

LILCO, March 9, 1984

RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
PLANNING & SERVICE  
BRANCH

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,	)	Proceeding)
Unit 1)	)	

MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY  
ON BEHALF OF SUFFOLK COUNTY REGARDING EMERGENCY  
PLANNING CONTENTION 26

Long Island Lighting Company (LILCO) hereby moves to strike portions of the direct testimony of Deputy Inspector Kenneth J. Regensburg, Deputy Inspector Robert A. Snow, and Police Officer Vincent R. Stile on behalf of Suffolk County regarding Emergency Planning Contention 26 dealing with notification of emergency response personnel. The bases for this Motion are as follows:

First, the testimony asserts that the notification of emergency response personnel cannot be implemented in accordance with applicable regulations and guidelines because of the alleged inadequacy of nondedicated commercial telephone lines. The testimony is replete with conclusory references, some direct and some indirect, that the commercial telephone system on

Long Island will overload and breakdown or otherwise be out of service in the event of an emergency. These references in the testimony should be struck.

The alleged inadequacy of non-dedicated commercial telephone lines for notification of emergency response personnel was originally submitted by Suffolk County as paragraph B of Contention 26.1/ In its order of August 19, 1983, this Board

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1/ Contention 26.B. [Not admitted by ASLB]. Under the LILCO Plan, non-dedicated, commercial telephone lines, with no backup means of communication, are relied upon for notifying essentially all categories of emergency response personnel. The notification procedures which are dependent upon commercial telephones are:

1. Notification by the plan and/or LILCO Customer Service of (a) Nassau County, (b) the State of Connecticut, (c) the U.S. Coast Guard, and (d) the Federal Aviation Administration. (See Plan at 3.4-4; Figures 3.3.5 and 3.4.1).

2. Notification of BNL, which will provide all offsite dose and accident assessment and projection personnel. (Plan, Attachment 2.2.1, at 2; Figure 3.3.5).

3. Notification by "key" emergency response personnel who are employed by LILCO, by means of pagers which must be accessed by commercial telephones. (Plan, at 3.4-4 and 3.4-5).

4. Notification of all other emergency response personnel who are employed by LILCO, by means of telephone calls from other emergency workers. (OPIP 3.3.2).

5. Notification of reception hospitals, ambulance and fire/rescue dispatch stations, bus companies, relocation center, and, apparently, the American Red Cross and all other non-LILCO organizations and personnel relied upon in the LILCO Plan. (See OPIPs 3.6.4 and 3.6.5).

LILCO's reliance upon commercial telephones for most notification of offsite response personnel is inappropriate. Commercial telephones are subject to overload, or may be out of service in the event of an emergency. The possibility of over-

(footnote continued)

denied Contention 26.B. Specifically, the Board stated:

The subject matter of this subcontention is the alleged inadequacy of nondedicated commercial telephone lines for notification of emergency response personnel. Contention EP11 specifically addressed this issue during Phase I of this proceeding; that contention was dismissed as a sanction for the Intervenor's intentional failure to comply with orders of the Board, ("Memorandum and Order Confirming Ruling on Sanctions for Intervenor's Refusal to Comply with Order to Participate in Prehearing Examination," LBP-82-115, 16 NRC \_\_\_\_\_, December 22, 1983). We will not relitigate issues which were raised in Phase I.

Once again, in its testimony filed on Contention 26, Suffolk County seeks to circumvent this Board's Order and relitigate this issue. Such testimony, identified specifically hereinafter, should be struck.

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(footnote continued)

load is particularly acute under the LILCO Plan because, in addition to the heavy telephone use by the public which is likely in the event of an emergency, LILCO employees will themselves be making extensive use of the telephone lines. In addition to using the lines for all the notification purposes listed above, the Plan also contemplates LILCO personnel contacting all schools, hospitals, nursing/adult homes, other special facilities, and handicapped persons in the EPZ, to verify their awareness of an emergency, the need to evacuate, and to arrange for assistance. (See OPIPs 3.6.4. and 3.6.5). If commercial telephone lines were not available to LILCO, practically none of the offsite response personnel could be notified, and no aspect of its Plan could be implemented. Given both the enhanced probability of commercial telephone line overload, and the impact of telephone unavailability on the implementation of the LILCO Plan, LILCO's reliance upon commercial telephones means there can be no assurance that the Plan can or will be implemented.

