

LILCO, March 9, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
REGULATING & SERVICE  
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
LONG ISLAND LIGHTING COMPANY ) Doc et 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 55-58

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 55-58 regarding notification to the public. The reasons why specific portions the County's testimony must be struck are set forth below.

I. ASSERTED PURPOSES AND CONCLUSIONS

The passage on lines 8-15 of page 5 of the County's testimony attempts to resurrect the issue of the adequacy and dependability of commercial telephones. This issue was specifically raised in the County's Proposed Contention 26.B., which was rejected by the Board (Special Prehearing Conference Order.

August 19, 1983, p. 15-16). The County should not be permitted to resurrect Contention 26.B. under the guise of some other Contention.

## II. CONTENTION 55

Contention 55 asserts simply that "as a result of the deficiencies noted in Contention 26, LILCO will be unable to contact its key command and control personnel in a timely manner, thus potentially delaying the decision to activate the siren system...." (emphasis added). Rather than adhere to the Contention, however, the County's testimony consists almost entirely of matters beyond the scope of the Contention. As a result, the testimony is not related to the issue presented by the admitted Contention and is therefore irrelevant under 10 C.F.R. § 2.743(c).

Beginning on page 6, line 9, and continuing through page 8, line 9, the County's testimony speculates as to the amount of time it might take the Director of Local Response to activate the siren system after he receives notification from the Hicksville Customer Service Operator, because of various things the Director allegedly must do prior to activating the siren system.<sup>1/</sup> Contention 55, however, refers exclusively to alleged communications deficiencies "noted in Contention 26" that

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<sup>1/</sup> Many of the County's assertions as to what the Director of Local Response must do before activating the siren system, moreover, are simply incorrect. This is a matter of apparent factual dispute.

allegedly would prevent LERO from being able "to contact its command and control personnel in a timely manner...." Any asserted delay in activating the siren system after the Director of Local Response is contacted is plainly beyond the scope of the Contention and therefore irrelevant.

In addition, the County's testimony appears to assume, incorrectly, that the Director of Local Response must activate the siren system "within 15 minutes of the declaration of the emergency." (County testimony, page 7, line 16 through page 8, line 9). This assumption is incorrect as a matter of law, and renders the County's testimony that is based on that assumption irrelevant to any issue in this proceeding. In short, applicable regulations and guidelines simply require that the design objective of the prompt notification system be to provide notification to the public within 15 minutes of the decision to declare a general emergency or a decision to activate the system. See, e.g., 10 C.F.R. § 50.47(b)(5); 10 C.F.R. Part 50, Appendix E, § IV(D)(3); NUREG-0654, Appendix 3. This portion of the County's testimony is therefore irrelevant.

Other major portions of the County's testimony on Contentin 55 (page 9, lines 10-14; page 10, line 6 through the end of page 12) hinge on the assertion that activation of EBS messages will be time consuming and will delay activation of the sirens by either the Director of Local Response after he is contacted or by the Customer Service operator in Hicksville.

Again, Contention 55 asserts simply that communications deficiencies noted in Contention 26 will delay LERO from making contact with key command and control personnel. The Contention contains no suggestion that activation of EBS messages, independently, might prevent timely activation of the sirens. Nonetheless, this is precisely what the County's testimony asserts. The testimony is beyond the scope of the Contention and is therefore irrelevant.

In addition, as noted above, the references in the County's testimony to a requirement that EBS messages be activated within 15 minutes of the time an emergency is declared, should be struck because they are incorrect as a matter of law. These references are set forth on page 10, lines 6-10 and page 12, lines 19-21, of the County's testimony.

### III. CONTENTION 56

The County's testimony (page 13, line 14 through page 14, line 4) asserts that the siren system will have "no backup power source" and that LILCO will not know whether some of its sirens have failed to activate. It is clear that this portion of the County's testimony is beyond the competence or expertise of the County's sponsoring witnesses. The issue of backup power to the sirens is squarely presented in Contention 95.A. The County filed no testimony on that Contention, as the County presumably would have done if the County's witnesses had been competent to testify on that issue. Contention 56, moreover,

focuses on the use of route alert drivers and makes no mention of a backup power source for the sirens. Thus, the County's testimony is also irrelevant to Contention 56.

