

205,

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

'84 MAY 17 A10:50

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

Docket No. 50-222-OL-3
(Emergency Planning)

SUFFOLK COUNTY MEMORANDUM IN OPPOSITION TO
LILCO'S MOTION TO STRIKE PORTIONS
OF SUFFOLK COUNTY'S TESTIMONY
ON CONTENTIONS 11 AND 15

Suffolk County hereby responds to LILCO's Motion to Strike Portions of Suffolk County's Testimony on Contentions 11 and 15, dated May 3, 1984 (hereinafter "Motion"), and for the reasons set forth below, submits that the LILCO Motion should be denied.

I. Testimony of Arthur H. Purcell et al.

- A. On pages 10-11: The answer beginning with "(Purcell Saegert) The Three Mile Island" on line 3 of page 10 and ending with "that TMI-II was lost" on line 16 of page 11, including footnotes 2 and 3

LILCO asserts that this portion of testimony is irrelevant "because the chain of reasoning is so tenuous that the evidence (that CPU behaved inappropriately in 1979) simply does not lead

DS03

to the conclusion that the County witnesses would have the Board draw" Motion at 2-3. LILCO also asserts that in its view, "all things considered" the testimony is "not probative." Motion at 4. LILCO's objection goes merely to the weight of this testimony, and the motion to strike should therefore be denied.

LILCO admits that the testimony in question contains the County witnesses' opinion that the behavior of utility officials during the TMI accident evidenced a lack of objectivity and conflict of interest. See Motion at 3. It is certainly proper for the County's witnesses to refer to the only relevant historical experience in order to illustrate the phenomenon they believe would also occur in the event of a Shoreham accident with LILCO officials in command and control. LILCO's Motion appears to constitute only a disagreement with the opinions of the County's witnesses; LILCO fails to state any proper basis for striking the testimony. Because the objection goes to the weight of the evidence and can be pursued on cross examination, the LILCO motion should be denied.

P. On pages 11-12: The answer beginning with "(All)
The terms 'mind set'" on line 17 of page 11 and
ending with "unworkable emergency responses" in
line 9 on page 12

LILCO moves to strike this portion of the testimony as irrelevant, by suggesting that lack of objectivity is not relevant to the lack of independence and conflict of interest issue that is the subject of Contention 11. See Motion at 4-5.

LILCO is incorrect. The testimony at issue sets forth the Suffolk County witnesses' opinion that utility employees are too close to the source of the problem to maintain the objectivity and open-mindedness necessary to manage and control a response to an emergency involving a nuclear power plant. The "mind set" discussed in this portion of the County's testimony directly relates both to the tendency of LILCO officials to minimize the public's perception of a potential or actual emergency, and to LILCO's failure to ensure the independence of LERO personnel who are in command and control under the LILCO Plan. Both of these matters are explicitly raised in Contention 11. LILCO's motion should be denied.

C. On page 14: The second paragraph on page 14, beginning with "Fourth" and ending with "regarding training."

LILCO asserts that this testimony "belongs in the testimony on the 'training' issues," and, therefore, LILCO asserts that it is irrelevant. Motion at 5. LILCO's motion should be denied. Although it is true that the word "training" does appear in the second line of the paragraph LILCO seeks to strike, the thrust of the paragraph is the "institutional inability" of the LILCO officials in command and control positions under the LILCO Plan "to be involved in emergency preparedness efforts on a full-time or near full-time basis." The Suffolk County witnesses, after noting that fact, note that as a result those officials lack the perspective necessary for objective and independent decision-making in the event of a Shoreham emergency. See Purcell, et al. at 14. The point of this paragraph is not to criticize the particulars of LILCO's training program which is the subject of the training contentions. Instead, the testimony at issue reflects the opinion of these witnesses that because of their existing LILCO positions and prior experience, the particular individuals chosen to be in command and control positions under the LILCO Plan do not have the necessary independence to permit objective decision-making. The testimony is relevant to the lack of independence

issue directly raised in Contention 11. Accordingly, the LILCO Motion should be denied.