Second, several sections of the County's testimony are irrelevant because they proceed upon an erroneous interpretations of applicable regulations and guidelines. The County's testimony assumes that after receiving notification from the Shoreham Plant that an emergency has been declared, LERO must notify emergency response workers within 15 minutes. There is no such requirement.<sup>2/</sup> The County's reference to 10 C.F.R. Part 50, Appendix E, Section IV.D.3 is misplaced. That section deals with the capability of the licensee to notify offsite authorities (in this case, LERO) within 15 minutes after declaring an emergency. That section does not address the subject of the notification of emergency response personnel by offsite authorities, nor does it impose any 15-minute limitation within which emergency response personnel must be notified.

There is no such 15-minute limitation in applicable regulations and guidelines. The County is attempting to lift out of context the 15-minute limitation applicable to notification of LERO by the licensee and apply that limitation to a facet of the emergency response plan where it has no application. In fact, LILCO is aware of no regulation or guideline which

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<sup>2/</sup> In support of their argument at Page 17 of their testimony, the County refers to the 15-minute limitation as the limitation "which we understand is the benchmark under NRC regulations for notifying emergency response personnel. See 10 C.F.R. Part 50, Appendix E, Section IV.D.3."



imposes a 15-minute limitation on the time for notifying emergency response personnel or even suggests such limitation as a "benchmark" for the notification of emergency response personnel. 10 C.F.R. Section 50.47(b)(6) refers to "prompt communications" to emergency personnel. The requirement is for "prompt communications" and not for notification within any 15-minute limitation. Those portions of the Suffolk County testimony which are predicated upon the erroneously assumed 15-minute limitation should be struck.<sup>3/</sup>

Portions of the County's testimony proceed on the erroneous premise that the LILCO Transition Plan must provide for immediate notification of an emergency to every location where there is a RECS telephone. Such is not the case. In cases where state and local government, and perhaps other governmental entities, are active participants in the applicable emergency response plan, then they are "response organizations" within the meaning of 10 C.F.R. Section 50.47(b)(5) and (6). In the present case, however, Suffolk County and the State of New York have refused to participate as response organizations. The entity created by LILCO to carry out the emergency response function, pursuant to the decision of this Board, is LERO.

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<sup>3/</sup> In addition, the issue of whether LILCO's on-site organization has the capability to notify the off-site organization (i.e., LERO) within 15 minutes was the subject of Phase I of this proceeding, as to which the County defaulted. This provides an additional reason for striking all references to the alleged 15-minute criterion.

Thus, on the facts of the present case, the only entity on the RECS system required to be initially notified in the event of a declaration of an emergency is LERO.

Third, portions of the County's testimony amount to conclusory statements and opinions for which there is no basis in the record. For example, on page 22 of their testimony, at lines 1 through 6, the County witnesses state that LILCO's emergency response personnel are not as likely to respond to an emergency as would be Suffolk County police officers. The testimony offers no factual basis to support this conclusion. Certainly, the qualifications of the County's witnesses would not qualify as experts qualified to offer such conclusions or opinions based upon their training or expertise. Moreover, these kinds of issues have been addressed in connection with other contentions and therefore the testimony should be struck because it is repetitious and cumulative.

Fourth, some of the County testimony is based upon an erroneous reading of the LILCO Plan. Accordingly, this testimony has no basis in fact and should be struck. For example, at pages 37 and 38 of their testimony, Suffolk County makes incorrect statements with respect to the number of telephone calls which could be handled at the Hicksville Customer Service Office.

In some instances, the same testimony should be struck on more than one basis. Where applicable, the additional bases will be stated specifically.

Adequacy of Non-Dedicated Commercial Telephone Lines

The following testimony, identified by page and line, should be struck because it attempts to relitigate the question of the adequacy of non-dedicated commercial telephone lines.

