UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Suffolk County Memorandum in Opposition to LILCO and NRC Staff Motions to Strike Suffolk County Supplemental Testimony on Contention 7B

On March 30, 1983, the NRC Staff and LILCO each filed a Motion to Strike substantial portions of the Suffolk County Supplemental Testimony on Contention 7B (SC Supp. Test.) which was filed on March 23, 1983. The Staff asserted three grounds for striking various portions of the testimony; LILCO asserted six. Before addressing the specific arguments made by LILCO and the Staff, we make the following general responses to the motions.

First, although inexplicably ignored by both LILCO and the Staff, it goes without saying that any discussion of Mr. Conran's Affidavit, of necessity, addresses matters already raised in the prior hearings on Contention 7B. Both Staff counsel and the Board recognized this fact in discussing the anticipated filing of Staff testimony in response to Mr. Conran's Affidavit:

> Mr. Rawson: [T]he affidavit would be in essence a reiteration of the Staff position and the matters [that] have been explored thoroughly with some of the same witnesses before.
>
> Judge Brenner: It's going to be explored again in light of the new information, and your estimate of one day [for cross examination] I find highly unlikely.

Tr. 20,322-23 (Emphasis added).

In fact, the Staff's Supplemental Testimony does reiterate, almost verbatim in several places, the Staff's previous 7B testimony and SER statements.1/ Similiarly, Mr. Conran's Affidavit refers to and, in some cases restates, matters or factual data that were discussed in the earlier 7B litigation. Accordingly, the mere fact that in some places the Suffolk County testimony refers to or reiterates previous 7B testimony does not constitute a basis to strike that testimony.

Second, following the Board's ruling reopening the record on 7B, all parties were given the opportunity to file

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1/ Compare, for example:

Staff Supp. Test. A.8 2nd para. (p. 4-5)	with Staff 7B Test. at 35-36 and with SER at B-9 and B-10
Staff Supp. Test. A.8 3d para. (p. 5)	with SER at B-10 and B-11
Staff Supp. Test. A.11 para. (1)(p. 10)	with Staff 7B Test. at 23; and with Tr. 7083, 7088, 7093-95 (Rossi); Tr. 7121-23 (Rossi, Hodges, Haass, Conran)
Staff Supp. Test. A.12 (p. 10)	with Tr. 6574-81 (Rossi)

additional testimony. A staggered filing schedule was set, with the Staff required to file first so "the parties [would have] an opportunity to look at the Staff's testimony before deciding whether to file testimony. . . ." Tr. 20,334 (Brenner). The Board stated that the additional testimony of LILCO and Suffolk County was to be "focused on the new material and the Staff's additional testimony and Mr. Conran's affidavit. . . . It is fairly broad, but, as we said, that is the nature of the affidavit." Tr. 20,331 (Brenner)(emphasis added). Thus, it was anticipated and intended that any Suffolk County or LILCO testimony was to address the Staff's Supplemental Testimony and Mr. Conran's Affidavit (both of which involve matters previously discussed in 7B), as well as "new material." The fact that Suffolk County (and LILCO) were explicitly permitted to address in testimony the points made in the Staff's Supplemental Testimony is ignored in both the LILCO and Staff Motions to Strike.

Third, in response to Suffolk County's statement of intention to file testimony concerning the proposed Staff "fix" relating to safety classification (i.e., the FSAR commitments discussed in and attached to the Staff's Supplemental Testimony), the Board explicitly acknowledged the propriety of such testimony:

> [I]f there is a new Staff proposal, it seems appropriate to allow the witnesses who testified to comment on why or whether or not that changes things, and why or why not.