- D. On page 2 and in the Attachments: Footnote 5 on page 21, beginning with "This desire" and ending with "command and control positions," and Attachment 4.
-

LILCO's motion to strike footnote 5 and Attachment 4 again amounts to an argument which goes to the weight of this testimony. LILCO asserts that the "probative value of the testimony is so slight that it should be struck as irrelevant." Motion at 6. In this portion of their testimony the County's witnesses state their opinion that the tendency of LILCO employees in command and control positions either to take the advice of other LILCO executives or to make statements presenting management in the most favorable light, could be increased as a result of LILCO's recent personnel actions. The discussion is relevant to the allegations in Contention 11 that LILCO employees will have a strong incentive to minimize the public's perception of the potential or actual danger involved in a radiological emergency, and that LILCO has failed to institute appropriate measures to ensure the independence of LERO personnel. Because the discussion is relevant to Contention 11 there is no basis for striking it, and LILCO has failed to state one. If LILCO wishes to challenge the weight of this evidence, it can do so on cross examination.

- E. On pages 26-27: The paragraph beginning in line 10 of page 26 with "Third" and ending in line 17 of page 27 with "short-term disruption"
-

LILCO asserts that this paragraph on pages 26-27 is irrelevant because "any decision-maker would prefer a less disruptive alternative," and, according to LILCO, the discussion pages 26-27 "has nothing to do with LILCO's financial and institutional interests." Motion at 7. LILCO's motion should be denied because it fails to state a proper basis for striking the testimony, and it ignores the fact that Contention 11 plainly raises the issue of the result of conflicts of interest upon protective action recommendations. The testimony is relevant and should not be stricken.

Contention 11 explicitly states that the LILCO employees in command and control "may not recommend an appropriate protective action in a prompt manner because to do so would be contrary to LILCO's financial interests in maintaining a public perception that Shoreham is not a source of danger." The paragraph at issue provides a specific example of one likely effect of conflicts of interest upon recommendations of protective actions. The testimony is clearly relevant to the contention and there is no basis for striking it.

F. On page 28: Footnote 6 beginning with
"For instance" and ending with "LERO"

LILCO asserts that this footnote is irrelevant, presumes a fact not in evidence, and "attempts to reopen the question of the onsite emergency plan." Motion at 7. Each of these LILCO assumptions is incorrect. First, the footnote is clearly relevant to Contention 11, since it discusses part of the decision-making process in which the LILCO officials in command and control will engage during a radiological emergency. It also discusses how the relationship between the LERO directors and persons at the plant -- that is, a non-independent relationship -- can result in a non-objective use of information provided by the LILCO employees to the LERO directors. Thus, the footnote discusses a direct contrast between the situation at Shoreham where utility officials are in charge of the offsite response and the traditional situation where non-utility officials are in command and control of that response. The footnote clearly addresses an issue that is relevant to Contention 11.

LILCO's assertion that footnote 6 presumes a fact not in evidence is without basis, and in fact goes to the weight of the testimony. First, it is not true that the testimony "presumes" that onsite recommendations need to be "critically challenged;" it merely states that if LILCO officials perform

offsite command and control functions, it is unlikely that the onsite recommendations would be critically challenged. Thus, there is no presumption that such challenges are always necessary, the witnesses merely discuss what they believe is likely to happen during the process of making offsite protective action recommendations under the LILCO Plan.

Finally, LILCO's suggestion that this footnote "attempts to reopen" onsite emergency planning is also without basis. The footnote contains no criticism or discussion of anything pertaining to the onsite plan; it merely discusses how the LILCO officials in command and control of the offsite response are going to perform their decision-making responsibilities. LILCO has stated no basis for striking this footnote, and the motion should, therefore, be denied.

