UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

'83 DEC 22 A10:39

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In the Matter of	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

SUFFOLK COUNTY RESPONSE TO
LILCO AND NRC STAFF MOTIONS TO STRIKE
THE TESTIMONY OF FRED C. FINLAYSON, GREGORY C. MINOR
AND EDWARD P. RADFORD ON BEHALF OF SUFFOLK COUNTY
REGARDING CONTENTIONS 65, 23.D AND 23.H

On November 28, 1983, LILCO and the NRC Staff filed motions to strike in its entirety the testimony filed on behalf of Suffolk County by Fred C. Finlayson, Gregory C. Minor and Edward P. Radford regarding Contentions 65, 23.D and 23.H (hereafter the "Finlayson" testimony).1/ Suffolk County hereby responds and urges that each motion be denied.

The Finlayson testimony describes the health consequences which may be experienced by Suffolk County residents if there

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1/ See LILCO's Motion to Strike the Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on Behalf of Suffolk County Regarding Contentions 65, 23.D, and 23.H; Part A of NRC Staff Motion to Strike Certain Prefiled Testimony of Suffolk County.

Add: J. Gorn
OCA

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is an accident at Shoreham and LILCO uses inaccurate evacuation time estimates in recommending an evacuation. LILCO argues that the Finlayson testimony is not relevant "to the issues in this proceeding" and also constitutes a challenge to the NRC regulations. LILCO Motion at 1. The Staff appears to take the same position, although its motion is so brief that the precise bases cannot be discerned.2/ In addition, LILCO also argues that one portion of the Finlayson testimony pertains to a "Phase I" issue concerning LILCO's method of making protective action recommendations and is thus barred from litigation. LILCO Motion at 1-2.

The LILCO and Staff motions must be denied. LILCO and the Staff basically take the position that any discussion of health consequences is per se irrelevant or a challenge to the regulations. This is not the case. Indeed, if this Board were to

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2/ In this response, the County will address directly the arguments raised by LILCO. It is not possible to respond in detail to the Staff's motion, because it merely alleges that the Finlayson testimony is a "challenge" to NUREG-0396 and has "no probative value." Staff Motion at 1-2. No bases for these allegations are provided. Accordingly, the Staff has not satisfied the requirement that the grounds for a motion be stated "with particularity" (10 C.F.R. § 2.730(b)), and also has not met its burden of proof. Id. § 2.732. Accordingly, the Board should reject the Staff motion without any further consideration or, in the alternative, direct the Staff to refile its motion in compliance with Section 2.730 requirements.

accept such arguments, it would have to reverse its own prior orders admitting these contentions for litigation and put on blinders to the fact that the entire purpose of this proceeding is to determine whether the protective measures proposed by LILCO in its emergency plan are in fact adequate under the specific facts of this case. See 10 C.F.R. § 50.47(a)(1).

Thus, the LILCO and Staff motions are nothing but smoke screens in which these parties attempt to bar the Board and ultimately the Commission from considering evidence which is directly relevant both to the contentions in question and to the overall reasonable assurance findings which must be made in this case. Accordingly, in this response Suffolk County will demonstrate the following:

-- Relevance. The Finlayson testimony is directly relevant to Contentions 65, 23.D and 23.H. Indeed, each contention alleges that the deficiencies in LILCO's Plan will result in exposure of County residents to health threatening doses of radiation. The Finlayson testimony directly supports the factual allegations in the contentions by quantifying what the doses of radiation will be and how these doses will affect Suffolk County residents. Accordingly, the testimony is relevant to the contentions.

-- Challenge to Regulations. It is absurd to suggest that the Finlayson testimony challenges the NRC's regulations. In fact, the analyses by the County witnesses use conservative assumptions which are consistent with the regulations and with the analyses (such as NUREG-0396) which underlie the regulations. The mere fact that the witnesses testify about radiation and its effects does not make the testimony a challenge to any regulation. Rather, the testimony constitutes evidence which is directly pertinent to the allegations in the admitted contentions and which is essential to any determination whether LILCO has proposed adequate protective measures for a Shoreham emergency.

