

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges  
James A. Laurenson, Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon

In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power  
Station, Unit 1) )

Docket No. 50-322-OL-3  
(Emergency Planning Proceeding)

March 9, 1984

MOTION OF GOVERNOR MARIO CUOMO, REPRESENTING  
THE STATE OF NEW YORK, TO STRIKE PORTIONS OF  
THE "TESTIMONY OF MATTHEW C. CORDARO AND JOHN A.  
WEISMANTLE ON BEHALF OF LONG ISLAND LIGHTING  
COMPANY ON PHASE II EMERGENCY PLANNING CONTENTION  
92 (STATE EMERGENCY PLAN)"

AND

STATEMENT OF GOVERNOR MARIO CUOMO, REPRESENTING  
THE STATE OF NEW YORK, IN SUPPORT OF THE "SUFFOLK  
COUNTY MOTION TO STRIKE PORTIONS OF LILCO'S GROUP  
II-A TESTIMONY"

Pursuant to 10 C.F.R. Sections 2.743(c) and 2.757(b),  
the State of New York hereby moves to strike certain portions  
of the TESTIMONY OF MATTHEW C. CORDARO AND JOHN A. WEISMANTLE  
ON BEHALF OF LONG ISLAND LIGHTING COMPANY ON PHASE II EMERGENCY  
PLANNING CONTENTION 92 (STATE EMERGENCY PLAN).

10 C.F.R. Section 2.757(b) provides that the presiding  
officer may strike "argumentative, repetitious, cumulative or  
irrelevant evidence." In particular, the following portions of  
the testimony referred to above deviate from this standard:

- 1) the first, second, third, fifth, sixth and eighth  
sentence and the list of attachments 1-11 in the  
"PURPOSE" section;
- 2) all of the fourth question and answer;
- 3) all of the seventh question and answer;

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- 4) the second sentence of the first paragraph, and the last paragraph of the answer to the eighth question;
- 5) all of the ninth question and answer;
- 6) the second sentence of the answer to the tenth question;
- 7) the first, second, third, fifth, sixth and eighth sentence of the answer to the eleventh question; and
- 8) attachments 1-11.

The State of New York is not moving to strike the fourth sentence in the "PURPOSE" section, the fifth question and answer, or the fourth sentence in the answer to the eleventh question.

#### IRRELEVANCY

The Board has stated that the sole focus of this proceeding is the LILCO Plan, and that the dispositive issue is whether the LILCO Plan can be implemented by LILCO (See page 2 of the Board's Order of June 10, 1983, entitled, "ORDER LIMITING SCOPE OF SUBMISSIONS"). Hence, proffered evidence is relevant only if it pertains to this central issue and Contention 92. Contention 92 asserts:

Contention 92. There is no New York State emergency plan to deal with an emergency at the Shoreham plant before this board. (See Plan, at Attachment 1.4.2). In addition, the LILCO Plan fails to provide for coordination of LILCO's emergency response with that of the State of New York (assuming, arguendo, such a response would be forthcoming). (See FEMA Report at 1.)

In the absence of a State emergency plan for Shoreham, there can be no finding of compliance with 10 CFR Sections 50.47(a)(2), 50.47(b), or NUREG 0654, Section I.E, I.F, I.J or II. (Footnote omitted).

The following portions of the testimony referred to above are irrelevant:

- 1) the first, second and third sentence and the list of attachments 1-11 in the "PURPOSE" section;
- 2) all of the fourth question and answer;
- 3) all of the second paragraph of the answer to the seventh question except the last sentence;
- 4) the second sentence of the first paragraph of the answer to the eighth question;
- 5) the first, second and third sentence of the answer to the eleventh question; and
- 6) all of attachments 1-11.

The subject of this proffered evidence is the contents of the New York State Emergency Plan. The New York State Emergency Plan describes how New York State and its governmental subdivisions would react to disasters in general and radiological accidents at three other nuclear plants in particular. The New York State Emergency Plan has nothing to do with how LILCO or the State would react to a radiological accident at Shoreham.