Tr. 20,325-26 (Brenner). Therefore, arguments to strike the Suffolk County witnesses' discussion of the proposed Staff "fix," which is also addressed in the Staff's Supplemental Testimony, are without basis. These arguments, as well as the other two just addressed, in essence amount to an attempt by LILCO and the Staff to reargue the question of reopening the record, on which the Board has already ruled.2/

Fourth, most of the grounds asserted to support striking Suffolk County's testimony, if found to be legitimate, would be equally applicable to the Staff's Supplemental Testimony and, indeed, to Mr. Conran's Affidavit. LILCO did not move to strike any of the Staff Supplemental Testimony. It already lost its attempt to keep Mr. Conran's Affidavit out of the record. The striking of any Suffolk County testimony on the ground that it includes matters that could have been, should have been, or actually have been raised in the previous 7B

2/ Indeed, Suffolk County's original position was that it would be sufficient to admit the Conran Affidavit into evidence without additional testimony being filed by any parties. The reason the County filed its supplemental testimony was because the Staff submitted its views which challenged Mr. Conran's opinions, included assertions with which the County disagreed, and discussed the proposed Staff "fix."

litigation without also striking substantial portions of the Staff Supplemental Testimony and Mr. Conran's Affidavit, could only result from the application of an unfair double standard. It would also fly in the face of the Board's previous reopening ruling.

Fifth, the suggestion that because the County agrees with Mr. Conran's conclusions (and, therefore, the County's position has not been "altered" by Mr. Conran's Affidavit), the County should not be permitted to submit testimony discussing the substantive matters addressed in the Affidavit, is specious. The fact of Suffolk County's agreement with Mr. Conran's conclusions and its disagreement with the Staff's original 7B position has been recognized from the outset by all parties and by the Board. See Tr. 20,327 (Brenner). Nevertheless, all parties, including the County, were provided the opportunity to file additional testimony focusing on "the new material, the Staff's additional testimony and Mr. Conran's affidavit." Tr. 20,331 (Brenner). The Board did not restrict that opportunity to parties whose position may have been adversely affected, or even altered, by Mr. Conran's views.

Furthermore, the County does not dispute the point that had its testimony been limited to a statement of agreement with Mr. Conran, with nothing more, a statement to that effect in proposed findings may have been sufficient. However, the

County's testimony contains substantially more than a conclusory statement of general agreement. The County's witnesses, after noting their agreement with certain of Mr. Conran's conclusions, proceed to state the bases for their agreement. Thus, they set forth the pertinent facts, assumptions, analyses and reasoning that led them to draw the same conclusions as Mr. Conran. We note that the Staff's testimony, allegedly more "succinct" than the County's, largely consists of conclusory generalizations; there is little or no explanation of the basis which presumably underlies those generalizations. The fact that, unlike the Staff, the County's witnesses chose to state the rationale behind their conclusions, does not constitute a basis for striking the County's testimony.

We now turn to the specific arguments made in the LILCO and Staff Motions.

A. Permissible Additional Testimony was not Limited to "New" Facts.

Section I of the LILCO Motion and Section A of the Staff Motion make essentially the same argument: that substantial portions of the County's testimony should be stricken because they include facts or opinions that could have been, should have been, or actually were raised during the original 7B litigation. This argument is premised on an illogical interpretation of the Board's ruling to reopen the record on 7B. As noted above, that ruling did not impose a requirement that

testimony be limited to address only "new" facts that arose or became known after the completion of the prior 7B hearing. Such a requirement would have been illogical in the face of Mr. Conran's Affidavit, and the proposed Staff testimony that was described in the Staff's Statement of Views in Response to the Board's February 11, 1983 Order.

It is true that the impetus for reopening the 7B record was the alteration of position by Mr. Conran. Certain new information was also acknowledged and discussed by Mr. Conran and by the parties in their statements of views regarding Mr. Coran's Affidavit. Nonetheless, it was understood that the statement of Mr. Conran's new conclusions, as well as the proposed reiteration of the Staff's original ones, were both based, at least in part, on facts that had been discussed during the 7B litigation. Indeed, it was because Mr. Conran's interpretation of several of those pre-existing facts had changed, that the record was reopened. See Tr. 20,316 (Prenner). Moreover, as noted above, the Board's instructions as to the content of testimony by LILCO and the County was explicitly not limited to new matters. Thus, the "could have, should have" argument must fail for the additional reason that it completely ignores the County's right to address the Staff's Supplemental Testimony and Mr. Conran's Affidavit. We address in the sections which follow the "examples" of allegedly inappropriate testimony discussed by LILCO.