- G. On pages 32-33: The three sentences beginning with "That is" in line 3 of page 32 and footnotes 8 and 9, ending on page 33
-

LILCO fails to state any basis for striking this testimony, see Motion at 8, and for that reason alone, the motion should be denied. LILCO does assert, however, that this testimony "goes to the quality of the paper plan," and "has nothing to do with how the public perceives the author of the plan" This LILCO motion appears to be a disagreement

with the opinions stated by the County's witnesses, and thus is not a proper motion to strike. Motion at 8. First, LILCO is incorrect that this testimony goes only to "the quality" of a "paper plan." The testimony discusses certain characteristics a plan must have in order to be credible, including methods of presenting information, and recommending courses of action. Clearly, such things take place during the implementation of an emergency plan and are directly relevant to the credibility of that plan as Professor Saegert explains in the first sentence on page 32, which LILCO does not seek to strike. The fact that the LILCO Plan's "contents" may be written on paper before LILCO attempts to implement them during an emergency does not render irrelevant a discussion of whether LILCO's statements made during that implementation will be believed by the public. The testimony at issue is relevant to Contention 15, and LILCO has stated no basis for striking it.

H. On pages 35-36 and in the attachments: From "In addition" in line 9 on page 35, through "more negative" in line 7 on page 36, and Attachment 5

LILCO asserts that this testimony is inadmissible because it violates the "best evidence" rule, in LILCO's view it has "so little probative value" that it is irrelevant, and the testimony constitutes hearsay. All LILCO's arguments go to the

weight of this testimony and LILCO has failed to state a proper basis for striking it.

First, it is important to view this portion of testimony in its entirety in order to understand the reason that the County's witnesses cite one of the findings of the Marburger Commission. As stated in the testimony, there are two reasons that the witnesses believe the quoted Marburger Commission findings are significant: (1) the Commission's conclusion supports the survey results cited in Contention 15; and (2) the wide publicity received by the findings -- evidenced in the newspaper articles which constitute Attachment 5 -- is likely to cause public perception of LILCO and its credibility to become even more negative. These reasons also demonstrate why the testimony is relevant to Contention 15. Clearly, the findings of the Marburger Commission cited by the County witnesses, and the publicity given those findings even assuming the findings were untrue, are relevant to the credibility issue raised in Contention 15.

Thus, the use which the County's witnesses make of the Marburger Commission Report is clear on the face of the testimony; should LILCO believe that it is necessary to place the entire Marburger Commission Report into evidence, it can do so

in connection with its cross-examination of the County witnesses. The County witnesses quoted the portions of that Report they believe are significant. There is no basis for striking that testimony simply because LILCO believes the entire Report should be put into evidence.

LILCO's second argument -- that the Marburger Commission Report was "not a consensus document" -- again goes to the weight of this testimony and the County's witnesses' reference to the quoted portion of the Marburger Commission Report. Should LILCO wish to challenge the significance assigned to that portion of the Commission's findings by the County's witnesses, it can do so upon cross-examination of those witnesses.

Finally, LILCO's hearsay objection should be denied for the same reasons this Board has consistently denied every other motion to strike hearsay testimony in this proceeding. In addition, the Suffolk County witnesses do not discuss the "deliberations" of the Marburger Commission, as suggested by LILCO in its Motion. Instead, the County witnesses quote one finding contained in the Commission's Report, and discuss the effect, upon the public's perception of LILCO's credibility, of the numerous press reports which contained the credibility finding of the Commission.^{1/} In sum, LILCO has stated no basis for

^{1/} Moreover, LILCO's implication that it would be prejudiced by the admission of this testimony containing a brief quo-

(Footnote cont'd next page)

striking this testimony.

