

LILCO, April 13, 1984

UNITED STATES OF AMERICA ~~DOCKETED~~  
NUCLEAR REGULATORY COMMISSION ~~USNRC~~

Before the Atomic Safety and Licensing Board ~~04 APR 16 07~~ ~~AM~~ ~~07~~

In the Matter of	)	OFFICE OF SECRETARY
	)	DOCKETING & SERVICE
LONG ISLAND LIGHTING COMPANY	)	BRANCH
	)	Docket No. 50-322-OL-3
(Shoreham Nuclear Power Station,	)	(Emergency Planning Proceeding)
Unit 1)	)	

LILCO'S RESPONSE TO "SUFFOLK COUNTY MOTION  
TO STRIKE PORTIONS OF TESTIMONY OF HARRY N. BABB,  
GARY J. BERGER, MATTHEW C. CORDARO, CHARLES A. DAVERIO,  
DENNIS S. MILETI, WILLIAM F. RENZ, AND RONALD A. VARLEY  
ON BEHALF OF LONG ISLAND LIGHTING COMPANY ON PHASE  
II EMERGENCY PLANNING CONTENTIONS 39.A, B, 40, 41, 44.D,  
E AND F, 98, 99.C AND G, 100.B, D, AND G"

On April 9, 1984, Suffolk County filed its "Suffolk County Motion to Strike Portions of Testimony of Harry N. Babb, Gary J. Berger, Matthew C. Cordaro, Charles A. Daverio, Dennis S. Mileti, William F. Renz, and Ronald A. Varley on Behalf of Long Island Lighting Company on Phase II Emergency Planning Contentions 39.A, B, 40, 41, 44.D, E and F, 98, 99.C and G, 100.B, D, and G" (hereinafter "County Motion"). LILCO opposes portions of the County's motion and urges that those portions of the County's motion be denied for the reasons set forth below.

1. Answer 10, portion by Mileti, page 23, the last paragraph

The County argues that this portion of the testimony should be stricken because the comparison of the LILCO training program with other training programs is not relevant. The County argues here, as it has in its motions to strike LILCO's testimony on both

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the Group II-A and Group II-B issues, that LILCO should not be permitted to testify about how other emergency planners have handled similar issues at other nuclear plants. The County's argument that such testimony is not relevant should be rejected. As the Board noted when ruling on the County's motion to strike LILCO's testimony on Contentions 96.A and C, what LILCO's witnesses know of other emergency plans concerning the issues raised by the contentions is relevant to a decision in this case. See Tr. 5560-61 (March 30, 1984).

The County also argues that Dr. Mileti does not provide a detailed description of the other training programs that he has reviewed and the process by which he has reviewed those programs and, therefore, that this portion of the testimony is "without probative value" and should be stricken. County Motion at 3. This argument goes to the weight, not the admissibility of the evidence. If the County wishes additional information concerning this portion of the testimony, it may seek to elicit such information on cross-examination.

2. Answer 10, portion by Berger, page 24, first sentence

The County moves to strike this portion of the testimony on the grounds that a comparison of LILCO's training program with other training programs is not relevant and that the witness's comparison of the LILCO training program with other training programs that he has reviewed is not probative. In short, the County raises the same arguments that it raised with respect to the

testimony of Dr. Miletì in answer to Question 10. As stated previously, this Board has in the past found that a comparison of LILCO's emergency planning efforts with that of other nuclear power plants is relevant. See, e.g., Tr. 5560-61 (March 30, 1984). This portion of the testimony should not be stricken. Moreover, the County's allegation that this portion of Mr. Berger's testimony is not probative of the issues is an argument that goes to the weight and not the admissibility of the evidence. See 10 C.F.R. § 2.743(c) (1983).

3. Answer 29, page 45, last three lines

The County moves to strike the sentence "[i]n no instance was there a shortage of manpower due to the failure of LILCO personnel to show up for their positions in the organization," on the grounds that it is irrelevant as well as repetitious and cumulative of LILCO's testimony on Contention 25. The portion of LILCO's training testimony that Suffolk County seeks to strike has been offered solely to provide background and context to support LILCO's belief that it can train LILCO employees to perform emergency tasks that differ from their normal job activities. In that context, LILCO believes that the portion of the testimony in question is relevant.

