

LILCO, November 9, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322 (OL)
)	
(Shoreham Nuclear Power Station,)	
Unit 1))	

LILCO's Motion to Strike the
Testimony of Kai T. Erikson and
Stephen Cole on Suffolk County
Contention EP 5(A) -- Role Conflict

I.

On October 12, 1982, Suffolk County filed testimony from Dr. Kai Erikson and Dr. Stephen Cole on contention EP 5(A). The contention reads as follows:

Suffolk County contends that LILCO has failed to provide reasonable assurance that on-site assistance from off-site agencies will be forthcoming in the event of a radiological emergency at the Shoreham site (see, e.g., Plan at 5-8 and 6-15). LILCO has therefore not met the requirements of 10 C.F.R. §§ 50.47(b)(1), (2), (3), (8), (12), and (15), 10 C.F.R. Part 50, Appendix C, Item A, and NUREG 0654 Thus:

A. It does not appear that LILCO has addressed or analyzed the possibility that off-site personnel and/or on-site augmenting personnel expected to report to the Shoreham site for emergency duty would fail to report (or report in a timely

manner) because of conflicting family (or other) duties that would arise in the event of a radiological emergency.

As will be explained below, much of the Suffolk County testimony on EP 5(A) is unrelated to the issues raised in that contention. Under the NRC's rules of practice, testimony must be relevant to the issues in contention. 10 C.F.R. § 2.743(c).^{1/} And irrelevant testimony is the proper subject of a motion to strike. See 10 C.F.R. Part 2 Appendix A, V(d)(7). The Board has the power to implement these provisions, both through its general power to regulate the conduct of a hearing, 10 C.F.R. § 2.718, and through the specific authority under 10 C.F.R. § 2.757(b) to strike argumentative, repetitious, cumulative or irrelevant evidence. Accordingly, LILCO moves to strike the portions of Dr. Erikson's and Dr. Cole's testimony specified below.

^{1/} Title 10 C.F.R. § 2.743(c) provides:

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

II.

Contention EP 5(A) deals with onsite assistance from emergency workers located offsite at the time a radiological emergency is declared at Shoreham. In particular, the County contends that emergency workers expected to report to the Shoreham site for emergency duty may not report because of conflicting family or other duties ("role conflict").

At the prehearing conference of April 14, 1982, the Board restricted the issues regarding emergency planning "on which we can proceed to litigation" (Tr. 760). That area was defined as "the licensee's actions under its emergency plan, whether those actions be on-site or off-site." Tr. 760; see Order of April 20, 1982, at 7. As admitted, EP 5A was expressly limited to role conflict that may be experienced by emergency workers called to Shoreham. The contention, on its face, states that limitation, and the Board explained in admitting the contention in Phase I of the emergency planning hearings rather than Phase II, that "I am talking about the emergency workers reporting on site, though. Whether that record is useful or not when you talk about what non-emergency workers or emergency workers off-site do, we will consider when we get to the next phase." Tr. 7346.

The County has chosen to ignore this limitation and address role conflict in general. The testimony goes beyond the scope of the contention in several respects.

A. School bus drivers

Suffolk County has failed to limit its testimony to the emergency workers offsite who are expected to respond onsite in the event of an emergency at Shoreham. Instead the County addresses the alleged role conflict that may be experienced by school bus drivers, basing its conclusions regarding role conflict in part upon a survey of the school bus drivers in the vicinity of Shoreham.

School bus drivers are not among those "off-site personnel expected to report to the Shoreham site for emergency duty." Nowhere does the LILCO emergency plan rely upon school buses or school bus drivers to respond onsite. Therefore, even assuming that the results of surveys of the bus drivers are predictive of their future behavior,^{2/} testimony on (1) the ability or inability of school bus drivers to perform their tasks due to role conflict, and (2) the surveys upon which

^{2/} LILCO does not concede that surveys should be relied upon as a basis for predicting future behavior of emergency workers; LILCO's testimony on EP 5(A) indicates that in LILCO's view one cannot predict future response to an emergency situation from the answers given to surveys.

conclusions regarding potential role conflict of bus drivers are based, is outside the scope of contention EP 5(A) and therefore irrelevant.

Accordingly, those portions of the County's testimony on EP 5(A) which discuss role conflict among school bus drivers should be struck. The pertinent portions of Dr. Erikson's testimony are the following:

page 7, line 22 ("and school bus drivers, both groups of")

page 7, line 24 ("School bus drivers, for instance, could")

page 8, lines 1-2, 18-23, and line 24 ("of Brookhaven")

page 9, lines 3-4 (excluding "men" on line 3)

page 10, lines 4-15

Attachment 3 in its entirety.3/

The pertinent portions of Dr. Cole's testimony are the following:

3/ Attachment 4 (a draft report by Dr. Cole, summarizing the results of the surveys) is listed in the summary of Dr. Erikson's testimony as an attachment. Erikson EP 5(A) Summary at 2. It is not, however, referenced in Dr. Erikson's testimony, and Dr. Erikson states in his testimony that he has not reviewed the results of the surveys compiled by Dr. Cole. Therefore, Attachment 4 is omitted from the list of the portions of Dr. Erikson's testimony that should be struck.

page 2, lines 12-18 (excluding "The second survey" on line 18)

page 5, lines 8-23

page 6

page 7

page 8, lines 1-3

Attachment 3 in its entirety

Attachment 4 --

page 3, line 11 ("school bus drivers and"), lines 13-15 ("school bus drivers are needed to drive school children from schools within the evacuating zone to shelters outside of the evacuation zone."), and line 19 ("both school bus drivers"); pages 4-7 (excluding "The survey of volunteer firemen was conducted on the" at page 7.); pages 12-22; page 37, line 17, through page 39, line 14; page 39, line 27 (excluding "prepared") through page 41, line 2; pages 46-50.^{4/}

B. Volunteer Firemen

Suffolk County has failed to limit its testimony to the role conflict that emergency workers offsite may experience when called upon to respond onsite. Instead, the County addresses the alleged role conflict that volunteer firemen may experience while performing evacuation, rescue, or firefighting duties offsite during an evacuation of the population within the ten-mile emergency planning zone.