-- Phase I Objection. The LILCO "Phase I" objection represents a twisted characterization of what the Finlayson testimony in fact states. The testimony pertains to the adverse health consequences which will be experienced if an evacuation is ordered and LILCO relies on its faulty time estimates. That is not a Phase I issue at all. To the extent LILCO tries to make it into a Phase I issue by the mention of protective action recommendations, LILCO omits to point out that its own witnesses on Contentions 23.C, 23.D, and 23.H discuss protective action matters as well.3/

3/ See Testimony of Matthew C. Cordaro, John A. Weismantle and Edward B. Lieberman on Behalf of Long Island Lighting

(Footnote cont'd next page)

-- Cross References. LILCO's argument that two references in the Finlayson testimony to opinions of other County witnesses should be stricken is specious. It is clear that the witnesses sponsoring the Finlayson testimony rely on the opinions of the other referenced witnesses and the cross references are included for convenience only.

In the discussion which follows, the County will address each of the foregoing matters and will also respond to the related issues raised by the LILCO and Staff motions.

I. The Finlayson Testimony is Relevant

A. LILCO's Relevancy Objection Ignores the Contents of Admitted Contentions.

The LILCO relevancy objection builds upon LILCO's characterizations of the points allegedly made by the Finlayson testimony (see LILCO Motion at 2-3). LILCO then proceeds to state that the Finlayson testimony, as characterized by LILCO, is "utterly irrelevant -- not necessarily irrelevant to emergency planning, but irrelevant to the issue in this proceeding, which is whether NRC regulations are met." Id. at 3 (emphasis in original). LILCO goes on to state:

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Company on Phase II Emergency Planning Contentions 23.C, .D, and .H, pp. 8-9.

> The issue of this proceeding is whether the offsite emergency plan complies with NRC regulations. And it is fair to say that the Finlayson testimony sheds no light whatsoever on the question of compliance with NRC regulations.

Id. at 4.

LILCO's characterization of the "issue" in this proceeding is grossly misleading. Of course the ultimate issue is whether LILCO complies with the NRC's regulations. However, in NRC practice generally -- and in this proceeding in particular -- the way in which compliance/noncompliance is measured is by the proffer and subsequent litigation of specific contentions. Accordingly, since the contentions in question have been admitted by the Board for litigation -- and neither LILCO nor the Staff objected to the portions of the contentions to which the Finlayson testimony pertains -- the proper relevance question is whether the Finlayson testimony provides "relevant, material, and reliable evidence which is not unduly repetitious" on the issues raised in the contentions. See 10 C.F.R. § 2.743(c).

The fact is that the Finlayson testimony clearly does relate directly to factual matters which are spelled out clearly in the contentions admitted by this Board. Accordingly, since the testimony relates to factual issues in the

contentions, it cannot properly be stricken as irrelevant. Indeed, to grant a motion to strike on relevance grounds would be to grant reconsideration of the admissibility of these contentions, despite the fact that neither LILCO nor the Staff objected to the portions of the contentions addressed by the Finlayson testimony back in August 1983 when the admissibility question was being considered.4/

The relevance of the Finlayson testimony to Contentions 65, 23.D, and 23.H is documented by a comparison of the testimony with the contentions. Contention 65 states:

> Contention 65: Intervenors contend that LILCO's evacuation time estimates are inaccurate, unreliable and, in fact, should be far longer. LILCO's evacuation time estimates are so underestimated that under the LILCO Plan an evacuation may be ordered which realistically cannot be completed prior to release and dispersion of fission products from the Shoreham plant. Evacuees will be caught in queues or delayed in

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4/ As the Board certainly is aware, the Staff and particularly LILCO did not hesitate to object to the County's proposed contentions. See LILCO's Objections to Intervenors' "Revised Emergency Planning Contentions," dated August 2, 1983; NRC Staff Response to Revised Emergency Planning Contentions, dated August 2, 1983. Thus, it certainly was not by oversight that LILCO and the Staff did not move to strike the portions of the contentions to which the Finlayson testimony pertains. They should not now be permitted to raise, by means of a motion to strike testimony, objections to contentions that should have been raised months ago.

