

LILCO, March 9, 1984

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'84 MAR 12 A11:00

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))

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LILCO'S MOTION TO STRIKE PORTIONS OF
THE TESTIMONY OF SUSAN SAEGERT ON BEHALF
OF SUFFOLK COUNTY CONCERNING
EMERGENCY PLANNING CONTENTION 73.A

The Long Island Lighting Company (LILCO) hereby moves the Board to strike certain portions of the "Direct Testimony of Susan Saegert on Behalf of Suffolk County Concerning Emergency Planning Contention 73.A -- Evacuation of the Homebound" (hereinafter referred to as the Saegert testimony).

Under the NRC's rules of practice, testimony must be relevant to the issues in contention. 10 C.F.R. §2.743(c) (1983).^{1/} Irrelevant testimony is the proper subject of a motion to strike. See 10 C.F.R. Part 2, Appendix A, V(d)(7)

^{1/} 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 parts of an admissible document will be segregated and excluded so far as is practicable.

(1983). The Board has the 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.

First, the Saegert testimony bearing LILCO's credibility should be stricken because (1) it is beyond the scope of Contention 73.A and, therefore, irrelevant to issues being litigated under Contention 73.A, and (2) as Professor Saegert herself acknowledges, this issue already is the subject of Contention 15. Thus, the Saegert testimony relating to LILCO's credibility is also repetitious and cumulative.

Specifically, LILCO moves to strike the following underlined portion of the Saegert testimony:

Moreover, as I will discuss in more detail in my testimony on Contention 15 and 16, people are unlikely to read material they receive in the mail, if they do not perceive it as being immediately important to them, or if they view the sender's credibility as being low. Both of these perceptions are likely with respect to information sent by LILCO. Therefore, it is likely that many handicapped residents of the EPZ would not return postcards, because they would never read either the postcard or the accompanying letter or brochure.

There is no mention of LILCO's alleged lack of credibility in Contention 73.A. Moreover, LILCO's credibility is already the subject of Contention 15. This portion of the

Saegert testimony bearing on LILCO's credibility should be stricken accordingly.

Second, the Board should strike the paragraph on pages 5 and 6 of the Saegert testimony that reads as follows:

Furthermore, even for those people who did read the brochure, the information in the brochure about what would be done for handicapped people may be too vague to lead those needing assistance to want to rely on the unidentified "LERO" for such assistance. Obviously such individuals are unlikely to return postcards.

This testimony is outside the scope of Contention 73.A because it is clearly designed to support a contention that has been proposed but not yet been admitted into the proceeding, namely proposed Contention 16.N on the public education brochure.

On February 27, 1984, Suffolk County submitted several new contentions about LILCO's public education brochure. See Suffolk County Motion for Leave to File Modified Contentions 16 and 18 Concerning the LILCO Public Education Brochure, February 27, 1984. One of those proposed contentions was 16.N, which reads as follows:

N. The brochure makes numerous references to LERO or "the Local Emergency Response Organization." Thus, it states:

. . . .

4. "If you are hearing impaired and should need special assistance in the event that the sirens are sounded it is important for you to register

with the Local Emergency Response Organization (LERO)." (page 6)

5. "If the sirens are sounded due to an emergency at the Shoreham Nuclear Power Station, a LERO worker will come to your home to notify you personally of the emergency condition." (page 6)

6. "To register with LERO, please complete the post card in the back of the brochure. . . ." (page 6)

. . . .

The brochure thus states that the offsite response to a Shoreham accident would be directed, and the public adequately protected, by an organization with an official-sounding title, but whose affiliation, source of authority, legitimacy, manpower, training, or competence, is not identified or described anywhere in the brochure. This aspect of the brochure is incomplete and misleading. People in the EPZ will not know who or what LERO is, and without complete information on that subject the brochure is not credible. Furthermore, in failing to identify LERO accurately as a LILCO surrogate unilaterally created and staffed by LILCO in an attempt to replace governmental authorities, the brochure suggests that LERO is a governmentally authorized body, which is false.

Since the remedy for the alleged problem raised in the above-quoted passage from Professor Saegert's testimony would be to revise the brochure, it should not be allowed until such time, if it comes, that Contention 16.N is admitted. Otherwise

the proffered testimony would be a backdoor means of getting into the record testimony on an issue that the Board has not yet admitted for litigation.

Respectfully submitted,

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DATED: March 9, 1984

LILCO, March 9, 1984

CERTIFICATE OF SERVICE

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

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I hereby certify that copies of LILCO's

MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF
PHILIP B. HERR ON CONTENTION 22.D -- INADEQUACY OF LILCO'S
EPZ

MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF DAVID HARRIS
AND MARTIN MAYER ON CONTENTIONS 24.G (AGREEMENTS FOR AMBU-
LANCES) AND 75 (CAPACITY OF RELOCATION CENTERS)

MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF DEPU-
TY CHIEF INSPECTOR RICHARD C. ROBERTS, ET AL. ON CONTEN-
TIONS 24.T AND 59

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

MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY ON BEHALF OF
SUFFOLK COUNTY REGARDING EMERGENCY PLANNING CONTENTIONS
28, 29, 30, 31, 32 AND 34

MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY ON BEHALF OF
SUFFOLK COUNTY REGARDING EMERGENCY PLANNING CONTENTIONS
55-58

MOTION TO STRIKE PORTIONS OF ASSISTANT CHIEF INSPECTOR
MONTEITH, ET AL.'S TESTIMONY ON EMERGENCY PLANNING CONTEN-
TION 66

MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY OF THOMAS D.
GIBBONS ON CONTENTIONS 66.D AND 97.B

MOTION TO STRIKE PORTIONS OF WILLIAM J. ACQUARIO, ET AL.'S
TESTIMONY ON EMERGENCY PLANNING CONTENTION 67

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

MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF SUSAN
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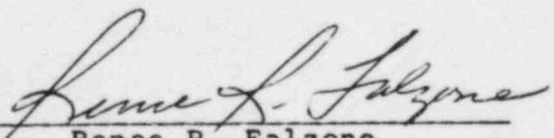
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