

LILCO, March 9, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
REGULATORY & SERVICE  
BRANCH

In the Matter of )  
 )  
LONG ISLAND LIGHTING COMPANY ) Docket No. 50-322-OL-3  
 ) (Emergency Planning  
(Shoreham Nuclear Power Station, ) Proceeding)  
Unit 1) )

LILCO'S MOTION TO STRIKE PORTIONS  
OF THE DIRECT TESTIMONY OF  
WILLIAM J. AQUARIO, RICHARD D. ALBERTIN,  
AND ROBERT G. KNIGHTON REGARDING CONTENTION 73

The Long Island Lighting Company moves the Board to strike portions of the "Direct Testimony of William J. Acquario, Richard D. Albertin, and Robert G. Knighton on Behalf of New York State Regarding Emergency Planning Contention 73 -- Evacuation of Handicapped Persons not in Special Facilities," because it is beyond the scope of Contention 73 and, therefore, not relevant to issues being litigated under Contention 73.

Under the NRC's rules of practice, testimony must be relevant to the issues in contention. 10 C.F.R. §2.743(c) (1983).<sup>1/</sup> Irrelevant testimony is the proper subject of a

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<sup>1/</sup> Title 10 C.F.R. §2.743(c) provides:

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant

(footnote continued)

motion to strike. See 10 C.F.R. Part 2, Appendix A, V(d)(7) (1983). The Board has the power to implement these provisions, both through its general power to regulate the conduct of a hearing, 10 C.F.R. §2.718, and through the specific authority under 10 C.F.R. §2.757(b) to strike argumentative, repetitious, cumulative, or irrelevant evidence.

Specifically, LILCO moves to strike the following portions of the State's testimony on Contention 73:

- A. Rather than the LILCO estimate of 450 people, we feel that the base number is at least 600 and in fact may well be substantially higher because . . .  
(2) the number of families with cars, who claimed no need for transportation in the survey, may in fact not have a car available at all times during the day or even every day. . .

Direct testimony of Aquario, Albertin, and Knighton at 7.

- A. One is the very definition of handicapped. Many people may not have identified themselves as being handicapped unless they were advised that the alternative for the autoless is to walk up to 1/2 mile with a suitcase, pillow and blankets. (The notification to evacuate in the plan suggests everyone to bring pillows and blankets). The latest postcard survey we've seen phrases the possible length of walk as a "few blocks". Given those two factors it seems highly likely that the total numbers may be underestimated.

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(footnote continued)

parts of an admissible document will be segregated and excluded so far as is practicable.

Id. at 8.

- A. Yes, it doesn't appear that survey responders will realize that if they use general public transportation they may need to walk up to 1/2 mile. Therefore, some respondents may require specialized transportation and may not realize it.

Id. at 9.

The preceding testimony of Aquario, Albertin, and Knighton is beyond the scope of Contention 73. Contention 73 raises issues concerning registration, notification, and evacuation of (1) "all handicapped persons in need of special evacuation services," (emphasis added), i.e., ambulances (see Contentions 73 and 73.A), and (2) the deaf. Contention 73 addresses the needs of disabled/invalid persons who can only be evacuated in special vehicles, i.e., ambulances and ambulettes.

The testimony of Aquario, Albertin, and Knighton, on the other hand, broadens the scope of Contention 73 to include (1) persons who are capable of being transported by LILCO buses, but who allegedly would consider themselves to be handicapped if they knew they might have to walk "up to 1/2 mile with a suitcase, pillow and blankets," and (2) persons whose family has a car that is not available to them every day or at all times of the day. These people, who are physically able to be transported by bus, simply are not "handicapped" within the meaning of Contention 73.

Indeed, the intervenors have raised similar issues in other contentions completely unrelated to handicapped persons. Contention 67, for example, states that:

LILCO proposes that people who do not have access to an automobile at the time of an evacuation order will be evacuated by buses running special evacuation routes, with bus stops purportedly no more than one-half mile from each person's home. [Citations omitted]. However, LILCO's proposal cannot be implemented, and LILCO's proposed evacuation of people without access to cars would not provide adequate protection for such people, because evacuation would take too long.

Contention 73, which addresses issues related to disabled, invalid and deaf persons, should not be used as a vehicle to litigate the transportation needs of able-bodied individuals who are capable of being transported by bus. Testimony relating to the adequacy of bus routes, including whether 1/2 mile is an unreasonable distance to expect some people to walk to a bus route, should have been raised under the contentions relating to bus routes.

The testimony of Aquario, Albertin, and Knighton bearing on the needs of able-bodied persons who are capable of being transported by bus but who (1) may not have access to a car on a given day or (2) may have to walk up to 1/2 mile to the nearest bus route, are beyond the scope of Contention 73 and should be stricken.



Also, the first sentence of the first answer on page 11 should be stricken because it raises an issue of people who have a "language problem." The issue of people who speak only Spanish is fairly raised by Contention 21.C, but "language problems" are raised in no other contentions. Properly speaking, only the portion of the sentence that deals with language problems should be stricken on this ground, but since the State witnesses chose to lump the deaf and people with a language problem inextricably together, the only remedy is to strike the entire sentence.

Also, the first question and answer on page 13 of the testimony should be stricken. They deal with training of ambulance and van operators. Nothing in Contention 73 gives the slightest hint that the intervenors are interested in litigating the training of ambulance drivers.<sup>2/</sup>


Finally, the second question and answer on page 13 of the testimony should be stricken. This question and answer address "where the handicapped individuals will be relocated."

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<sup>2/</sup> This is unlike an earlier LILCO motion to strike testimony about training, as to which the Board ruled "evacuation times cannot be estimated without some consideration of the training and experience of the personnel who will have first-line responsibility for maintaining traffic flow." Order Ruling on Motions to Strike 4 (Jan. 16, 1984). Contention 73.B.4 and 5 have to do with traffic congestion that ambulance drivers might encounter. The connection between training of ambulance drivers and traffic congestion is much more tenuous than the connection between evacuation times and the training of traffic guides.

Again, Contention 73 expresses no concern whatsoever about specifying relocation centers for the handicapped.

Respectfully submitted,  
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