> heavily congested traffic within the EPZ. Under many accident conditions, there will be a dispersal of radioactive materials while such traffic conditions still exist, resulting in unacceptable health-threatening exposure to the evacuees. The automobiles of the evacuees will offer essentially no protection from the plume.

(emphasis supplied).[5/] The Finlayson testimony is directly relevant to the emphasized words of the contention. It discusses "the timing of the release and the dispersal of fission products under many accident conditions at Shoreham, and the resulting radiation exposure and health consequences to which evacuees caught in queues or traffic will be subjected." Finlayson testimony at 3. Therefore, there is no possible basis for a ruling that the testimony is not pertinent to the very words of the contention.

5/ Contention 65 also states:

> [S]uch estimates must be accurate and reliable so that command and control personnel who are considering what protective actions might be ordered for particular persons can estimate whether, given projected release and dispersion of health-threatening fission products from the Shoreham plant, evacuation can be accomplished before such dispersion takes place. (See 10 CFR Section 50.47(b)(10); NUREG 0654 Section II.J.10.m). A decision to order evacuation, if based on inaccurate evacuation time estimates, could result in evacuees' being trapped in queues or slow moving traffic inside or outside the EPZ, thus exposing them to a release of fission products from the Shoreham plant.

(emphasis supplied).

There is also no possible basis to find the Finlayson testimony irrelevant to Contentions 23.D and 23.H. In Contention 23, Suffolk County alleges that in the event of an accident at Shoreham, there would be large numbers of persons who would evacuate voluntarily, even if not ordered to do so, and that the LILCO Plan fails to take this phenomenon into account. Part D of Contention 23 states that the additional vehicles which will be on the road network as a result of voluntary evacuation will create congestion within the EPZ and in the regions just outside the EPZ. It states, further, that the congestion caused by voluntary evacuation will cause queuing and will impede traffic evacuating from the EPZ, and that the LILCO evacuation time estimates are inaccurate for failing to take into account the numbers and locations of voluntary evacuees. The Finlayson testimony directly addresses the portion of Contention 23.D which states:

> The additional congestion caused by voluntary evacuation will cause adverse health consequences to the public because (a) evacuees from beyond the 10-mile EPZ will impede the evacuation of those within the 10-mile EPZ who are ordered to evacuate, resulting in evacuees' receiving health-threatening radiation doses; and (b) those who choose to evacuate will be unable to do so safely and efficiently . . . . If voluntary evacuation were properly taken into account, the LILCO time estimates would increase substantially, rendering evacuation an inadequate protective action for many accident scenarios.

(emphasis supplied). Thus, the Finlayson testimony "discusses the radiation doses and adverse health consequences to which evacuees will be subject if they are stranded in traffic in the EPZ, and the resulting inadequacy of evacuation as a protective action under many accident scenarios if voluntary evacuation, and the resulting evacuation times, were properly taken into account." Finlayson testimony at 5.

Similarly, Part H of Contention 23 states that the LILCO Plan fails to provide adequate access control measures at the EPZ perimeter, contrary to the requirement of NUREG-0654 Section II.J.10.j. The Finlayson testimony addresses the portion of Contention 23.H which states:

> [V]oluntary evacuees from the East End whose chosen evacuation routes may cross the EPZ perimeter, may travel into contaminated areas and receive health threatening radiation doses . . . .

(emphasis supplied). Thus, the testimony discusses "the contamination which will be in the EPZ in the event of an accident and the radiation doses and resulting threats to health to which persons travelling into the EPZ may be subjected." Finlayson testimony at 5.

The foregoing discussion makes clear that the Finlayson testimony pertains and is directly relevant to specific

portions of Contentions 65, 23.D, and 23.H. Thus, the relevancy objection must be denied.

B. The Finlayson Testimony Addresses Compliance with NRC Regulations

LILCO also seems to assert a separate "relevancy" argument, one based on LILCO's view of emergency planning rather than on the contentions which this Board has admitted. This objection is that the Finlayson testimony can have no possible bearing on, or relevance to, the "issue" whether the NRC's regulations are met. LILCO Motion at 3-4. As already noted, this is not a proper relevancy objection, since the relevance question must be judged in terms of the contentions which have been admitted for litigation. However, even if one accepts arguendo LILCO's characterization of the "issue," the Finlayson testimony still clearly is relevant.

