

LILCO, March 9, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 CONTENTIONS 28, 29, 30, 31, 32 AND 34

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 Contentions 28, 29, 30, 31, 32 and 34 regarding communications among emergency response personnel. The reasons why specific portions of the County's testimony must be struck are set forth below.

I. CONTENTION 28

All of the County's testimony on Contention 28 rests on a ground that already has been rejected by the Board in denying admission to Suffolk County's proposed Contention 26.B. On pages 4 (lines 6-16) and 5 (lines 1-17), the County asserts

that communications by commercial telephone or the Federal Telecommunications System (FTS) with FEMA, the Federal Aviation Administration (FAA) and the U. S. Coast Guard will be inadequate and unreliable. With the exception of a reference to the testimony of FEMA witness Philip McIntire, to the effect that the commercial telephone system might become overloaded in the event of an incident at Shoreham, the purported reasons for the alleged inadequacy and unreliability of commercial telephones and the FTS are completely unspecified.<sup>1/</sup>

The issue of telephone system overload was addressed specifically by the County's proposed Contention 26.B. Indeed, that Contention made specific reference to the alleged lack of reliability of commercial telephone for notifying state and federal agencies, including the U. S. Coast Guard, the FAA and DOE/BNL. That Contention asserted, inter alia, that

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<sup>1/</sup> The County's testimony asserts that the FTS "is ineffective as a backup to commercial telephones, since it is nothing more than the Federal tie-line telephone system and therefore also inadequate and unreliable under emergency conditions." (County testimony at 4-5). There is absolutely no basis for this assertion, and the County's testimony specifies no reason why the FTS would be "inadequate and unreliable under emergency conditions." The FTS is not part of the commercial telephone system and would not be subject to any alleged overload resulting from calls by members of the public, who have no access to the FTS.

The County's testimony also asserts that commercial telephones and the FTS "have common failure modes under adverse environmental conditions." (County testimony at 5). The alleged "failure modes" are left completely to speculation and conjecture. The testimony is not probative of any fact and is therefore irrelevant.

Commercial telephones are subject to overload, or may be out of service in the event of an emergency.

Thus, the Contention asserted, LILCO's reliance on commercial telephones to notify federal agencies allegedly meant that there could be no assurance that the Plan could or would be implemented.

The Board rejected Contention 26.B, primarily on the ground that it raised an issue upon which the County defaulted in Phase I of this Emergency Planning proceeding. (Special Prehearing Conference Order, August 19, 1983, pp. 15-16). Despite the Board's ruling, the County's testimony on Contention 28 attempts to resurrect the issue of alleged overload and lack of reliability of commercial telephone to notify FEMA, the FAA and the U. S. Coast Guard. The County's attempt to resurrect the Contention that was rejected by the Board should not be countenanced.

As noted above (see note 1 supra), the County's testimony provides no reason, foundation, or basis for the assertion that the FTS would be inadequate and unreliable under emergency conditions. To the extent that the County may be attempting to suggest that the FTS would be subject to overload, the County's testimony should be struck, first, because it attempts to reopen the overload issue that the Board rejected under proposed Contention 26.B. and, second, because it lacks any factual basis whatsoever.

Finally, the County's testimony asserts that "additional problems must be expected with LILCO's reliance on the Federal Telephone System" because the FTS line is located in the Shoreham Control Room and the LERO Director of Local Response and Evacuation Coordinator will not be located in the Shoreham Control Room. These individuals, however, will either be in communication with the Customer Service Operater at Hicksville or will themselves be located at the EOC. Communications from the Hicksville Customer Service Office to the Shoreham Control Room and from the EOC to the Shoreham Control Room include dedicated telephone lines and the ESO frequency. Thus, the County's idle speculation as to unspecified "additional problems" lacks any factual basis and must be struck.

Since the entire paragraph beginning on page 4 and ending on page 5 of the County's testimony must be struck, the question on page 3 and the introductory paragraph on pages 3 and 4 of the County's testimony constitute mere surplusage with no foundation. The introductory paragraph on pages 3 and 4 does nothing more than purport to describe certain provisions of the LILCO Transition Plan. As a consequence, this portion of the County's testimony must also be struck as irrelevant, because it is not probative of any fact that is in issue.

## II. CONTENTION 29

Contention 29 contains two simple assertions: (1) that "[t]he LILCO Plan does not specify the number of emergency

personnel that will be assigned responsibility for manning communications equipment" at various specified and unspecified "communication posts"; and (2) that "the Plan does not provide for trained repair technicians capable of keeping communications equipment operational" (emphasis added). Based on these two assertions, the Contention concludes that "there is no assurance that LILCO's communications system can or will be operated in the event of an emergency."