1. SC Testimony at pages 32-37

LILCO argues that the County's criticism of the Staff's reliance on the Standard Review Plan and Regulatory Guides for GDC-1 compliance, at pages 32 through 37 of the County's testimony, is an inappropriate "reargument" of the invalidity of the Staff position, "in the nature of a reply to the Staff's findings." LILCO Motion at 5-7. In fact, as noted in the County's testimony, the discussion which LILCO seeks to strike is in direct response to statements made in the Staff's Supplemental Testimony at pages 10 and 12 and in Mr. Conran's Affidavit at page 32. See SC Supp. Test. at 32.

The fact that witnesses have been cross examined and proposed findings submitted on these subjects, as addressed in the original 7B testimony, does not negate the County's right to address the additional testimony on these subjects which has now been submitted by the Staff. In disputing Mr. Conran's conclusion that LILCO does not understand what is required minimally for safety, the Staff asserts that such understanding and GDC-1 compliance have been demonstrated by means of the Staff's SRP review and LILCO's Regulatory Guide 1.70 compliance. In the testimony which LILCO and the Staff seek to strike (p. 32-37), the County witnesses challenge that Staff assertion. There is thus no basis for striking this testimony; it is an appropriate response to the Staff's Supplemental Testimony.

2. SC's Mention of the RSP and RPT

Both LILCO and the Staff make special mention of the County witnesses' reference to the Remote Shutdown Panel (RSP) and the Recirculation Pump Trip (RPT) (SC Supp. Test., at 36). See LILCO Motion at 7; Staff Motion at 6. In arguing that those references should be stricken, both LILCO and the Staff mischaracterize the referenced County's testimony. LILCO suggests that the County mentioned these systems as examples of systems that were inappropriately classified. It then purports to knock down this straw man by objecting because such examples had already been provided by the County in the initial 7B litigation. Even a cursory reading of the paragraph in which these two systems are mentioned reveals that the County's concern is not with their classification by LILCO. Rather, that paragraph makes the following point: an SRP review of the Shoreham FSAR cannot be said to demonstrate compliance with GDC 1 because the FSAR does not show GDC-1, IEEE 336, or Regulatory Guide 1.30 as applicable criteria for certain systems, such as the RSP and RPT, which clearly are important to safety. The County's testimony is thus directly responsive to an assertion in the Staff's Supplemental Testimony, and therefore proper. See Staff Supp. Test. at 10 and 12.

The Staff labels "astounding" what it characterizes as the County's "seek[ing] to raise questions about two new systems

and an entire new FSAR table . . . at this late date." Staff Motion at 6. The Staff, like LILCO, mischaracterizes the County's testimony. The point is not to "question" the systems mentioned; it is to illustrate an inadequacy in a review based on the SRP and Shoreham FSAR.

3. SC Testimony on USI A-17

Both LILCO and the Staff seek to strike pages 4-13 of the County's testimony on USI A-17 because it "could have been (or was)" litigated during the initial 7B hearings. LILCO Motion at 7. See Staff Motion at 4-5. As support for this argument they note that the County witnesses cited documents referenced in the previous 7B record in setting forth the factual basis for their support of Mr. Conran's conclusions about USI A-17. See LILCO Motion at 7-8; Staff Motion at 4-5.3/ The argument must fail because, again, the County's testimony is directly related to the points made in Mr. Conran's Affidavit and the Staff's Supplemental Testimony.

Pages 4-9 of the County's testimony discuss the high priority and safety significance assigned to USI A-17. As noted in the introduction to that testimony, Mr. Conran cites the history of the high priority consistently assigned to A-17 in

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3/ Both LILCO and the Staff conveniently ignore the references to NUREGS-0410, -0510, and -0660 that also appear in Mr. Conran's Affidavit. See Conran Affidavit at 3 nn. 2, 3 and 5; 4 n. 7; 5 n. 8; and 8 n. 11.

his "baseline considerations." On pages 4-9 the County witnesses set forth their reasons for agreeing with Mr. Conran's conclusion that USI A-17 has been accorded a high degree of safety significance which requires a timely resolution. See SC Supp. Test. at 3. This testimony also sets forth the bases for the County witnesses' disagreement with the Staff's suggestion (See Staff Supp. Test. at 4, 5 and 14) that because it now calls the USI A-17 program "confirmatory," progress toward timely resolution is unnecessary. See SC Supp. Test at 3 and 16-17. Regardless whether the history of USI A-17 was touched on during the earlier 7B litigation, this testimony by Suffolk County is directed toward specific points raised by Mr. Conran and by the Staff in its Supplemental Testimony. It should not be stricken.