- I. On pages 37-38 and in the attachments: The words "St. Andrews School Board" in the third line from the bottom on page 37; the words "and the Board of Trustees of the New Interdisciplinary School" in line 5 on page 38; and the letter and resolution from St. Andrews and two letters from the New Interdisciplinary School in Attachment 6
-

The only basis for LILCO's motion to strike this testimony is that the two schools mentioned "are not in the Shoreham ten-mile EPZ." LILCO therefore concludes that "how" these schools "view LILCO is irrelevant to the adequacy of the emergency plan." Motion at 10. LILCO is incorrect. First, Contention 15 is nowhere limited to "schools in the Shoreham EPZ." Contention 15 states that "LILCO is not considered by the public to be a credible source of information," and it refers

(Footnote cont'd from previous page)

tation from the Marburger Commission Report and newspaper articles discussing that Report because LILCO would not have the opportunity "to cross-examine" the Marburger Commission "results" is disingenuous. LILCO and, indeed, many of its own witnesses on Contention 15, participated fully in the months of hearings before the Marburger Commission, and put into that hearing record volumes of written material and oral testimony. If LILCO wishes to bring to the Board's attention any aspect of that Commission's findings which it believes are relevant to the finding cited for a limited purpose by the County, it is certainly in a position to do so provided it can make the proper and necessary showing of good cause.

to more than 60 percent of the people in Suffolk County who who would not trust LILCO officials to tell the truth about an accident. As the Suffolk County witnesses state in the paragraph from which LILCO seeks to strike references to these two schools, all the resolutions in Attachment 6 "further corroborate" their opinion that, as stated in Contention 15, "LILCO is not considered a credible source of information in the event of a Shoreham emergency. The testimony is relevant and should not be stricken.

- J. On pages 27-38: The sentence at the bottom of page 37 beginning with "Each" through the end of the paragraph at the top of page 38, ending with "Shoreham emergency."

LILCO seeks to strike this testimony, but states no basis other than its assertion that it "has so little probative value that it should be struck as irrelevant." Motion at 10. This motion should be summarily denied since it is totally lacking in basis. In addition, this objection goes merely to the weight of the testimony. LILCO makes no argument or showing that the testimony does not relate to Contention 15 or the allegation in the contention that the public does not view LILCO as a credible source of information in the event of a Shoreham emergency. There is no basis for striking this testimony.

K. On pages 40-44 and in the attachments: All of pages 40, 41, 42 and 43, and page 44 from the top through the words "manage an emergency" in line 6; Attachments 7-11

Once again, LILCO completely fails to provide any basis for striking this testimony, other than its statement that "on balance the relevance of [this testimony] is so slight that the testimony should be ruled inadmissible." Motion at 11. This Motion should be summarily rejected. As LILCO itself notes, the relationship between the press reports which constitute Attachments 7-11 concerning LILCO's mismanagement and diesel generator and other problems, and LILCO's credibility as a source of information during an accident is described on pages 42-44 of the testimony which LILCO seeks to strike (i.e., where the witnesses respond to the question "How does publicity about LILCO's mismanagement relate to LILCO's credibility as a source of information during a radiological emergency?"). Even if LILCO does not agree with the conclusions drawn by the County's witnesses in this portion of their testimony, that provides no basis for striking the testimony. It is clearly relevant and probative to the issues raised in Contention 15, and, therefore, the LILCO motion should be denied.

- L. On page 44: The sentence beginning in line 1 of page 44 with "Third" and ending with "standards of competence" in line 3

This sentence is a portion of the testimony which LILCO seeks to strike in the immediately preceding portion of its Motion. See part I.K above. LILCO provides no new basis for striking this sentence, it merely states that the "chain of cause and effect the testimony postulates is so tenuous that the testimony is not probative." Motion at 11. Once again, this LILCO objection goes to the weight of the testimony. If LILCO believes that the "chain of cause and effect" is tenuous, it can pursue that belief upon cross-examination of the County's witnesses. In addition, contrary to LILCO's suggestion, the testimony does not go to the adequacy or inadequacy of LILCO's training program; it discusses the effect, upon the public's perception of LILCO's performance during an emergency, of the public's pre-existing perceptions about LILCO's incompetence. The testimony is relevant to Contention 15 and should not be stricken.