In addition, Contention 92 is framed precisely in terms of the nonexistence of New York State planning documents for Shoreham. The fifth question and answer in the testimony is

relevant to the contention because it admits that the New York State Emergency Plan contains no site-specific volume for Shoreham. However, proffered evidence that the New York State Emergency Plan contains planning documents for all types of disasters other than a disaster at Shoreham is irrelevant to Contention 92.

REPETITION, SPECULATION, AD HOMINEM STATEMENTS

The following portions of the testimony referred to above are repetitive, speculative or ad hominem:

- 1) the fifth, sixth and eighth sentence in the "PURPOSE" section;
- 2) the first paragraph, and the last sentence of the second paragraph, of the answer to the seventh question;
- 3) the last paragraph of the answer to the eighth question;
- 4) all of the ninth question and answer;
- 5) the second sentence of the answer to the tenth question; and
- 6) the fifth, sixth and eighth sentence of the answer to the eleventh question.

This proffered testimony consists of LILCO's version of the State of New York's official position with respect to Shoreham and statements of LILCO's views, hopes, feelings and



expectations of whatever the State of New York's position on Shoreham might be in the future.

This proffered testimony contains speculative and factually inaccurate statements. For example, the answer to the seventh question is prefaced with "At present, it [the State of New York's position with respect to Shoreham] is uncertain." (Emphasis added.) Also, the last sentence in the "PURPOSE" section and the last sentence in the answer to the eleventh question state that "LILCO expects that the State of New York would participate in an emergency response were there an actual emergency at Shoreham." (Emphasis added.) The State submits that the Board should strike such speculation because it cannot be substantiated until an actual emergency occurs at Shoreham. Similar speculation by LILCO about the response of Suffolk County's personnel has previously been stricken by the Board (T.p.1298). The proffered testimony, therefore, only serves to clutter the record.

The proffered testimony also contains ad hominem statements. For example, the sixth sentence in the "PURPOSE" section and the sixth sentence in the answer to the eleventh question state, "LILCO would welcome the participation of New York State in the planning and process or during an actual emergency." (Emphasis added.) Such statements appeal to the emotions of the reader rather than to the knowledge of the reader and, therefore, merely serve to clutter the record with nonsubstantive matter.

#### CONCLUSION

For the foregoing reasons, the State of New York urges that

the Board strike the portions of the proffered testimony identified above.

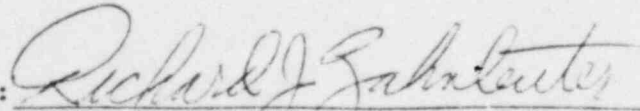
SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF LILCO'S GROUP II-A  
TESTIMONY

The State of New York fully supports Suffolk County's MOTION  
TO STRIKE PORTIONS OF LILCO'S GROUP II-A TESTIMONY.

Respectfully submitted,

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges  
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CERTIFICATE OF SERVICE

I hereby certify that one copy of the MOTION OF GOVERNOR MARIO CUOMO, REPRESENTING THE STATE OF NEW YORK, TO STRIKE PORTIONS OF THE "TESTIMONY OF MATTHEW C. CORDARO AND JOHN A. WEISMANTLE ON BEHALF OF LONG ISLAND LIGHTING COMPANY ON PHASE II EMERGENCY PLANNING CONTENTION 92 (STATE EMERGENCY PLAN)"

AND

STATEMENT OF GOVERNOR MARIO CUOMO, REPRESENTING THE STATE OF NEW YORK, IN SUPPORT OF THE "SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF LILCO'S GROUP II-A TESTIMONY" has been served to each of the following this ninth day of March 1984 by U. S. Mail, first class, except as otherwise noted:

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\*\*\*By Telecopier on March 9, 1984  
\*\*\*\*By U.S. Express Mail

Albany, New York  
March 9, 1984