Similarly, the County's testimony at pages 10-13 addresses Mr. Conran's concern about lack of progress toward resolution of USI A-17. (See Conran Aff. at 10-11, 14-22). It also sets forth some of the factual data underlying the County witnesses' disagreement with the Staff's assertion (see Staff Supp. Test. at 5) that progress to date in the A-17 program provides a basis for a North Anna finding for Shoreham. See SC Supp. Test, at 17 and 20. Again the County's testimony is well within the scope of testimony contemplated by the Board's reopening order.

Although not discussed in the text of LILCO's Motion, LILCO also seeks to strike the County's testimony at pages 16-22. See LILCO Motion at 3 n.1. The Staff seeks to strike portions of this testimony also. See Staff Motion at 5. This testimony should not be stricken for the reasons discussed above. The first portion (SC Supp. Test. at 16-20), which appears under the heading "The Staff's Supplemental Testimony Provides No Basis for Making the North Anna Findings" is a direct response to the Staff's Supplemental Testimony. Mr. Conran believes that the necessary North Anna findings cannot be made for Shoreham. The Staff has asserted that they can. In this testimony, the County witnesses take issue with the Staff's conclusion and directly challenge the Staff's apparent basis for that conclusion. The testimony sets forth the factual data and analyses relied upon by the County witnesses. It is clearly relevant and should not be stricken.

The second portion of the challenged testimony (SC Supp. Test. 20-22) addresses Mr. Conran's statement that limited systems interactions reviews should be required of operating license applicants. It sets forth the County witnesses' opinion as to the form such a review could take at Shoreham. Thus, it is relevant and should not be stricken.

4. SC Testimony at pages 37-39

LILCO argues that the County's testimony at pages 37-39 "has already been presented." LILCO Motion at 8-9. The argument is premised upon LILCO's mischaracterization of this testimony as "regarding the adequacy of the original classification of structures systems and components." Once again, the lack of basis for the LILCO position is evident upon review of the challenged testimony. On page 37, the County witnesses discuss their conclusion that the Staff's reliance on the SRP to insure GDC-1 compliance is unjustified. This is in direct response to the Supplemental Staff Testimony. On pages 38-39, the County witnesses state their opinions on the adequacy of the proposed FSAR revisions discussed and relied upon by the Staff in its Supplemental Testimony. Clearly, discussion of the "fix" proposed by the Staff to resolve the classification problem is an appropriate subject for testimony, as the Board has explicitly noted. This LILCO argument must be rejected.4/

B. Section II of LILCO's Motion is Without Merit

In Section II of its Motion LILCO argues that progress toward resolution of USI A-17 is irrelevant to the Shoreham proceeding. LILCO Motion at 9-10.5/ This argument might have

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4/ LILCO also objects, without discussion, to certain portions of the County's testimony at pages 26-30, and 40-43. See LILCO Motion at 3, n. 1. These segments of the County's testimony all deal with the Staff's proposed fix and are therefore relevant for the reasons discussed in the text.

5/ Footnote 7 at the end of Section II of the LILCO Motion to Strike indicates that the argument contained in that

(Footnote cont'd next page)

been an appropriate topic for testimony by LILCO witnesses; it has no place in a Motion to Strike.

As we stated above, the County's discussion of USI A-17 is plainly directed toward specific matters raised by Mr. Conran and the Staff. Clearly, both Mr. Conran and the Staff disagree with LILCO; like the County witnesses, they apparently believe that the question of progress on USI A -17 is relevant, since they address it in their filings.6/ Moreover, Licensing Boards have also disagreed with LILCO's assertion that progress toward resolving an unresolved safety issue is "irrelevant" in a licensing proceeding. See, e.g., Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 249-50 (1978); Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 775 (1977).

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section is directed to the County testimony at pages 8 and 9. That testimony concerns the priority given to resolution of USI A-17 in draft NUREG-0933, and the impropriety of striking this testimony is covered by our discussion in A.3 above.