- M. On page 44: The sentence starting on line 3 with "Thus any" and ending with "emergency" in line 6

This motion to strike is also encompassed within the Motion discussed in Part I.K above. LILCO asserts that this sentence is outside the scope of Contention 15 because it deals with something that would happen "during an emergency." Motion at 12. This issue is directly raised in Contention 15; indeed, LILCO's lack of credibility and the public's perception of LILCO's credibility are important primarily because of the effect of such perceptions during an emergency. Here the County's witnesses discuss the fact that the public's preexisting perceptions will be confirmed given certain LILCO behavior during an emergency, resulting in disobedience of LILCO orders. The testimony is relevant to the issues raised in Contention 15 and should not be stricken.

- N. On page 51 - 52: The paragraph beginning with "Responding" at the bottom of Page 51 and ending with "for LILCO" on line 13 of page 52

LILCO asserts that this paragraph "addresses the alleged lack of legal authority raised by Contentions 1 - 10," and therefore is outside the scope of Contention 15. Motion at 12. LILCO is incorrect. The testimony at issue does not discuss LILCO's actual legal authority to perform any specific acts,

which are the issues raised in Contentions 1 - 10. Instead, the testimony at pages 51 - 52 addresses the public perception issue which is the heart of Contention 15. That Contention states, among other things, "because the public does not perceive LILCO as a credible source of information, protective action recommendations and other information disseminated by LILCO in an emergency will not be followed or believed by the public." In this portion of the County's testimony the witnesses discuss that issue. They note that the exercise of command and control during an emergency means, among other things, having confidence that orders will be accepted, and they state that orders will not be accepted unless the entity which issues them is perceived as legitimate and credible by the public and members of organizations which are expected to follow the orders. There is no basis for striking this testimony.

- O. On pages 52 - 60: The question on page 52 beginning with "Q. Are there any other reasons" through the answer on pages 58-60 ending with "there areas of concern and expertise" in line 2 of page 60."

In its Motion LILCO asserts that this testimony is beyond the scope of Contention 15. Motion at 13. LILCO provides no explanation or reason for this belief, other than its assertion

that it believes this testimony is pertinent to Contentions 12 and 13 which were denied admission by the Board. Such a statement does not constitute a basis for striking this testimony which is relevant to issues raised in Contention 15.

Contention 15.A asserts that individuals in support organizations relied upon in the Plan:

will share the public perception that LILCO is not a credible source of information. Therefore, it is likely that orders from the LILCO employees in command and control will not be obeyed by the non-LILCO emergency workers relied upon in the Plan. Accordingly, there is no assurance that the portions of the LILCO Plan involving participation of non-LILCO personnel can or will be implemented

The testimony which LILCO seeks to strike sets forth the reasons for the witnesses' agreement with Subpart A of Contention 15 -- that is, they explain in this testimony why they believe that LILCO's lack of credibility will lead non-LILCO organization members not to obey LILCO command and control directives. The testimony is directly relevant to the issue explicitly raised in Contention 15.A. There is no basis for striking it.

In addition, LILCO's description of this testimony as being limited to a statement that LILCO personnel "will lack

intimate, every day working relationships with support organizations" (Motion at 15), is a mischaracterization which merely indicates that LILCO's objection to this testimony is, in reality, a disagreement with the testimony. The County's witnesses are entitled to explain the bases for their agreement with the Contention and they do so in this testimony. The fact that their bases include opinions about the relationships between LILCO and non-LILCO entities does not justify striking their testimony. Should LILCO wish to challenge the County witnesses' opinions on this matter, it can do so upon cross examination.