The County's testimony, however, gropes considerably beyond the scope of Contention 29. Those portions of the County's testimony are not relevant to issues in this proceeding and are not admissible as evidence under Section 2.743(c) of the Commission's Rules of Practice, which restricts admissible evidence to "relevant, material, and reliable evidence...." Specific instances are discussed below.

The last sentence on page 6 of the County's testimony (lines 17-22) speculates that "[w]ithout an adequate number of qualified and trained personnel to man LILCO's communications system and to back up those personnel assigned primary communications responsibilities and duties, there can be no assurance that prompt or reliable communications among emergency personnel will be possible" (emphasis added). Contention 29 asserts only that the LILCO Transition Plan does not specify the number of emergency personnel that will be assigned responsibility for manning communications equipment; it does not question the

qualifications or training of those individuals. Further, there is no requirement under applicable regulations or guidelines that specific personnel be assigned to back up everyone involved in communications. Thus, this sentence of the County's testimony must be struck not only because it is beyond the scope of the Contention, and therefore irrelevant, but also because it lacks any basis in regulations or guidelines.

The first paragraph of page 7 of the County's testimony (lines 1-12) then asserts that "[t]he LILCO Plan does not specify the responsibilities or duties of the LILCO personnel assigned to man communications equipment" (emphasis added). Once again, Contention 29 addresses only the "number of emergency personnel that will be assigned responsibility for manning communications equipment...", not any alleged specification of their "responsibilities or duties." This same problem recurs on page 8 (lines 1-7) of the County's testimony. In addition, the sentence on lines 3-7 of page 8 of the County's testimony appears to question whether there are "clear lines of responsibility and authority among LILCO's communications personnel..." This assertion is hopelessly beyond the scope of the language of Contention 29, and is therefore irrelevant to the issue admitted by the Board.

A different problem is presented by the sentence on lines 4-7 of page 9 of the County's testimony. That sentence questions whether communications under the LILCO Transition

Plan would be possible without "trained repair technicians on duty at all times at every location where a communications post is established...." There is no factual basis for this assertion; it should be struck as lacking any foundation, therefore irrelevant and not probative.

### III. CONTENTION 30 AND 31

The County's testimony groups Contentions 30 and 31 together under the heading "LILCO's Emergency Radio System." Portions of this testimony lack any basis.

The middle paragraph on page 16 of the County's testimony (lines 11-20) hinges on the assertion that lead traffic guides from each staging area "would have to communicate and coordinate with each other" and "traffic guides from different staging areas might also have to communicate with each other." These assertions lack any basis whatsoever. The County's testimony proffers no reason why such communication "would" or "might" have to take place, in light of the facts that each staging area has direct communications with traffic control coordinators at the EOC, and the traffic guides in each staging area have direct radio communications with their respective lead traffic guides. The County's bald assertion that communications between lead traffic guides in different staging areas, and between traffic guides in different staging areas, might have to take place, lacks any foundation and should be rejected as irrelevant, immaterial and not probative.

At two points the County's testimony asserts that each traffic guide may have to use his radio fifteen minutes or more per hour (page 18, lines 10-15; page 20, lines 2-4). This assertion allegedly is based on "our experience." That alleged "experience" is completely unspecified; as a result, these assertions lack any basis. It is impossible to discern whether this purported "experience" has any relationship whatsoever to the circumstances applicable to traffic guides under the LILCO Transition Plan. Similarly, the assertion that allotting one minute per hour to each traffic guide for communications "is really far too little time for traffic control purposes" is so vague as to make it impossible to discern any relationship between the County's assertion and the LILCO Transition Plan (see County testimony at 18, lines 15-21). As a result, these portions of the County's testimony should be struck as irrelevant because they are not probative of any issue in this proceeding.

The paragraph beginning on page 20, line 10 of the County's testimony and ending on page 21, line 6, also must be struck as irrelevant to any issue in this proceeding. That paragraph contains a number of assertions and opinions as to how police officers purportedly prefer to assign radio channels for "performing traffic control functions." For example, the County's testimony asserts that "the police dispatcher would not permit officers directing traffic to stay on a channel with other users" and that "the traffic officers would be put on

their on dedicated channel" to avoid "disrupting other police radio traffic or being disrupted themselves." The testimony also refers to the assignment of four police officers to a single channel to direct traffic at a demonstration at Shoreham. The methods allegedly used by the police, or the methods the police prefer to use, have no probative value in deciding whether the means of communications with traffic guides under the LILCO Transition Plan will be effective. In short, simply suggesting that one method of communication used by the police is effective does not tend to prove or disprove whether another method will be effective under the LILCO Transition Plan. As a result, this paragraph of the County's testimony must be struck under 10 C.F.R. § 2.743(c).