Prior to permitting Shoreham to operate, this Board must find that there is reasonable assurance that "adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R. § 50.47(a)(1) (emphasis supplied). The Finlayson testimony is directly pertinent to this issue. Suffolk County contends and proves (through the Finlayson testimony as well as other testimony which has been submitted) that as presently envisioned under the LILCO Plan,

evacuation is not an adequate protective measure because persons attempting to evacuate will be stuck in queues and exposed to health threatening doses of radiation. Thus, the Finlayson testimony is relevant to whether the LILCO Plan in fact satisfies the NRC regulations.

The NRC's guidance in NUREG-0654 confirms the relevance of the Finlayson testimony. The testimony, while not focusing on any single accident or series of accidents, does provide information specific to the Shoreham plant concerning the time frame of potential Shoreham accidents (Finlayson testimony at 7-8 and Attachment 4, pages 7-11 and Table 3), the potential duration of releases (id.), and the time available before exposures are experienced (id.) NUREG-0654 makes clear that such data are important to an assessment of the adequacy of emergency preparedness:

> Information on the time frames of accidents is also important. The time between the initial recognition at the nuclear facility that a serious accident is in progress and the beginning of the radioactive release to the surrounding environment is critical in determining the type of protective actions which are feasible. Knowledge of the potential duration of release and the time available before exposures are expected several miles offsite is important in determining what specific instructions can be given to the public.

NUREG-0654, at 7-8. Thus, the Finlayson testimony is pertinent and relevant to a determination whether the NRC's emergency planning regulations, as further explained in NUREG-0654, are satisfied.

Further, it is clear from a recent decision in the Fermi proceeding, that evidence relating to health effects is pertinent to the question whether protective actions proposed by an applicant are feasible. Thus, in Detroit Edison Co. (Enrico Fermi, Unit 2), LBP-82-96, 16 NRC 1408, 1422-29 (1982), the Board considered testimony in which the applicant's witness postulated an accident which released a substantial amount of radioactivity over a period of time with a specific wind direction and steady wind speed. Doses were calculated for specific points for the purpose of measuring the increment in dose which evacuees would receive along the sole evacuation route. Minimum and maximum dose rate intensity was analyzed, and calculations were made to determine the increase in dose rate factor. All this testimony was introduced with respect to a contention that the sole evacuation route was not feasible as an evacuation route since it traveled toward the reactor for some time before traveling away from it. Accordingly, the case law clearly does not prohibit a Licensing Board from considering health effects data when deliberating about the adequacy of protective actions proposed under an emergency plan.6/

6/ See also Union Electric Co. (Callaway Plant, Unit 1), Docket No. STN 50-483 OL, (October 31, 1983), slip opinion

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C. LILCO's Argument Consists of Creating and Knocking Down its Own Strawmen.

LILCO's motion comprises, in large part, the creation of several strawmen which serves no legitimate purpose at all. First, LILCO states:

> The County's theory is that if even with an emergency plan it is still possible (with probability x) for people to receive serious doses of radiation (y), then the emergency plan is inadequate and does not meet NRC regulations. It is clear that this is the County's position.

LILCO Motion at 8 (footnote omitted). LILCO then proceeds for 8 pages (pp. 9-16) to argue that the "x and y" proposition quoted above is not part of the NRC's regulations. The fact is, however, that LILCO's statement of the "County's theory" is entirely wrong and thus LILCO's entire discussion is wholly irrelevant.