<u>Page and Line References</u>	<u>Reasons to Strike</u>
6, lines 12 thru 19	Attempts to relitigate commercial telephones.
22, lines 12 thru 19	Attempts to relitigate commercial telephones.
34, lines 21 thru 23	Attempts to relitigate commercial telephones. (This testimony also should be struck because it is part of a body of testimony which proceeds upon the erroneous premise that there is a 15-minute time limitation, after LERO receives notification that an emergency has been declared, within which LERO must notify emergency response workers.)
41, lines 8 thru 13	Attempts to relitigate commercial telephones. (Additionally, this testimony should be struck because it offers conclusory statements for which there are no supporting facts. There is no basis upon which these witnesses can testify that every paged worker will attempt to telephone somebody to verify the paged message.)
47, lines 11 thru 23	Attempts to relitigate commercial telephones.
51, lines 1 thru 6	Attempts to relitigate commercial telephones. (This testimony is also subject to strike because it is not relevant to the contention for which it is proffered and, in fact, raises role conflict issues addressed in connection with other contentions.)

53, lines 8  
thru 20

Attempts to relitigate commercial telephones. (Additionally, this testimony should be struck because it offers conclusory statements for which there are no supporting facts. There is no basis upon which these witnesses can testify that emergency workers will call their home, friends and relatives before calling out emergency workers. In addition, to the extent that this testimony addresses role conflict, it should be struck as repetitious and cumulative of testimony on other contentions.)

55, lines 4  
thru 11

Attempts to relitigate commercial telephones.

60, line 22  
thru page 61,  
line 22

Attempts to relitigate commercial telephones.

TESTIMONY BASED ON ERRONEOUS  
INTERPRETATIONS OF APPLICABLE REGULATIONS

Page and Line  
References

Reasons to Strike

12, line 21  
thru page 17,  
line 20

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified. (Additionally, page 16, lines 8-9 and 15-18, should be struck because there is no factual basis in the record to support these conclusory statements that "the LILCO paging system might malfunction.") (Emphasis added).

30, line 6  
thru 15

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified.



31, line 11  
thru page 35,  
line 12

All of this testimony should be struck because it proceeds on the erroneous premise that various governmental entities, such as Suffolk County, are "response organizations" within the meaning of 10 C.F.R. § 50.47(b)(5) and (6). Such is not the case in this proceeding.

52, line 15  
thru page 52,  
line 16

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified.

TESTIMONY BEYOND SCOPE OF CONTENTION  
AND/OR WITHOUT SUFFICIENT FOUNDATION

Page and Line  
References

Reasons to Strike

20, line 11  
thru page 21,  
line 2

This testimony makes numerous assumptions for which there is no basis in the record. Upon what basis can these witnesses assume that a call made by a customer service operator to a LERO emergency worker will be more time consuming than a call made by one police officer to another off-duty police officer? This testimony is based upon rank speculation. Finally, the testimony seems to raise questions as to the adequacy of the training of LERO workers. Training issues are addressed in other contentions and testimony as to training is irrelevant to the issues presented by Contention 26.

21, line 20  
thru page 22,  
line 12

This testimony is based on speculation and assumptions which find no factual basis in the record. Additionally, the testimony seeks to raise issues being addressed in other contentions. For example, the issue of role conflict, raised at the top of page 22, is not relevant to the issues presented by Contention 26.

Page and Line  
References

Reasons to Strike

38, lines 13  
thru 22

This testimony should be struck because it addresses issues relating to training and role conflict. There is no factual basis in the record to suggest that these witnesses are competent to discuss these issues nor that the issues are relevant to Contention 26.

45, line 16  
thru page 46,  
line 17

There is no factual basis in this record to support the conclusions set forth in this testimony. Upon what basis do these witnesses presume to testify that LERO workers, in violation of their training, will leave the area covered by the pager system while they are on duty? Additionally, upon what basis do these witnesses conclude that persons who are paged will choose to ignore the page?

48, line 1  
thru page 50,  
line 7

This testimony, including the footnote incorporated therein, has no factual basis in the record relating to Contention 26. This testimony represents an effort by Suffolk County to relitigate the role conflict and credibility issues presented in other contentions. For example, on page 49, upon what factual basis to these witnesses preoffer an opinion that "without some kind of confirmation before hand, many persons [who have been paged] will not really believe that there is an emergency requiring them to report for duty." This testimony should be struck.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By Jessie A. Monaghan  
Counsel

James E. Farnham  
K. Dennis Sisk  
Jessine A. Monaghan  
HUNTON & WILLIAMS  
P. O. Box 1535  
Richmond, Virginia 23212