6/ Even though the Staff witnesses now call the A-17 program "confirmatory," they nonetheless spend 4 pages of their Supplemental Testimony discussing the alleged progress in the program and proposed future actions to be taken "in the interest of a timely resolution" of the program. See Staff Supp. Test. at 5-8.

LILCO's "argument" is, in truth, nothing but a statement of its disagreement with the opinions expressed by Mr. Conran and the County witnesses. Such disagreement can be pursued on cross-examination; alternatively, it could have been stated in LILCO testimony. It is not a proper basis for striking an opponent's testimony. This section of the LILCO motion is without merit and should be rejected out of hand.7/

C. Statement of the Conran Conclusions with which the County Agrees is Necessary and Appropriate

Section III of the LILCO Motion is hardly the kind of serious objection this Board asked the parties to make. LILCO Motion at 11. It seeks to strike introductory or summary references in the County's testimony which identify the Conran concerns which are about to be, or have been, addressed by the County witnesses. These sections of the County testimony were included as a convenience to the reader and to provide context for the County witnesses' opinions. They are no different from the Staff's statements at pages 4 (A.8) and 9 (A.11) of the Staff Supplemental Testimony which LILCO has not moved to

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7/ LILCO quoted an unidentified Commission "pronoucement" in support of its argument that USI A-17 progress is irrelevant. LILCO Motion at 9. The statement, contained in the Commission's March 8, 1983 Policy Statement on Safety Goals for the Operation of Nuclear Power Plants, has nothing whatsoever to do with systems interactions, A-17, or unresolved safety issues. It is taken totally out of context and should be disregarded. We also note that the correct citation is 48 Fed. Reg. 10,773 (1983).

strike. There is no reason to strike them from the County's testimony.

D. The Salem Event is an Appropriate Illustration

LILCO and the Staff each seek to strike the County's brief mention of the recent scram breaker failures at the Salem Nuclear Power Station. See SC Supp. Test. at 40-41. They note that Mr. Conran's Affidavit does not discuss the Salem incidents (which occurred after the Affidavit was filed), and that Salem is a PWR, unlike Shoreham. For these reasons, LILCO and the Staff assert that the portion of the County's testimony which mentions the Salem events is irrelevent. LILCO Motion at 12; Staff Motion at 8-9.

The County's mention of the Salem events must be viewed in the proper context. The County witnesses cited those events as an example of what could result from a failure (a) to identify and list items important to safety, and (b) systematically to demonstrate that treatment of such items, including maintenance, is consistent with their safety significance. SC Supp. Test. at 41. The Salem events, in their opinion, "underscore the importance of properly assessing the safety significance of components and providing the commensurate level of QA and preventive maintenance." SC Supp. Test. at 40. Thus, given the limited purpose for which it was offered, the brief discussion of the Salem events by the County witnesses is relevant to Mr. Conran's concerns and to the Staff's Supplemental Testimony.8/

8/ To put it a different way, the Salem events illustrate one possible answer to the following question whch was asked

(Footnote cont'd next page)

Furthermore, the County does not intend to suggest, in mentioning the Salem events, that a scram breaker failure like those that occurred at Salem could or would occur at Shoreham. It is the generic implication of those events on the safety classification issue, which has been recognized by the Staff and the Commission, that the County witnesses have addressed. See, e.g., Board Notification 83-26, Failure of Reactor Trip Breakers to Open on Trip Signal (March 3, 1983) and attachments thereto. The County's limited use of the Salem events is thus proper and the testimony should not be stricken.

E. Testimony on Staff's Use of SRP is Appropriate

Section V of the LILCO Motion argues that pages 33-35 of the County's testimony "merely restates a contention . . . rejected by the Board," and therefore should be stricken. LILCO Motion at 13.9/ This LILCO argument once again ignores

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by Mr. Mattson at the February 18 meeting between Staff and LILCO:

> Will, over a period of time, cognizance of the importance of a piece of equipment, maybe a tertiary system to the functioning of safety equipment, be lost because the FSAR relevance of the equipment, is not by procedure, continually brought before the person making the judgment about what to do?

Feb. 18 Meeting Tr. at 125.