Finally, LILCO's assertion that the testimony on pages 53 - 57 concerning the qualifications of certain individual LERO workers is inadmissible because it is "minutia" or because in LILCO's view its "probative value is so slight as to be outweighed by the burden of admitting and hearing it," is no basis for striking the testimony. The testimony is relevant, probative and material to Contention 15. The fact that it is detailed does not constitute a basis for striking it, nor does LILCO's self-serving and arrogant assertion that it would be more burdensome to admit this testimony than to strike it. The County's witnesses are entitled to discuss specifics and provide examples in stating the bases for their opinions and

their agreement with particular Contentions. They do so in the testimony which LILCO seeks to strike. Because that testimony is relevant to the admitted Contention 15 and its Subpart A, LILCO's motion should be denied.

P. On page 58: The words "and fire departments" in lines 10 - 11 on page 58

LILCO asserts that this testimony is irrelevant because "the LILCO Plan does not rely on fire departments." Motion at 15. In making this Motion LILCO appears to ignore the statements contained in its own Plan. On page 2.2-4, the LILCO Plan states the following:

Local Law Enforcement Agencies and Fire Departments

It is anticipated that all local law enforcement agencies and fire departments within the 10 mile EPZ will continue to carry out their normal response functions during an emergency. Should the incident escalate to the point of requiring these agencies to evacuate from the local area, it is further anticipated that these agencies will take their own compensating measures, based upon the situation at hand, and continue to render the necessary services in response to the situation.

The LERO provides a liaison within its organization to act as a full time point of contact through which LERO response effort information and interaction can be effected by the agencies involved.

Thus, the reference in Contention 15.A to fire departments is a result of LILCO's assumption, contained in its Plan, that such departments will carry out functions during an emergency, will render necessary services in response to the situation, and will be in contact and interact with LERO. LILCO's Motion to Strike has no basis.

Q. On page 59: The words "and the Suffolk County Police Department" in the last two lines of page 59

LILCO makes the same argument here as it does with respect to the reference to fire departments on page 58. For the reasons stated in Section I.F above, and evidenced in the portion of the LILCO Plan quoted therein, this portion of the LILCO Motion should be denied.

R. On pages 65 - 66: The entire paragraph beginning with "Second" on page 65 and ending with "workers will be met" in the middle of page 66

LILCO asserts that this testimony is outside the scope of Contention 15. Motion at 16. LILCO is incorrect. This portion of testimony addresses Subpart D of Contention 15, which alleges that LILCO's field personnel will not be trusted or obeyed by the public. This testimony states the basis for the County's witnesses' agreement with that portion of the

Contention, by stating why it is that the public's perception of LILCO and its workers will result in disobedience during an emergency. Clearly, Intervenor's are not required to, nor could they, state in a Contention every reason which supports every allegation contained in the contention. The fact that the particular reason discussed on pages 65-66 is not explicitly set forth in the Contention does not mean that the testimony should be stricken. The testimony states the reason for, and explains, an allegation contained in Contention 15.D and is therefore relevant and admissible evidence.

- S. On page 66: The sentence beginning "The inability of LILCO's field workers" in line 10 on page 66 and ending with "will be met" on line 13 on page 66
-

This sentence is part of the paragraph discussed in part I.P above. This motion should be denied for the reasons set forth in part I.P.

- T. On pages 68 - 68: The two paragraphs, beginning with "Second, a critical fact" in line 4 on page 68 and ending with "by the public" in line 7 on page 69
-

LILCO asserts that this testimony is about the LILCO training program and is therefore outside the scope of Contention 15. Motion at 16. LILCO is incorrect. This testimony

does not discuss the substantive inadequacies in the LILCO training program as those inadequacies are discussed in the County's training testimony. Instead, this testimony focuses on the perception of the public, which is the subject of Contention 15. The testimony states that contrary to the normal situation in which the public traditionally has confidence in public service workers, such confidence will be lacking with respect to LILCO workers as a result of the public's perception of the training provided to LILCO's workers concerning the jobs they are expected to perform during an emergency. As the testimony states:

The confidence and resulting grant of credibility which can come from the public's knowledge about extensive on-the-job training, will thus be missing with respect to those LILCO workers and will contribute to the likelihood that their directives will not be followed by the public.