However, based on the County's assertion that this portion of the testimony raises the issue of role conflict and based on LILCO's experience at the hearings during which it became apparent that the County intends to use references in LILCO's testimony as

a springboard from which to explore other issues (see Tr. 5587-98 (April 13, 1984)), LILCO does not contest this motion to strike and withdraws this sentence from the LILCO testimony. LILCO takes this action to avoid the delay which cumulative questioning concerning issues of role conflict would undoubtedly cause.

4. Answer 31, paragraph beginning on page 48 through sentence ending on line 15 on page 49

In its motion to strike, Suffolk County alleges that the testimony in question is repetitious and cumulative of LILCO's testimony on Contention 25. LILCO disagrees. The referenced portion of the testimony does not repeat LILCO's role conflict testimony. Rather, the testimony relates to the ability of LERO-trained personnel to perform their jobs during an emergency "when the tasks to be performed may be accompanied by high levels of stress and fatigue involving life-threatening situations." See Contention 40. The portion of the testimony in question directly addresses the ability of people, even those who do not have normal emergency jobs, to perform emergency work during the "stressful" situation which arises in conjunction with an emergency. This testimony does not relate to whether emergency workers will report to their emergency jobs or whether they will suffer "role conflict" and, therefore, should not be stricken as cumulative or repetitious.

5. Question 50 and first two lines of Answer 50, page 71

First, LILCO notes that it is difficult to ascertain precisely the language that Suffolk County seeks to strike. It is

unclear whether Suffolk County seeks to strike the first two sentences of LILCO's response or whether Suffolk County seeks to strike only the first sentence and the phrase which begins the second sentence. In either case, Suffolk County's motion to strike this portion of the testimony should be denied. The testimony in question draws a comparison between LILCO's method for incorporating free play for decisionmaking in its exercise and drill program and the method employed by other nuclear facilities for incorporating free play for decisionmaking in their drill and exercise programs. As the Board has previously ruled, comparisons between LILCO's programs and those at other nuclear power plants are relevant to the issues in litigation. See, e.g., Tr. 5560-61 (March 30, 1984).

6. Questions and Answers 64, 65, 66 and 70, page 80-82, and 84

The County objects to the portions of LILCO's testimony in which the LILCO witnesses testify concerning the training materials and training program which LILCO proposes to offer to non-LILCO organizations such as schools, hospitals, nursing homes, adult homes, and other special facilities. The County states that "speculation and conjecture about actions that LILCO might take in the future is irrelevant and should be stricken." County Motion at 7. In support of its argument the County references portions of its motions to strike both Group II-A and Group II-B testimony; in both its prior motions the County contends, in essence, that LILCO should not be permitted to discuss future planning activities.



This Board has already ruled that LILCO's testimony concerning future planning activities are the proper subject of testimony. On March 20, 1984, the Board ruled as follows:

Turning next to page 42 and 43, the objection is to the answer to Question 110, for the reason that it amounts to allegedly improper speculation. This Motion is denied.

LILCO can submit evidence concerning what it intends to do under certain circumstances.

Tr. 4003 (March 20, 1984). As discussed at length in "LILCO's Answer to 'Suffolk County Motion to Strike Portions of LILCO's Group II-B Testimony,'" at pages 3-8, testimony concerning future planning activities is not speculation on the part of LILCO; rather, it is a commitment by LILCO, in this case, to offer such training to non-LILCO organizations.

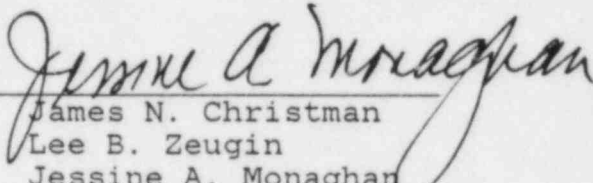
Moreover, as LILCO noted in its Response to Suffolk County's Motion to Strike LILCO's Group II-B Testimony, it is permissible to have predictive testimony and predictive findings in the case of emergency planning proceedings. See Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-08 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983).

For the foregoing reasons, the County's motion to strike the portions of LILCO's testimony contained in Questions and Answers 64, 65, 66 and 70 should be denied.