All of page 22 of the County's testimony should be struck because it amounts to nothing more than speculation and conjecture. It asserts simply that the channel for road crews and evacuation route spotters "could become overloaded," not that it would, or even would be likely to, become overloaded. This kind of speculation is not probative and should be struck as irrelevant. In addition, the sentence beginning on line 10 and ending line 13 of page 22 must be struck because it lacks any factual basis or predicate in the LILCO Transition Plan or Procedures. The Plan and Procedures provide that coordination of the road crews and evacuation route spotters will be the responsibility of the EOC. The County's speculation that road

crews and evacuation route spotters "would have to communicate with each other" to coordinate their functions, therefore, lacks any foundation.

The sentence beginning on line 16 and ending on line 21 of page 30 of the County's testimony is both outside the scope of Contentions 30 and 31 and without any factual basis. These sentences assert that "to our knowledge, there are no backup transmitters for the radio channels, no procedures in case a radio becomes inoperable, no spare radios or antennas at the staging areas..., and no backup generators at the EOC or staging areas or other communications post." In effect, this sentence states that the sponsors of the testimony do not know whether such provisions exist. As a result, the testimony is not competent because it is not sponsored by any witness who has knowledge of the facts supposedly asserted. Moreover, neither Contention 30 nor Contention 31 makes any mention of "backup transmitters," "procedures in case a radio becomes inoperable," spare radios or backup generators; the testimony is therefore irrelevant because it is beyond the scope of the Contentions. With respect to backup generators, there is an additional reason for striking this portion of the County's testimony. The County filed no testimony on Contentions 93 through 95; Contention 93 asserts that there are no backup generators at the EOC or staging areas. It is clear that if the County had anyone competent to testify on this issue, it would have

presented testimony on Contention 93. The additional assertion that there are no backup generators at unspecified "other communications posts" is not contained in Contention 30 or 31, or even in Contentions 93 through 95. In sum, this portion of the County's testimony is incompetent, beyond the scope of the admitted Contentions and irrelevant.

The sentence on lines 6 and 7 of page 36 of the County's testimony should be struck because it merely asserts that "low band channels are more susceptible to outside interference." The testimony provides no hint as to what significance, if any, this assertion has. It is not probative and is therefore irrelevant.

The portion of the County's testimony beginning on page 36 and ending on page 41 under the heading "Problems with Dedicated Telephone Lines" should be struck for a number of reasons. First, the asserted technical problems with dedicated telephone lines (e.g. "stubs," telephone line amplifiers going down, blown line fuses, adverse weather conditions, and inadequate priority service from New York Telephone Company) are not raised by any fair reading of Contention 30 or 31. Contention 30 begins with the statement that the LILCO Transition Plan "fails to demonstrate that there will be sufficient and adequate communications equipment to ensure effective communications among LILCO field emergency personnel...." (emphasis added). The remainder of the Contention then focuses

exclusively on various problems with the mobile radios assigned to field personnel. Contention 30 makes no reference to dedicated telephone lines, which will not be used by field personnel but instead will be used by the Shoreham Control Room, the EOC, the staging areas, and so forth. Similarly, Contention 31 begins with the assertion that:

With the exception of dedicated telephone lines between the staging area coordinators and the EOC emergency response coordinators, there is no backup communications system for the LILCO Emergency Radio System.

The remainder of Contention 31 then focuses on alleged problems with the Emergency Radio System and makes no suggestion of any alleged problems with dedicated telephone lines. In short, Contention 31 simply notes that dedicated telephone lines provide communications between staging area coordinators and the EOC, but does not specify or suggest any problems with dedicated telephone lines; instead, the Contention focuses solely on alleged problems with the Emergency Radio System. Thus, none of the County's testimony as to "Problems With Dedicated Telephone Lines" is raised by the underlying Contentions; all of that testimony therefore is irrelevant under 10 C.F.R. § 2.743(c).

Portions of the section of the County's testimony dealing with dedicated telephone lines should be struck for additional reasons. The County's witnesses' speculation as to potential failures because of "stubs" is nothing more than

conjecture with no factual predicate. In addition, the County's testimony asserts that if telephone line amplifiers go down, communications cannot take place; there is no predicate in the testimony demonstrating that such failures would, or would be likely to, occur. Similarly, the County asserts that line fuses "may blow out," without laying any predicate as to the likelihood of such an occurrence. All of these assertions amount to mere speculation and conjecture with no basis or foundation in fact or in the County's testimony itself. The assertions, therefore, are not probative and are irrelevant. Accordingly, the portion of the County's testimony beginning on page 37, line 6, and ending on page 38, line 5, should be struck.

The reference to commercial telephone lines in the sentence beginning on line 8 and ending on line 11 of page 38 must be struck for the reasons previously addressed with respect to Contention 28. Alleged problems with commercial telephone lines were raised in the County's proposed Contention 26.B., which was rejected by the Board. The County should not be permitted to resurrect those issues.

