the Shadow Phenomenon

LILCO objects to the brief portion of the Johnson and Saegert Testimony which seeks to put their testimony in context by providing a short explanation of the evacuation shadow phenomenon. See Johnson and Saegert Testimony at 8-10. LILCO argues that (1) the testimony is duplicative and attempts to relitigate the shadow phenomenon; and (2) there is no need for background testimony on an issue with which the Board and the parties are familiar. Motion to Strike at 1-2. These arguments are meritless.

First, the County's experts have every right to provide a brief explanation of the basis for their testimony. Written testimony has little value if the premise for the testimony is absent. The testimony at issue here merely puts their entire testimony in context. Thus, it is not improper; it is also brief.

In addition, LILCO ignores the Board's December 11 Memorandum and Order which specifically placed at issue whether "[the three LILCO facilities'] location might create problems in



regard to the evacuation shadow phenomenon." See Dec. 11 Memorandum and Order at 7, 16-18. Thus, testimony designed to address this issue, such as the testimony in question here, is perfectly proper.

C. The Sensory Evidence Testimony (pp. 10-11)

LILCO next moves to strike a portion of an answer explaining why the location of the reception centers will increase the evacuation shadow. LILCO mischaracterizes the testimony as an attempt to relitigate that "radiation is a colorless, odorless hazard and therefore different from other hazards." Motion to Strike at 2. LILCO's argument must be rejected.

In fact, the testimony simply addresses the evacuation shadow phenomenon issue which the Board has admitted as an issue in this proceeding. In explaining the likely dimensions of the shadow evacuation, the testimony in question concludes that the absence of environmental cues will magnify the importance of the location of the reception centers in defining the zone of risk. See Johnson and Saegert Testimony at 10-11. The perceived zone of risk, in turn, directly affects the magnitude of the shadow evacuation. This is merely an explanation of why the evacuation shadow phenomenon will be exacerbated by the location of the reception centers -- an issue which both this Board and the Appeal Board have ruled must be heard.

D.    Testimony Concerning the Result  
of an Expanded Evacuation Shadow

LILCO moves to strike a question and an answer on page 12 offered to explain the implications of an expanded evacuation shadow. LILCO alleges that the testimony should be stricken because: (1) it attempts to expand the EPZ to approximately 40 miles; and (2) relies on survey evidence in an effort to relitigate the shadow phenomenon issue and contradict the Board's 1985 findings on the predictive validity of polls. Motion to Strike at 2-3.

LILCO's contentions are unsupported by the facts. In particular, LILCO's bald assertion that the County is attempting to establish a 40-mile EPZ is unexplained and unexplainable. Obviously, a fair reading of the testimony reveals that the County is making no attempt to expand the EPZ to 40 miles. Rather, the Johnson and Saegert Testimony addresses two issues admitted by the Board: (1) whether transportation and traffic problems might develop as a result of the reception centers' location and distance from the plume EPZ; and (2) whether the reception centers' location might create problems in regard to the evacuation shadow phenomenon. See Memorandum and Order at 7, 16-18. The roadway capacity considerations discussed in the testimony are obviously relevant and material to the discussion of transportation and traffic problems which might develop as a result of the enhanced shadow phenomenon generated by the



reception centers' distance from the EPZ and the further evacuation of people from around the reception centers. Contrary to LILCO's assertion, these issues have never before been litigated.

As for the second contention, two points should be established. First, the County has already addressed the Board's conclusion that the evacuation shadow phenomenon is within the scope of the reopened hearing. Second, LILCO's citation to the PID's determination on the predictive validity of surveys is simply misleading. The PID concludes that the surveys taken by LILCO and Suffolk County lacked "literal predictive value" because the surveys failed to take note of the situation-specific information which would be made available at the time of an accident. See PID, 21 NRC at 667.