The portion of the County's testimony on page 15, lines 15-23, refers to alleged problems with commercial telephones which might prevent communications to Marketing Evaluations, Inc. and from Marketing Evaluations to residents near the sirens. This represents yet another attempt by the County to resurrect Contention 26.B., which was rejected by the Board. This portion of the County's testimony should be struck as irrelevant.

The County's witnesses are not competent to sponsor the assertion in the sentence on page 16, lines 3-7. In addition, that sentence is irrelevant because the County's testimony fails to draw any link between the asserted "study" and the siren system under the LILCO Transition Plan.

The sentence on page 16, lines 13-17, of the County's testimony concludes that LERO may not be aware that route alert drivers need to be dispatched to areas where sirens have failed until the 90 minutes required to complete the Marketing Evaluations survey has expired. The County's assertion lacks any predicate in the LILCO Transition Plan or Procedures. The agreement with Marketing Evaluations requires Marketing Evaluations to notify LERO immediately if Marketing Evaluations concludes that any siren has failed to activate.

Until some factual predicate is laid for it, the County's conclusory assertions as to matters "discussed in the Suffolk County testimony concerning Contention 27" should be struck. This includes the sentence beginning on the last two lines of page 16 and ending on line 5 of page 17, including footnote 4 on page 17. There is no indication that the witnesses sponsoring the County's testimony on Contention 56 are competent to express opinions on these issues. In addition, this cross reference to the testimony in Contention 27 and conclusory assertions based thereon, will simply be repetitious and cumulative; it therefore should be struck.

The two sentences beginning on line 9 and ending on line 12 of page 17 of the County's testimony lack any basis. This passage (1) amounts to nothing more than speculation and conjecture that members of the public might stop route alert drivers to ask questions and (2) presumes, without any basis, that the route alert drivers would stop and all answer all such questions. The County's speculations are not probative and should therefore be struck as irrelevant.

The sentence on page 20 (lines 16-19) also constitutes mere speculation and conjecture. In addition, the speculation is that some persons might not hear messages broadcast by route alert drivers because they might be, for example, drying their hair. There is absolutely no requirement in the regulations or guidelines that the notification procedure guarantee that 100%

of the population receive notification. NUREG-0654, Appendix 3, page 3-1, in fact, expressly states that the design objective of the prompt notification system "does not...constitute a guarantee that early notification can be provided for everyone with 100% assurance or that the system when tested under actual field conditions will meet the design objectives in all cases." Since the ultimate issue presented by this proceeding is whether the LILCO Transition Plan conforms to applicable regulations and guidelines, the County's idle speculations are completely irrelevant.

#### IV. CONTENTION 57

Page 22 (lines 15-23) of the County's testimony is irrelevant. That portion of the County's testimony asserts that "contrary to LILCO's assertion in versions of the plan preceding Revision 3, special facilities and other organizations would not have any additional alerting or preparation time..." by means of tone alert radios. The County cites no regulatory requirement for advance warning to special facilities, and what may or may not be contrary to prior versions of the LILCO Transition Plan has no relevance to the version that is now being litigated.

#### V. CONTENTION 58

The last two lines of page 24 and the first five lines of page 25 of the County's testimony, once again, represent an attempt by the County to resurrect commercial telephone system

issues asserted in Contention 26.B., which was rejected by the Board. For the reasons stated previously in this Motion to Strike, and in LILCO's Motion to Strike portions of the County's testimony on Contentions 28-32 and 34, the County's attempt to resurrect those issues should be rejected.

Finally, the sentence and citation on lines 9 through 12 of page 25 of the County's testimony is nothing more than a cumulative cross reference to the County's testimony on Contentions 72 and 73. Because it is merely repetitious and cumulative, it should be struck.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By

*Jessie A. Monaghan*  
Counsel

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