The sentence beginning on line 9 and ending on line 11 of page 39 should be struck because it is irrelevant. The sentence asserts that "[i]n most cases, the Telephone Company has not been able to restore a downed circuit in much less than approximately six hours." That sentence makes no reference to a

priority service agreement, such as the New York Telephone Company has provided for LILCO, nor does the assertion provide any basis to discern what "in most cases" means. That portion of the County's testimony is not probative of any issue in this proceeding.

The next sentence of the County's testimony (page 39, lines 11-16), is an amalgam of various speculations. The sentence speculates that restoration of priority service to dedicated lines "could take far longer" during an emergency at Shoreham "with the heavy telephone use that should be expected." These speculations not only attempt to resurrect Contention 26.B. -- which the Board previously rejected -- but also lack any factual predicate. The speculations are also beyond the competence or expertise of the witnesses sponsoring the testimony. Similarly, the speculation that telephone crews might not be "willing" to reach any problem areas is clearly beyond the competence or expertise of the County's witnesses; although the meaning of this speculation is unclear, the County's witnesses may be attempting to express an opinion as to role conflict, which has already been the subject of extensive testimony and hearings under other Contentions. If the County's witnesses are in fact raising the role conflict issue, the testimony should be struck as beyond the scope of the Contentions, cumulative and repetitious. Finally, the speculation that telephone crews might not be "able" to reach problem areas

because of highway congestion is a bald assertion without any factual predicate or foundation, and is also beyond the competence or expertise of the County's witnesses.

Finally, the portion of the County's testimony beginning with the question at the bottom of page 39 and ending on line 3 of page 41 must be struck as irrelevant because it bears no apparent relationship to the agreement provided by New York Telephone Company to LILCO under the LILCO Transition Plan. The County's testimony states that the Suffolk County Police Department has "an understanding with the Telephone Company that when an emergency telephone drop is requested, it will be done as quickly as possible." The testimony then transmutes this "understanding" into a "long-standing agreement", and then transmutes it into "our experience...with priority service agreements...." These leaps from "an understanding" to "a priority service agreement" are evidently intended to make an irrelevant incident about a missing six-year-old child appear relevant to the LILCO Transition Plan. The County's testimony does not contain a copy of the "understanding" or "agreement" referred to in the testimony, and thus provides no predicate to discern any relationship between the incident referred to in the testimony and the circumstances of the LILCO Transition Plan. Similarly, the County's assertions near the bottom of page 40 that "not long ago one of the telephone lines to a hospital was down for more than a month" and that this "was a

priority service line" (page 41, line 1) should be struck because they have no relationship to the LILCO Transition Plan and are not probative of any fact in issue.

#### IV. CONTENTION 32

All of the County's testimony on Contention 32 (pages 41-43) should be struck because it does not support Contention 32 and is therefore irrelevant. Contention 32 asserts that a lack of direct communications between traffic guides and bus transfer points, on the one hand, and the EOC response coordinators, on the other, "will result in the delay of implementation of emergency actions." (emphasis added). The County's testimony, however, simply concludes that "there may be some delay in the implementation of emergency actions" (page 42, line 8), that "implementation of emergency actions may be delayed" (page 43, lines 2-3), and that "delays in implementing emergency actions could also occur...." (page 43, lines 3-4) (all emphases added). The testimony of the County's witnesses, therefore, does not support the County's own Contention and is therefore irrelevant under 10 C.F.R. § 2.743(c).

#### V. CONTENTION 34

Similarly, the first paragraph on page 44 of the County's testimony on Contention 34 concludes that a lack of direct communications between the EOC and ambulance vehicles "may lead to some delays in dispatching the ambulance crews." (emphasis added). Contention 34.C., on the other hand, asserts that this

lack of direct communications "will delay the implementation of emergency actions." (emphasis added). The County's testimony fails to support the County's Contention, and is therefore irrelevant.

The second paragraph on page 44 of the County's testimony once again seeks to resurrect the issue of alleged problems with commercial telephone lines. As stated previously, the County's repeated attempts to resurrect Contention 26.B., which was rejected by the Board, should not be permitted. That paragraph of the County's testimony should be struck.

The second paragraph on page 45 of the County's testimony (lines 6-16) should be struck because it is not probative of any material issue. The LILCO Transition Plan does not "rely upon" fire departments or fire/rescue vehicles to perform any emergency response function related to an emergency at Shoreham. Thus, the speculation in the County's testimony that "there is no communications link...[to] all the fixed and mobile medical support facilities relied upon by LILCO" (emphasis added) lacks any factual basis whatsoever. Therefore it is not probative and should be struck as irrelevant.

Respectfully submitted,

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