The point of the testimony is not the actual training that may in fact be received by LILCO workers -- it is the public's perception and its effect upon the public's willingness to obey the LILCO workers. The testimony is thus relevant to Subpart D of Contention 15. LILCO has stated no bases for striking it.

- U. On pages 69 - 70: The paragraph beginning with "Third" in line 2 on page 69 and ending with "is most essential" in line 6 on page 70
-

LILCO asserts that this testimony is beyond the scope of Contention 15, but does not explain in any way the basis for its assertion. See Motion at 17. Contrary to LILCO's bald assertion, this testimony is relevant to the Contention. It states the witnesses' opinion that "LILCO traffic and public safety personnel will not be credible sources of information and directives, particularly where complex split-second judgments may be required," and the reasons that they believe this to be the case. LILCO has failed to state any basis for striking the testimony, and its motion should be denied.

- W. On pages 75 - 76: All of page 75 (except the end of footnote 25 at the bottom) and the first 5 lines of page 76
-

LILCO asserts that this testimony "has to do with training or personnel selection, not with LILCO's credibility." Motion at 17. Regardless of how LILCO chooses to characterize this testimony, it is relevant to Subpart F of Contention 15 and therefore there is no basis for striking it. Subpart F of Contention 15 states in pertinent part:

LILCO's proposed rumor control point is to be manned by LILCO employees. (Plan at 3.8-5). This rumor control effort will be ineffective and will fail to comply with NUREG 0654, Section II.C.4.c, because it relies on LILCO -- a non-credible source of information -- has the authoritative source for squelching, explaining or otherwise controlling rumors. Rumors cannot be effectively controlled if the source of control is itself not credible.

The testimony at issue set forth specific reasons for the County's witnesses' agreement with Contention 15.F. It discusses the specifics of LILCO's proposed rumor control system, and explains why that system will not and cannot result in effective rumor control. There is no basis for LILCO's implicit suggestion that a discussion of the specifics of LILCO's proposed rumor control system is outside the scope of the Contention which asserts that that system will not be effective. Using LILCO's logic, any sentence in the testimony that does not contain the word "credibility" would be irrelevant. Clearly, the testimony at issue provides the factual context in which the effectiveness of, and the impact of LILCO's lack of credibility upon, LILCO's proposed rumor control system must be evaluated. Such an evaluation cannot be conducted in a factual vacuum. The LILCO motion should be denied.

- X. On page 79: The paragraph beginning with "(Saegert) The public" in line 4 on page 79 and ending with "read such material" near the bottom of page 79

LILCO asserts that this testimony is outside the scope of Contention 15 and has "so little bearing" on the issue raised in the Contention that it should be stricken as irrelevant. Motion at 18. LILCO's Motion simply ignores the content of this portion of the County's testimony which is clearly relevant to Subpart G of Contention 15. That Contention states:

LILCO proposes to conduct all public education activities designed to inform the public about Shoreham and about actions to be taken in the event of a Shoreham emergency. (See Plan at 3.8-1 through 3.8-4) LILCO's lack of credibility renders LILCO incapable of effectively educating the public on these matters. The public will likely disbelieve, disregard or discount purported educational materials regarding such preparation for the radiological emergency at Shoreham, if such materials are received from and/or prepared by LILCO. Thus, the LILCO Plan cannot and does not comply with 10 CFR § 50.47(b)(7) or NUREG 0654, Sections II.G.1 and 2.

(emphasis added). The Contention clearly includes the allegation that the public will disregard educational materials they receive from LILCO. The testimony at issue addresses precisely that point. Not only does it state Professor Saegert's opinion concerning the public's likely reaction to materials sent by

LILCO, it also includes additional evidence which she believes further substantiates that opinion. The testimony is relevant to Contention 15.G and should not be stricken.