9/ The Staff also moves to strike this testimony. See Appendix A to Staff Motion.

the County's right to respond to the Staff's Supplemental Testimony. The Staff states that it is satisfied that LILCO understands what is minimally required for safety (contrary to Mr. Conran's belief) because "during the design and construction phase of Shoreham [LILCO] satisfied the deterministic criteria embodied in the Staff's Standard Review Plan . . . . Staff Supp. Test at 10. The Staff states, further, that by complying with the SRP, LILCO "has identified and properly treated those structures, systems, and components the Staff deems important to safety," and that "[t]his has been documented in the Staff's Safety Evaluation Report . . . ." Staff Supp. Test at 12. The County's testimony, at pages 33-35, directly addresses the basis for and legitimacy of these Staff assertions. Thus, the County witnesses state their opinion that "the Staff is simply not in a position to assert that LILCO has complied with its regulatory guidance." SC Supp. Test. at 33. They also state their reasons for holding that opinion, which include the following:

- Staff does not know the degree to which LILCO has complied with regulatory guidance (p. 33).
- Staff does not document in the SER the extent of compliance or justifications for instances of non-compliance (p. 33).

- Staff has acknowledged that its review practices do not provide detailed knowledge concerning compliance (pp. 34-35).

This County testimony is an appropriate and necessary response to the Staff's conclusory statements in its Supplemental Testimony, and therefore should not be stricken.

F. The County's ACRS References are Proper

In Section VI of its Motion, LILCO seeks to strike two portions of the County's Supplemental Testimony: one refers to the transcript of an ACRS meeting on Indian Point-3, the other quotes a letter from the Acting ACRS Chairman to Mr. Dircks. LILCO's objection, based on an Appeal Board ruling, assumes two things: (1) that the referenced County testimony includes an ACRS opinion, and (2) that the opinion is cited for its truth. LILCO Motion at 14-15. These assumptions do not apply to the challenged County testimony.

LILCO objects to the following statement in the County's testimony:

> The Indian Point study includes a walkdown and, in addition, a dependency analysis.24/

Footnote 24 states:

> 24/ ACRS Subcommittee on Safety Philosophy, Technology, and Criteria Meeting Transcript, (February 26, 1982) 27, 28, 34, 35, 65-69.

Had LILCO bothered to read the transcript pages cited, instead

of reflexively moving to strike the reference, it would have seen that the County witnesses refer to statements made by representatives of the NRC Staff and PASNY, not statements made by ACRS members. Clearly, LILCO's objection to this citation is without basis.

LILCO also objects to the County's quotation from a letter from the Acting Chairman of the ACRS which sets forth the ACRS' "disappointment" at the Staff's delay in implementing systems interactions studies. The letter, which was also cited by Mr. Conran in his Affidavit without objection by LILCO (see Conran Aff. at 12 n.13 and 23 n.21), is quoted by the County witnesses immediately following their statement that "The foregoing 'progress' or lack thereof toward resolution of USI A-17 has been criticized by the ACRS." SC Supp. Test at 14. LILCO's objection to this quotation fails to take into account the fact that it is not offered by the County for the truth of its contents.

The County's purpose in citing the letter is simply to show that the lack of progress toward resolution of USI A-17 has been criticized by the ACRS. The statements quoted are offered to prove the fact that they were made, not for the truth of their contents. Thus, this ACRS material is used by the County for an "appropriate limited purpose" which is permissible and appropriate. It should not be stricken.

G. The Staff's Hearsay Objection Should be Rejected

The Staff seeks to strike from the County's testimony certain passages quoted from the transcript of the February 18, 1983 meeting between LILCO and Staff on the grounds that "they are hearsay material which is not relevant and material and which lacks probative value." Staff Motion at 6. This objection is not well founded.10/

A hearsay objection is not a valid ground for a motion to strike testimony in NRC proceedings. See Duke Power Company (William B. McGuire Nuclear Station), ALAB-669, 15 N.R.C. 443 (1982); 10 CFR § 2.757(b). Furthermore, even if the referenced statements were hearsay, they would be admissible evidence because they are admissions by a party.11/

The Staff also argues, however, that the selected statements are irrelevant and lacking in probative value. In addition, the Staff implies by its statement, "What does it

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10/ We note that the County quotes the meeting transcript 10 times in its testimony:

page 25 - 2 Mattson statements, 2 LILCO statements
page 29 - 1 Haass statement, 1 Mattson statement
page 29-30 - 1 Mattson statement
page 31 - 2 LILCO statements

The Staff selectively asserts its hearsay objection only with respect to 4 of the 5 Staff statements.