LILCO asserts that the Finlayson testimony is irrelevant in discussing the fact that people may suffer injuries from a Shoreham accident because, according to LILCO, the possibility of radiation exposure is an underlying assumption of the NRC's

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> at 9-10 (Board considered evidence concerning probability of thyroid doses greater than 25 rems and evidence postulating a "fast developing emergency scenario").

regulations, and the regulations do not set an "acceptable" or "unacceptable" dose level. LILCO Motion at 5-9. In making this argument, however, LILCO has mischaracterized what the Finlayson testimony is all about. That testimony does not assert that the LILCO Plan is inadequate merely because there is a risk of exposure in the event of an accident. The testimony also does not attempt to state that a particular dose level constitutes the limit of "acceptable" dose. Rather, the Finlayson testimony takes the real life circumstances existing on Long Island, including the realities of evacuation movement under the LILCO Plan, and provides essential data which (1) support the allegations of the contentions at issue and (2) provide a basis for judgment on the adequacy of evacuation as a protective measure under the LILCO plan.

The County testimony is carefully focused. It demonstrates in support of the contentions that LILCO has not prepared properly for evacuation on Long Island because the very evacuation LILCO thinks will protect people by providing a lesser radiation dose than if there were no evacuation, will, in fact, have just the opposite effect -- that is, it will result in more exposure to high levels of radiation. Therefore, this strawman argument set up by LILCO must fail.

LILCO seems also to suggest that unless a precise limit of "acceptable" radiation dose is specified in the regulations, no discussion of radiation exposure can possibly be relevant. That clearly is not true, as exhibited by the Fermi case. See Detroit Edison Co. (Enrico Fermi Unit 2), LEP-82-96, 16 NRC 1408, 1422-29 (1982). Therefore this LILCO argument must also fail.

LILCO has also dredged up the recurring PRA strawman, arguing that there is no regulatory requirement that a PRA be conducted and that intervenors' attempts to litigate the PRA performed on behalf of LILCO were rebuffed during Phase I. See LILCO Motion at 12-16. This is a non-issue. The County is not litigating the LILCO PRA, nor does it wish to. Rather, in the Finlayson testimony, the County is presenting relevant, probative data which support the contentions and show that the protective actions proposed by LILCO will not work. Such evidence should be welcomed in an emergency planning proceeding. Moreover, the County does not suggest either in its contentions or in its testimony that the regulations require in an emergency planning proceeding the compilation of evidence such as is presented in the Finlayson testimony. However, when such data are available, the Board clearly should not close its eyes to it. See Southern California Edison Co. (San Onofre Nuclear

Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1183 (1982).

Finally, LILCO has created one last strawman: LILCO states that the Finlayson testimony attempts to create criteria for a maximum allowable evacuation time when such criteria in fact do not exist. See LILCO Motion at 17-19. Again, LILCO accuses the County witnesses of doing something which they simply have not done, and then uses that accusation to support its attack on that testimony.

LILCO's efforts should be rejected. Protective actions are designed to result in maximum dose savings, not just dose savings. See Cincinnati Gas & Electric Co. (Zimmer Nuclear Power Station, Unit 1), ALAB-727, 17 NRC 760, 765, 770 (1983). Emergency plans thus should be considered with the "efficiency with which evacuation might be accomplished given the conditions under which it must take place." Id. at 770 (emphasis in original). To achieve the goal of maximum dose savings, officials "must have available to them time estimates that are realistic appraisals of the minimum period in which, in light of existing local conditions, evacuation could reasonably be accomplished." Id. at 771. The Finlayson testimony discusses the radiation dose and adverse health

consequences to which evacuees will be subject if they are stranded in traffic and other conditions which are unanticipated by LILCO in its time estimates but which are nonetheless realistically likely to occur. Clearly, this testimony is an appropriate evidentiary offering to highlight deficiencies in the LILCO Plan. Such evidence does not impose criteria for a maximum allowable evacuation time but rather provides essential data by which to judge the efficiency with which evacuation might be accomplished under LILCO's plan.7/

II. The Finlayson Testimony Challenges No Regulations

LILCO also argues that the "County's theory" challenges the emergency planning regulations and the NRC's power plant siting criteria. LILCO Motion at 20. The short answer to this argument is that LILCO's statement of the "County's theory" is a misstatement (see discussion in Part I.C above) and thus the LILCO arguments are irrelevant. However, the County offers several additional comments.

7/ As pointed out by the Licensing Board at San Onofre, time estimates are designed to provide a basis for deciding whether evacuation can be carried out successfully in advance of potential radiation exposure under the circumstances present at that time. Southern Calif. Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163, 1185 (1982). The Finlayson testimony provides relevant data to assess whether LILCO is in a position to carry out such an evacuation.

