

LILCO, May 14, 1984

RELATED CORRESPONDENCE

DOCKETED  
USNRC

'84 MAY 16 AIO:29

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONBefore 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,	)	Proceeding)
Unit 1)	)	

LILCO'S ANSWER TO  
SUFFOLK COUNTY MOTION TO  
STRIKE LILCO TESTIMONY ON CONTENTION 15  
(CREDIBILITY) AND CONTENTION 11 (CONFLICT OF INTEREST)

The "Suffolk County Motion to Strike LILCO Testimony on Contention 15 (Credibility) and Contention 11 (Conflict of interest)," dated May 7, 1984, makes 12 separate requests to strike portions of LILCO's testimony. LILCO's answer to each of the 12 requests is set out below.

I. LILCO Testimony on Contention 15

- A. Answer 7, page 16, lines 12-19 [should read "12-18"] (through "because"); page 17, lines 20-23; page 18, the portion of line 3 which reads "or the County Executive"; page 18, lines 7-11 ("If Suffolk . . . happen.")

This first request to strike, covering four sentences and parts of two others, argues that the testimony in question

addresses the credibility of Suffolk County or the Suffolk County Executive or "what LILCO believes Suffolk County would have to do if it believed it could implement an emergency plan that would protect its citizens." The County says this is irrelevant because only LILCO's credibility and ability to implement an emergency plan are at issue in this proceeding.

This argument should be rejected. In Contention 15 Suffolk County has alleged lack of "credibility" as an insurmountable obstacle to planning. But a fact-finder has no way of knowing whether the alleged lack of credibility is significant without comparing it to the credibility of other people and groups. It is easily demonstrable that many public and private institutions do emergency planning, including emergency planning for nuclear power plants that are licensed by the NRC. If the so-called lack of "credibility" that Suffolk County claims to have discovered is nothing more than a routine and universal feature of our society, and if many institutions sharing this alleged disability are implementing emergency plans on which operating licenses depend, then it is necessarily the case that Suffolk County's Contention 15 is wrong.

Moreover, Suffolk County's motion to strike asks the Board to ignore the realities of the case. Several of Suffolk County's contentions (particularly the "legal authority" Contentions 1-10 and Contentions 11 and 15) are founded on the idea that only a government can do adequate emergency planning.

The LILCO testimony confronts this fundamental proposition and challenges it. Far from being irrelevant, the testimony goes to the very heart of Suffolk County's case.

- B. Answer 8, page 18, line 20 (after "No"), through page 19, line 5 (sentence ending with "emergency plan"); page 19, the portion of line 6 which reads "this is not so"; page 19, the portion of lines 12-13 which reads "and is therefore not exceptional in that regard."
- 

This testimony goes to the credibility of other utility companies, and Suffolk County repeats its argument that only LILCO's credibility, and no other, is at issue here.

It is true that the contention addresses only LILCO's credibility; but Suffolk County's argument takes too narrow a view of what evidence may be used to refute such a contention. (In the same way, if the contention were that LILCO had no source of water for fighting fires, Suffolk County might argue that LILCO was forbidden to testify about its halogen fire extinguishers because they do not use water.) The fact is that Suffolk County has repeatedly alleged that "unique local conditions" make emergency planning impossible on Long Island. The challenged testimony goes directly to the question whether LILCO's credibility is such a "unique local condition" and shows that it is not, in at least one sense.

Also, Congress has on two occasions<sup>1/</sup> in the past said that a "utility plan" might be used to compensate for the lack of a State or local plan. To the extent that Suffolk County's theory of this case would make "utility plans" categorically inadequate, the theory is a challenge to the will of Congress. LILCO's testimony tends to prove that the LILCO utility plan faces no obstacle that any other utility plan would not face as well.

Finally, emergency plans for all operating nuclear power plants depend to some extent, in the sense Suffolk County claims, on the "credibility" of utilities, because it is the utility that implements the onsite plan, first categorizes the emergency, communicates the situation to offsite authorities, and makes protective action recommendations. If Suffolk County's theory of this case were correct, it would place the viability of the emergency plans for all nuclear power plants in jeopardy. LILCO's testimony tends to show, in fact, that Suffolk County's theory of the case is wrong because it proves too much.

---

<sup>1/</sup> Pub.L. 96-295, § 109, 96th Cong., 2d Sess., 94 Stat. 783-84 (June 30, 1980); Pub.L. 97-415, 97th Cong., 2d Sess., 96 Stat. 2069 (Jan. 4, 1983).

- C. Question and Answer 11, pages 28-29;  
Question and Answer 12, page 30

Again Suffolk County challenges testimony about the credibility of government officials. For the same reasons cited in I.A above, this testimony is relevant. The evidence presented by LILCO shows that a lack of "credibility," as Suffolk County defines it, is something suffered by all institutions, public and private, to some degree as to some parts of the population. And this in turn tends to show that Suffolk County's proposition, that a lack of credibility makes emergency planning impossible, is wrong.