11/ According to the Federal Rules of Evidence, cited in the Staff's Motion, out of court statements by a party do not even constitute hearsay. See Fed. R. Evid. 801(d)(2).

matter that a meeting was considered advisable to obtain additional information from the Applicant?" (Staff Motion at 7), that the February 18 meeting itself is irrelevant. That suggestion is plainly inaccurate. The February 18 meeting was held in direct response to the filing of Mr. Conran's Affidavit.12/ As the Staff acknowledged in its Supplemental Testimony, the discussions during that meeting led to its February 18 request for FSAR commitments from LILCO. Staff Supp. Test. at 11. Those commitments, the need for them, and what, if anything, they are intended to or actually do accomplish, are all unquestionably relevant to the matters being discussed in this proceeding. Therefore, statements made at the February 18 meeting cannot be so cavalierly discarded.

12/ In opening the meeting, Mr. Eisenhut characterized it as follows:

> It is a discussion, generally speaking, of the approach, the methodology, the system that was used by the Applicant to classify structures, systems, and components as to sort of the care and feeding they get in the design and operation relating to their safety importance.
>
> . . .
>
> This meeting is a meeting that the Staff perceived a need for following a number of discussions recently that led us of course to resubmit testimony to the hearing.

Feb. 18 Meeting Tr. at 4.

Furthermore, the specific Mattson statement quoted by the County at the bottom of page 25 is both relevant and probative. It indicates why the meeting was deemed necessary by the Staff. It relates to the Staff-LILCO correspondence which Mr. Conran identifies as having contributed to his conclusion that LILCO does not understand what is required minimally for safety. See Conran Affidavit at 29. It also provides important and pertinent context for the Staff's decision to require the FSAR commitments which are discussed in the Staff's Supplemental Testimony. There is no basis for striking this statement.13/

The Staff also objects to the quotation of three statements by Messrs. Haass and Mattson and the accompanying commentary, which appear on pages 29 and 30 of the County's testimony. This portion of testimony is both relevant and probative for the reasons just discussed. However, the Staff asserts with respect to these three statements that "the asking of questions should not be taken as probative of anything more than that the questioner wants to obtain the information requested." Staff Motion at 8.

13/ The Staff also argues that Mr. Mattson's statement is "cumulative and unduly repetitious," and that Mr. Mattson will be present at the hearing. Staff Motion at 7. Contrary to the Staff's assertion, it is difficult to discern any overlap between the challenged passage and those passages quoted earlier on page 25 of the County's testimony. Moreover, the availability of Mr. Mattson for cross examination, if anything, works against the Staff's position that his statement should be stricken. His availability means that he can expand upon, deny, or explain the quoted statement if he so desires.

The Staff's facile argument ignores an important fact: that the Staff felt a need for the information is itself probative on the issues raised by Mr. Conran. In addition, the questions asked by the Staff provide important context for an evaluation of the Staff's conclusions stated in the Supplemental Testimony. Those conclusions were apparently arrived at following receipt of purported responses to the Staff's information requests. Furthermore, each of the three challenged quotations includes statements of fact as well as a question. Thus, for example, Mr. Haass is quoted as saying:

> I think the question here is, are you really addressing the safety aspects. I think that's the question, and we are not hearing an assurance that your system does address that. Tr. 124.

SC Supp. Test. at 29. To suggest that an occasional question mark renders statements such as these "not probative" is to ignore both the content of the statements and the context in which they were made. In summary, the Staff's hearsay objection should be rejected.

H. Conclusion

For the foregoing reasons, the LILCO and Staff Motions to Strike should be denied.

Respectfully submitted,

David J. Gilmartin
Patricia A. Dempsey
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788

Karla J. Letsche / Cmm

Lawrence Coe Lanpher
Karla J. Letsche
David C. Mahaffey
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W.
Washington, D.C. 20036

Attorneys for Suffolk County

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