First, LILCO suggests that the County has used a single accident sequence for its analyses while, in contrast, the NRC's regulations use a spectrum of accidents. LILCO Motion at 20. In fact, however, the County witnesses have used a spectrum of accidents and their analyses in fact include the spectrum of accidents which form the basis for NUREG-0396. See Finlayson testimony, Attachment 4, at 7-13 and Table 3. Thus, it simply is error to suggest (as LILCO has done) that the "County has chosen its own spectrum of accidents and attempted to redesign the planning basis from scratch." LILCO Motion at 20 (emphasis in original).8/

Second, LILCO argues that the Finlayson testimony also challenges the NRC's 1973 finding that the Shoreham site meets the Part 100 siting criteria. LILCO Motion at 20. LILCO states:

8/ The Finlayson analyses did look at accident sequences in addition to those in NUREG-0396. LILCO certainly cannot complain, however, because each additional analysis performed by Dr. Finlayson and Mr. Minor (i.e., using data from the SAI PRA and the Battelle Memorial Institute) generally had the effect of reducing the adverse consequences of a Shoreham accident below those resulting from NUREG-0396 assumptions. See Finlayson testimony at Attachment 4, pages 7-16. If only NUREG-0396 data had been used by Dr. Finlayson and Mr. Minor, then the health consequences would generally be more severe than those described in the Finlayson testimony.

> This has been clear from the beginning, as the County has argued frequently about the "unique local conditions" on Long Island that make it unsuitable for emergency planning and thus for a nuclear plant.
>
> An applicant shows compliance with Part 100 by assuming certain accidents and calculating their consequences. See 10 C.F.R. § 100.11 (1983). The Finlayson testimony chooses an entirely different set of accidents and calculates their consequences. If those consequences are too great, says the County, the plant may not be licensed. Thus the County's imagined x-y risk criterion is simply a challenge to the siting regulations.

Id. at 20-21 (emphasis in original; footnote omitted). This argument is absurd, since the emergency planning regulations are based on an entirely different base of accidents than are the Part 100 analyses. (Class 9 vs. the design basis accidents). Suffolk County does not challenge the NRC's 1973 decision, although it submits that it certainly was short sighted to locate the Shoreham plant without first assessing emergency planning realities. In the Finlayson testimony, the County witnesses use reasonable emergency planning assumptions and explain what the health consequences will be to people attempting to take protective actions under the LILCO Plan. Such testimony directly addresses admitted contentions and challenges no regulation.

III. The Phase I Argument Has No Merit

LILCO also attempts to strike portions of two paragraphs of the Finlayson testimony as being within the scope of Phase I. See LILCO Motion at 22. The two paragraphs are:

> [E]vacuees potentially will be in the EPZ and exposed to the radiation which the evacuation is designed to enable them to escape, for substantially longer periods of time than LILCO assumes. Therefore, it is likely that the assumed "protection" or reduction in dose upon which the LILCO evacuation recommendation will be based under the LILCO Plan will not be achieved, and, in fact, doses may be increased.

Finlayson testimony at 8.

> Our analysis shows that if the assumptions concerning evacuation times used by LILCO adequately took into account traffic congestion, queuing delays, and the exposure times for evacuees the resulting radiation doses would be substantially larger. Thus, under the Plan and as a result of its inaccurate assumptions, LILCO is likely to recommend evacuation in circumstances that are likely, in fact, to threaten a large number of evacuees with serious radiation doses and health consequences.

Id. at 13. LILCO states "this part of the Finlayson testimony challenges the bases for making protective action recommendations, and those bases were put squarely in issue in Phase I." LILCO Motion at 23.

LILCO's Phase I objection must be rejected. First, the entire purpose of evacuation time estimates is to provide decision makers with reliable data to use in determining the availability of various protective actions. Thus, in any discussion of time estimates, their purpose in assisting in protective action decision making is of course i volved.9/ Thus, LILCO's narrow Phase I/Phase II delineation is not possible to apply -- taken to its extreme, it would require all time estimate litigation to have been part of Phase I.