^{4/} If the Board grants this motion to strike on both of the portions of Attachment 4 on school bus drivers and the portions on volunteer firemen (discussed in part II(B) of this motion), Attachment 4 may be struck in its entirety.

LILCO relies on volunteer fire departments (principally Wading River Fire Department) to provide fire-fighting and ambulance services onsite if those services are required during a radiological emergency. LILCO Emergency Response Plan at 5-8. The County's testimony, however, focuses entirely upon the services volunteer fire departments may provide in an evacuation. The survey of volunteer firemen, upon which Dr. Erikson's and Dr. Cole's conclusions regarding role conflict among firemen are based, addresses the firemen's response offsite during an evacuation, not onsite during an emergency at Shoreham. Dr. Cole states in his draft report on the survey (Attachment 4 to his testimony at 3-4) that "[t]he two surveys we conducted [of school bus drivers and of volunteer firemen] had as their primary goal to estimate what proportion of both school bus drivers and volunteer firemen could be counted upon to report quickly for their evacuation assignments." (Emphasis added.) None of the questions in the survey focus upon role conflicts in connection with reporting onsite, or postulate that the firemen may report to the site. The question highlighted in the County's testimony, for example, discusses firemen reporting to work "to help with the evacuation." Cole testimony at 3-4; see Erikson testimony at 9-10.

The volunteer firemen reporting "to help with the evacuation" are not "offsite personnel and/or onsite augmenting personnel expected to report to the Shoreham site for emergency duty" within the meaning of contention EP 5(A). The conclusions in the testimony based upon a survey of volunteer firemen working offsite during an emergency, and the survey itself, are outside the scope of EP 5(A) and are therefore irrelevant.

Accordingly, those portions of the County's testimony on EP 5(A) which discuss role conflict among volunteer firemen reporting to work offsite during an emergency should be struck. The pertinent portions of Dr. Erikson's testimony are the following:

page 7, lines 21-24

page 8, lines 2-17 and line 24

page 9 through page 10, line 3

page 10, line 15, through page 11, line 5

Attachment 2 in its entirety.

The pertinent portions of Dr. Cole's testimony are the following:

page 2, line 19 (beginning "The second survey")

page 3 through page 5, line 7

page 8, lines 12-13 ("of volunteer firemen")

Attachment 2 in its entirety

Attachment 4 --

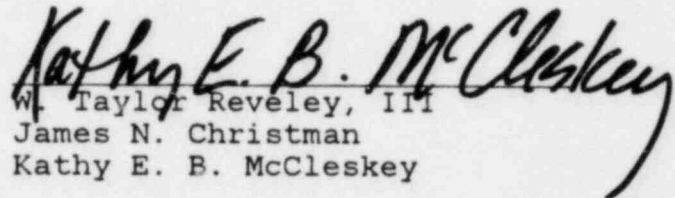
page 3, line 12 ("volunteer firemen"), lines 15-17 (beginning "volunteer firemen are"), and lines 19-20 ("volunteer firemen"); page 4, line 1 ("and volunteer firemen"); page 7, line 27; pages 8-11; pages 23-35; page 41, line 3, through page 45; pages 51-56.

III.

For the reasons stated, the portions of Suffolk County's testimony on contention EP 5(A) discussed above should not be admitted as evidence in this proceeding.5/

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


W. Taylor Reveley, III
James N. Christman
Kathy E. B. McCleskey

Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

DATED: November 9, 1982

5/ If this motion is granted as to the testimony on school bus drivers and the testimony on volunteer firemen, Dr. Cole's testimony and Attachments 2, 3, and 4 will be struck entirely. The County's remaining testimony on EP 5(A) will consist of (1) Dr. Erikson's testimony, pages 1-6; page 7, lines 1-20; and page 11, lines 6-22, plus (2) Attachment 1.

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322 (OL)

I hereby certify that copies of LILCO's Motion to Strike the Testimony of Kai T. Erickson and Stephen Cole on Suffolk County Contention EP 5(A) -- Role Conflict were served upon the following by first-class mail, postage prepaid, by Federal Express (as indicated by an asterisk), or by hand (as indicated by two asterisks), on November 9, 1982:

Lawrence Brenner, Esq.**
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Peter A. Morris**
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. James H. Carpenter**
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Daniel F. Brown, Esq.
Attorney
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.**
David A. Repka, Esq.
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Herbert H. Brown, Esq.**
Lawrence Coe Lanpher, Esq.
Karla J. Letsche, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

Mr. Mark W. Goldsmith
Energy Research Group
4001 Totten Pond Road
Waltham, Massachusetts 02154

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

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

David J. Gilmartin, Esq.
Attn: Patricia A. Dempsey, Esq.
County Attorney
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11787

Stephen B. Latham, Esq.*
Twomey, Latham & Shea
33 West Second Street
P. O. Box 398
Riverhead, New York 11901

Ralph Shapiro, Esq.*
Cammer and Shapiro, P.C.
9 East 40th Street
New York, New York 10016

Howard L. Blau, Esq.
217 Newbridge Road
Hicksville, New York 11801

Matthew J. Kelly, Esq.
State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Kathy E. B. McCleskey
Kathy E. B. McCleskey

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: November 9, 1982