- D. Answer 16, page 38, line 1 (after  
"Quite well") through line 11 ("Master  
Plan, and")

This challenge goes to testimony that mentions the credibility of the Governor of New York, Suffolk County, and the NRC. The same arguments made above in I.A and I.C apply here, with one addition.

Here Suffolk County challenges testimony about the credibility of the NRC. It is undeniable that the NRC would play a role, probably a highly visible one, in any emergency at any nuclear power plant, Shoreham included. This was the case at Three Mile Island, and it will be the case if there is ever another nuclear accident in the future. If the viability of the Shoreham emergency plan depends on LILCO's credibility, as

Suffolk County claims, then to some extent it must also depend on the credibility of other participants in the emergency planning and response, such as the NRC. By Suffolk County's own reasoning, the "credibility" of all participants is relevant. And Suffolk County cannot pretend that the NRC will not be involved in the response to an emergency. So Suffolk County's claim that the credibility of the NRC is irrelevant to the contention is wrong.

E. Question and Answer 23, pages 47-52;  
Question and Answers 25-27, pages  
53-56

The County claims that the testimony here is repetitive of pages 26-36 of LILCO's written testimony on the "evacuation shadow phenomenon."

It is true that the quality of emergency information is discussed in both LILCO's shadow phenomenon testimony and LILCO's credibility testimony. The reason is that the contentions themselves are repetitive. Contention 23 says that many people will evacuate even when told to do something else; Contention 15 says that people will not obey protective action recommendations.

But LILCO's testimony on Contention 15 is tailored to the particular contention; it is a more specific application of ideas set forth in the shadow phenomenon testimony. Where cross-reference to the shadow phenomenon testimony is possible,



LILCO has done it instead of repeating the earlier testimony. Likewise, Answer 20 to the shadow phenomenon testimony, on page 27 of that testimony, notes that the particular factor of the credibility of the source of the information will be discussed in detail in testimony on Contention 15.

Question and Answer 23 to the credibility testimony address the nature of "official" protective action recommendations and why they might be disobeyed. On pages 50-51 the testimony provides an example of how emergency information can be misleading, an example that was not contained in the shadow phenomenon testimony. At the top of page 52, the answer to the question incorporates the information that the National Weather Service has acted on the sort of advice that LILCO's witnesses are giving in the testimony, another detail not included in earlier testimony. In short, while the testimony on Contention 23 and the testimony on Contention 15 are related, they are not identical, nor are they needlessly redundant.

Likewise, Question and Answer 25, on pages 53-55, discuss the characteristics of good emergency information in the specific context of the credibility issue. Question and Answer 26 in the credibility testimony discuss the process of "confirmation." We do not find this discussion duplicated in the shadow phenomenon testimony. Question and Answer 27 in the credibility testimony simply cross-reference the shadow phenomenon testimony without repeating it. In short, the County's claim of repetitiveness is unfounded.

F. Answer 29, page 59, line 14 through  
page 63; Answer 30, pages 64-66

The County argues that LILCO's testimony about various situations in which private parties have had roles in emergencies or in giving advice is irrelevant. The County is wrong for reasons given above; one simply cannot ignore the fact that the County's premise is that a private company cannot successfully do an emergency plan. The LILCO testimony, on the other hand, shows that private parties and corporations are involved in emergency planning and in emergency responses in a number of areas. Moreover, part of the testimony shows that LILCO itself is routinely listened to in matters within its expertise. Again, the County's implicit theory seems to be that evidence is irrelevant unless it calls on experience in radiological emergencies and nothing else.

The discussion of theatre ushers and parking lot attendants is particularly relevant. It is senseless to argue, as Suffolk County does, the irrelevance of evidence that the public routinely follows directions given by people who lack what Suffolk County views as "credibility."

G. Answer 40, page 75, line 15, to page  
76, line 17

The County argues that this testimony is repetitious of LILCO's testimony on "role conflict," particularly pages 18-19.



The "emergency consensus" is indeed discussed both in the role conflict testimony and the credibility testimony. But the credibility testimony represents a specific application of the emergency consensus idea to the credibility issue raised by Suffolk County. It is simply a more focused and more specific rendering of a general concept developed in the role conflict testimony, and it is therefore relevant and admissible.

- H. Answer 41, page 77, second sentence  
("This letter . . . Connecticut")

Suffolk County argues that a sentence saying that the letter of agreement with the U.S. Coast Guard is essentially the same as the letter that the Coast Guard has executed for nuclear power plants in Connecticut is irrelevant. To the contrary, evidence that the Coast Guard views this emergency plan as "business as usual" certainly bears on the question of whether the Coast Guard will fail to function because of its alleged doubts about LILCO's "credibility."