The conclusion was limited to the surveys in question and did no more than raise an issue of methodology. See PID, 21 NRC at 666-67. The PID's conclusion did not suggest that survey evidence is always inadmissible. Nor did the PID question the value of surveys which employ situation-specific information such as the survey in question here which is based on the emergency broadcast information which LILCO would provide in the event of a radiological emergency at Shoreham, as evidenced by the February 1986 Exercise. Indeed, the OL-5 Board recently admitted evidence regarding that survey on exactly that ground. Memorandum and

Order (Ruling on LILCO's and Staff's Motions to Strike Suffolk County's Testimony on Contentions Ex 38, Ex 39, Ex 22F, Ex 40C, Ex 49C) (April 17, 1987). Accordingly, LILCO's Motion to Strike must be denied.

E. Response to Mileti Testimony (p.13)

Next, LILCO moves to strike a portion of an answer responding to testimony presented by Dr. Mileti in LILCO's direct testimony. LILCO argues that the testimony seeks to relitigate both the issues of "credibility" and "pre-[ex]isting concerns about radiation." Motion to Strike at 3. LILCO is once again seeking to strike County testimony on issues which LILCO itself has raised.

The testimony which LILCO is attempting to strike directly addresses LILCO's own testimony that emergency information alone will define the public's perception of risk. See, e.g., LILCO Testimony at 14, 19, 25. The County's testimony refutes that extreme statement by providing evidence that spatial considerations have a direct and important impact on perception of risk. Furthermore, the importance of the information factors raised by LILCO's experts is undercut by the factors raised in the testimony at issue, such as credibility, which in turn enhances even more the spatial considerations advanced by the

County's witnesses. LILCO cannot introduce testimony and then seek to strike testimony offered to rebut it. This tactic is unfair and must not prevail.

F. Assignment of Reception Centers and Evacuation Routes

LILCO moves to strike all of Section V of the Johnson and Saegert Testimony (pp. 21-22). LILCO objects to the testimony as an attempt to relitigate: (1) whether people would use the evacuation routes designated by LILCO; and (2) the larger issue of whether people will follow emergency information. Motion to Strike at 3. LILCO also seeks to strike a sentence in the concluding portion of the testimony on the same grounds cited with respect to the Section V testimony.

For the reasons set forth in Section A above, LILCO's Motion to Strike this portion of the Johnson and Saegert Testimony must be denied. What LILCO seeks to achieve is to deny the Board the opportunity to consider testimony which: (1) challenges LILCO's unfounded assumptions that the evacuees will be capable of unerringly following its elaborate routing scheme to its three reception centers; and (2) reveals the adverse consequences of deviations from those routes. The testimony in question is admissible for purposes of challenging the assumptions underlying LILCO's direct testimony.



April 30, 1987 <sup>DOCKETED</sup> <sub>SNRC</sub>

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'87 MAY -1 A9:57

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of the RESPONSE OF SUFFOLK COUNTY TO LILCO'S MOTION TO STRIKE THE TESTIMONY OF STEPHEN COLE, ET AL., RESPONSE OF SUFFOLK COUNTY TO THE LILCO MOTION TO STRIKE TESTIMONY OF RADFORD ET AL., and RESPONSE OF SUFFOLK COUNTY TO THE LILCO MOTION TO STRIKE DIRECT TESTIMONY OF JOHNSON AND SAEGERT have been served on the following this 30th day of April, 1987 by United States mail, first class, except as otherwise noted.

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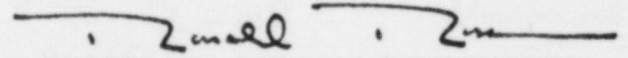
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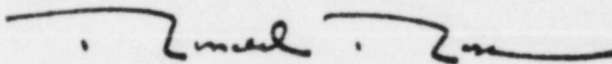


CONCLUSION

For the foregoing reasons, the proffered testimony of Suffolk County is admissible and the LILCO Motion should be denied.

Respectfully submitted,

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