Second, the Finlayson testimony is not challenging the bases for making protective action recommendations. It is not disputed that time estimates will be used in making dose projections and deciding what protective actions will be recommended. Rather, the Finlayson testimony points out that the effect of LILCO's faulty time estimates is to leave people exposed to harmful doses of radiation -- a matter which is squarely presented in Contention 65 itself.

Third, Contention 65 clearly does involve protective action recommendations. Thus, it is stated in the contention, and the Finlayson testimony directly supports the following:

9/ This aspect of evacuation time estimates and the Intervenors' concerns about LILCO's estimates are explicitly stated in the preamble to Contention 65.

"[Evacuation time] estimates must be accurate and reliable so that command and control personnel who are considering what protective actions might be ordered for particular persons can estimate whether, given projected release and dispersion of health-threatening fission products from the Shoreham plant, evacuation can be accomplished before such dispersion takes place." Testimony which is directly relevant to the very words of a Phase II contention is clearly not subject to a Phase I objection.

Fourth, LILCO cannot properly assert a Phase I objection when its own witnesses have addressed the bases for protective action recommendations in their Phase II testimony:

> The LERO Plan, like other emergency plans, relies upon dose projections and available field monitoring results to determine locations where the radiation dose may exceed the EPA Protective Action Guides. Once the dose data are known, the Protective Action Recommendation procedure is implemented. This procedure, which is detailed in OPIP 3.6.1, considers not only radiological doses, but also evacuation times and the shielding effects of homes and buildings in the affected area. The result is a recommendation that the public in the affected area either shelter or evacuate. For example, if the procedure indicates that evacuation of the area will result in a lower population dose than sheltering, then evacuation will be recommended.

Cordero et al., re Contentions 23.C, 23.D, and 23.H at 8-9.

Thus, in its Phase I argument, LILCO attempts to set up a double standard by objecting to the County's testimony but applying a different standard of admissibility for the testimony of its own witnesses. The Board, of course, cannot permit such a double standard to be imposed.

Fifth, a practically identical "Phase I" objection was made by LILCO with respect to Contention 64, and was rejected by the Board in admitting Contention 64. LILCO argued that Contention 64 "is really a challenge to the methods used to make protective action recommendations. As such it was capable of being litigated in Phase I." LILCO's Objections to Intervenors' "Revised Emergency Planning Contentions" at 55; compare with LILCO Motion at 23-24. Not only did LILCO fail to raise a Phase I objection to the portions of Contentions 65, 23.D and 23.H addressed by the Finlayson testimony at the proper time, but the Board's ruling on the objection made to Contention 64 indicates clearly that the Phase I argument in LILCO's Motion to Strike is without merit. For all the foregoing reasons, this Board should reject LILCO's Phase I argument.

IV. Cross-References Should Not Be Stricken

LILCO makes a final argument that two sentences in the Finlayson testimony (lines 10-12 on page 8, and lines 3-7 on page 13) should be stricken because they suggest that the witnesses sponsoring that testimony have independently drawn conclusions about evacuation times that are beyond their expertise. LILCO Motion at 30-31. LILCO appears to recognize the absurdity of this portion of its motion by noting itself that cross references to show that witnesses are relying on the work of others are perfectly proper and appropriate. Id. at 31 and n.19. It is clear from the context of the two sentences which LILCO seeks to strike that Dr. Finlayson and Mr. Minor are doing just that in referring to the testimony of other County witnesses. This LILCO argument should be rejected out of hand.

Conclusion

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

Respectfully submitted,

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December 20, 1983

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-3 (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY RESPONSE TO LILCO AND NRC STAFF MOTIONS TO STRIKE THE TESTIMONY OF FRED C. FINLAYSON, GREGORY C. MINOR AND EDWARD P. RADFORD ON BEHALF OF SUFFOLK COUNTY REGARDING CONTETIONS 65, 23.D AND 23.H, dated December 20, 1983, have been served to the following by U.S. mail, first class, except where noted, this 20th day of December 1983.

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DATED: December 20, 1983