- I. Questions and Answers 49-51; pages  
86-88

Suffolk County argues that this testimony is repetitious and cumulative of LILCO's "shadow phenomenon" testimony.

However, Question and Answer 49 simply cross-reference the shadow phenomenon testimony without repeating it. This testimony is once again, an application of ideas developed in

the shadow phenomenon testimony to the specific issue raised in Contention 15. It is thus relevant without being duplicative.

Likewise, Questions and Answers 50 and 51 are simply specific applications of ideas from the shadow phenomenon testimony applied to the precise contention at issue here.

J. Question and Answer 92, pages 109-110

The County moves to strike testimony that rumor control is commonly staffed by utility personnel under other radiological emergency plans. The County's oft-repeated argument that what is done under other emergency plans is irrelevant has been rejected by this Board already. In any event, evidence that rumor control programs routinely depend on utility personnel is certainly relevant to Suffolk County's thesis that a rumor control system manned by utility company employees makes the plan unworkable.

K. Question and Answer 97, pages 113-115;  
Question and Answer 109, page 121

Suffolk County moves to strike as "speculation" and as irrelevant testimony about what LILCO believes New York State and Suffolk County would do in the event of an emergency at Shoreham. The testimony at pages 113-115 discusses what would happen if Suffolk County or the State of New York were to elect in an actual emergency to participate in an emergency response.

The testimony on page 121, again, simply tells what LILCO would do if Suffolk County or New York State decided to take an active role in emergency preparedness.

Throughout this proceeding testimony has been elicited about LILCO's inability to "control" information going to the public in an emergency. This idea encompasses information disseminated by the press generally and information originating with public officials who may not have participated in the emergency planning process. In fact, this idea is raised by Suffolk County's own written testimony on Contentions 11 and 15. See Testimony of Arthur H. Purcell et al. Regarding Contentions 11 and 15 at 74-78. The testimony Suffolk County seeks to strike addresses this very question. Suffolk County cannot reasonably ask the Board to hear testimony on one side of the question and not on the other.

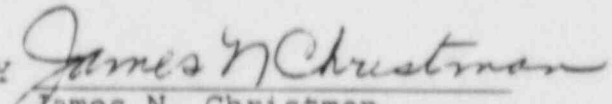
II. LILCO Testimony on Contention 11

Questions and Answers 7-10, pages 7-10;  
Answer 11, page 10, first sentence

Suffolk County moves to strike certain LILCO testimony on "conflict of interest" because testimony about such conflicts in other contexts is, Suffolk County argues, irrelevant. However, the testimony in question establishes that "conflict of interest" is a phenomenon that can affect anyone, sometimes

with pernicious results and sometimes without; this in turn shows that the important question is what measures have been put in place to prevent such results. If this is not relevant to the issue of conflict of interest, nothing is. It is inadmissible, in fact, only under the theory that the only relevant experience is experience with radiological emergencies; such a theory has never been accepted in this proceeding.

Respectfully submitted,  
LONG ISLAND LIGHTING COMPANY

BY   
James N. Christman

Hunton & Williams  
P.O. Box 1535  
707 East Main Street  
Richmond, VA 23219

DATED: May 14, 1984

CERTIFICATE OF SERVICE

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

I hereby certify that copies of LILCO'S ANSWER TO  
SUFFOLK COUNTY MOTION TO STRIKE LILCO TESTIMONY ON CONTENTION  
15 (CREDIBILITY) AND CONTENTION 11 (CONFLICT OF INTEREST) were  
served this date upon the following by first-class mail, post-  
age prepaid or, as indicated by an asterisk, by Federal Ex-  
press.

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

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

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

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

Fabian G. Palomino, Esq.\*  
Special Counsel to the  
Governor  
Executive Chamber  
Room 229  
State Capitol  
Albany, New York 12224

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

Mr. Marc 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

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

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

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

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

Jonathan D. Feinberg, Esq.  
New York State Department of  
Public Service, Staff Counsel  
Three Empire State Plaza  
Albany, New York 12223

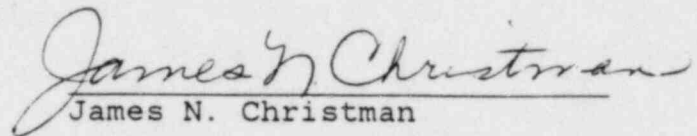
Spence W. Perry, Esq.  
Associate General Counsel  
Federal Emergency Management  
Agency  
500 C Street, S.W.  
Room 840  
Washington, D.C. 20472

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



Gerald C. Crotty, Esq.  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

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

  
James N. Christman

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

DATED: May 14, 1984