Conclusion

For the reasons stated above, LILCO opposes portions of Suffolk County's motion to strike and respectfully requests that those portions of the motion objected to be denied.

Respectfully submitted,

  
James N. Christman  
Lee B. Zeugin  
Jessine A. Monaghan

Hunton & Williams  
707 East Main Street  
Post Office Box 1535  
Richmond, Virginia 23212

DATED: April 13, 1984

LILCO, April 13, 1984

CERTIFICATE OF SERVICE

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE

I certify that copies of LILCO'S RESPONSE TO "SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF TESTIMONY OF HARRY N. BABB, GARY J. BERGER, MATTHEW C. CORDARO, CHARLES A. DAVERIO, DENNIS S. MILETI, WILLIAM F. RENZ, AND RONALD A. VARLEY ON BEHALF OF LONG ISLAND LIGHTING COMPANY ON PHASE II EMERGENCY PLANNING CONTENTIONS 39.A, B, 40, 41, 44.D, E AND F, 98, 99.C AND G, 100.B, D, AND G" were served this date upon the following by first-class mail, postage prepaid, or by Federal Express (as indicated by one asterisk).

James A. Laurenson,\*  
Chairman, Atomic Safety  
and Licensing Board, U.S.  
Nuclear Regulatory Commission  
East-West Tower, Rm. 402A  
4350 East-West Hwy.  
Bethesda, MD 20814

Dr. Jerry R. Kline\*  
Atomic Safety and Licensing  
Board, U.S. Nuclear  
Regulatory Commission  
East-West Tower, Rm. 427  
4350 East-West Hwy.  
Bethesda, MD 20814

Mr. Frederick J. Shon\*  
Atomic Safety and Licensing  
Board, U.S. Nuclear  
Regulatory Commission  
East-West Tower, Rm. 430  
4350 East-West Hwy.  
Bethesda, MD 20814

Fabian G. Palomino, Esq.\*  
Special Counsel to the Governor  
Executive Chamber, Rm. 299  
State Capitol  
Albany, New York 12224

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

Eleanor L. Frucci, Esq.\*  
Atomic Safety and Licensing  
Board Panel, U.S. Nuclear  
Regulatory Commission  
East-West Tower, North Tower  
4350 East-West Highway  
Bethesda, MD 20814

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

Stewart M. Glass, Esq.\*  
Regional Counsel, Federal  
Emergency Management Agency  
26 Federal Plaza, Room 1349  
New York, NY 10278

James B. Dougherty, Esq.\*  
3045 Porter Street  
Washington, D.C. 20008

Bernard M. Bordenick, Esq.\*  
David A. Repka, Esq.  
Edwin J. Reis, Esq.  
U.S. Nuclear Regulatory  
Commission (to mailroom)  
7735 Old Georgetown Road  
Bethesda, MD 20814



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

Gerald C. Crotty, Esq.\*  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

Martin Bradley Ashare, Esq.\*  
Suffolk County Attorney  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

Spence W. Perry, Esq.\*  
Assoc. General Counsel, Federal  
Emergency Management Agency  
500 C Street, S.W., Room 840  
Washington, D.C. 20472

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

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

Mr. Marc W. Goldsmith  
Energy Research Group  
4001 Totten Pond Road  
Waltham, MA 02154

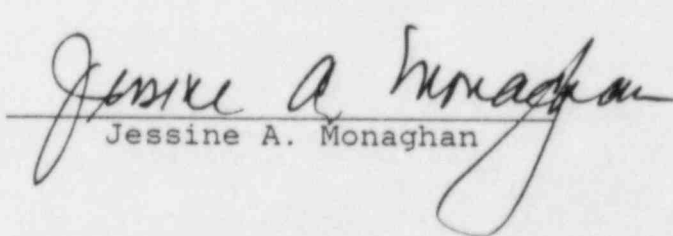
MHB Technical Associates  
1723 Hamilton Avenue  
Suite K  
San Jose, CA 95125

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

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

Hunton & Williams  
707 East Main Street  
Post Office Box 1535  
Richmond, Virginia 23212

DATED: April 13, 1984

  
Jessine A. Monaghan