II. Testimony of Steven Cole on Contention 15

- A. On page 14: The first paragraph beginning with "Recent research" and ending with "the Shoreham plant"

LILCO states no basis for striking this testimony, other than its bald and unexplained assertion that in its view it "has so little probative value" that it should be stricken as irrelevant. Motion at 18. The testimony clearly is relevant to Contention 15, a fact not even contested by LILCO in its Motion. The LILCO objection goes only to the weight of the testimony and that objection can be pursued upon cross examination of Professor Cole. The testimony merely states the bases for his opinion that LILCO's credibility is lower than that of many other utilities. The testimony should not be stricken.

III. Testimony of Robert W. Petrilak on Contention 15.C

- A. On page 2: The sentence "LILCO does not have the authority to direct the actions that would be expected of school districts" on page 2, lines 9 - 10
-

LILCO asserts that this sentence "goes to an issue of 'legal authority'" and is relevant to Contentions 1 - 10, and that it should be stricken as irrelevant to Contention 15. Motion at 19. Although the sentence does have the word "authority" in it, the sentence clearly is a part of Mr. Petrilak's explanation of the reasons he agrees with Contention 15.C. The sentence must be read in context. The Contention asserts that school authorities may not believe or follow the information or recommendation provided to them by LILCO. Mr. Petrilak simply explains on page 2 of his testimony why the Mount Sinai School District would not implement protective actions solely based upon LILCO recommendations. Although the sentence at issue may also be relevant to Contentions 1 - 10 (although it does not address the statutes or other legal matters raised in those contentions), in the context of this testimony, it clearly is relevant to Mr. Petrilak's opinion on Contention 15.C.

IV. Conclusion

For the foregoing reasons LILCO's Motion to Strike Portions of Suffolk County's Testimony on Contentions 11 and 15 should be denied.

Respectfully submitted,

Martin Bradley Ashare
Suffolk County Department of Law
Veterans Memorial Highway
Hauppauge, New York 11788



Herbert H. Brown
Lawrence Coe Lanpher
Karla J. Letsche

KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W.
Washington, D.C. 20036

Attorneys for Suffolk County

Dated: May 15, 1984

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.)
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Memorandum in Opposition to LILCO's Motion to Strike Portions of Suffolk County's Testimony on Contentions 11 and 15 have been served on the following this 15th day of May 1984, by U.S. mail, first class, except as otherwise noted.

* James A. Laurenson, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

* Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

** W. Taylor Reveley III, Esq.
Hunton & Willaims
P.O. Box 1535
707 East Main Street
Richmond, Virginia 23212

* Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Edward M. Barrett, Esq.
General Counsel
Long Island Lighting Company
250 Old Country Road
Mineola, New York 11501

* By Hand
** By Federal Express

Mr. Brian McCaffrey
Long Island Lighting Company
Shoreham Nuclear Power Station
P.O. Box 618
North Country Road
Wading River, New York 11792

Nora Bredes
Executive Director
Shoreham Opponents Coalition
195 East Main Street
Smithtown, New York 11787

Marc W. Goldsmith
Energy Research Group, Inc.
400-1 Totten Pond Road
Waltham, Massachusetts 02154

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

Joel Blau, Esq.
New York Public Service Commission
The Governor Nelson A. Rockefeller
Building
Empire State Plaza
Albany, New York 12223

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

* Edwin J. Reis, Esq.
Bernard M. Bordenick, Esq.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart Diamond
Business/Financial
NEW YORK TIMES
229 W. 43rd Street
New York, New York 10036

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

Docketing and Service Section
Office of the Secretary
1717 H Street, N.W.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Hon. Peter F. Cohalan
Suffolk County Executive
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

* Eleanor L. Frucci, Esq.
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

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

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

Jonathan D. Feinberg, Esq.
Staff Counsel, New York State
Public Service Commission
3 Rockefeller Plaza
Albany, New York 12223

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

Spence Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Washington, D.C. 20471

James B. Dougherty, Esq.
3045 Porter Street, N.W.
Washington, D.C. 20008

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



Karla J. Letsche
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

DATE: May 15, 1984