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, Unit 1)	

SUFFOLK COUNTY REPLY TO LILCO'S RESPONSE TO SUFFOLK COUNTY MOTION TO FILE NEW CONTENTIONS CONCERNING THE LILCO OFFSITE EMERGENCY PREPAREDNESS TRAINING PROGRAM AND LILCO'S OBJECTIONS TO PROPOSED TRAINING CONTENTIONS

Introduction

Suffolk County hereby responds to LILCO's Response to Suffolk County Motion to File New Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program and LILCO's Objections to Proposed Training Contentions, dated February 23, 1984 ("Objections"). The NRC Staff does not object to admission of the proposed training contentions. See NRC Staff Response to Suffolk County Motion for Leave to File New Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program, dated February 28, 1984.

In its Objections LILCO makes a number of general arguments against admission of the new contentions which were attached to the Suffolk County Motion for Leave to File New

Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program, dated February 13, 1984 (the "Proposed Contentions"). In addition, LILCO objects to the Proposed Contentions or their subparts, on the grounds that they are untimely, that they lack basis, that they are not sufficiently specific, and that no legal requirement is violated by the asserted deficiencies. (Objections at 12.) In Part I of this pleading, the County responds to LILCO's general arguments against admission of the Proposed Contentions. In Part II, the County responds to LILCO's generic objections. In Part III, the County responds to LILCO's specific objections to individual Proposed Contentions.

I. Response to Arguments Against Admission of the Proposed Contentions

A. Untimeliness and Good Cause

LILCO asserts that many of the Proposed Contentions should not be admitted because they are untimely, and because they do not satisfy the three-part good cause test of Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). Although LILCO makes this argument both in connection with its discussion of the Catawba standards and as a series of untimeliness objections to specific portions of the Proposed Contentions, the arguments are the same. Together,

they are premised on three allegations, which are all variations on a single theme: that the County should not have awaited LILCO's notice of completion of its training materials before filing new training contentions.

First, LILCO asserts that the County cannot rely on the filing of LILCO's Notice of Completion of Training Materials, dated February 2, 1984 (LILCO's "Notice") as the event by which the County's promptness should be measured. Instead, LILCO asserts, that the County should have submitted new contentions as various individual training documents were provided to it during the period between July 1983 and February 2, 1984. (Objections at 8). Second, LILCO asserts that the County in fact had been provided "most" of the LILCO training materials by sometime in the "Fall" of 1983, and therefore should have submitted new contentions sometime late last year (Objections at 7, 8). LILCO relies on these two assertions to argue that the Proposed Contentions are untimely and therefore do not meet the second and third elements of the Catawba good cause test. (See Objections at 6-9). LILCO's third argument is that many of the Proposed Contentions are not dependent on LILCO training materials, but rather on other information of which the County knew long ago (Objections at 7).

The many versions of LILCO's untimeliness objection should all be rejected because they ignore the fact that the County followed the procedure suggested by both the Board and LILCO at the time the County's original contentions were ruled upon.

1. The County properly awaited notice of completion of LILCO's training materials to file new training contentions.

When LILCO first objected to Intervenors' original training contentions submitted in July 1983, LILCO stated:

> The County should be required to state its precise contentions, if any, within one week of being provided with a complete set of the training materials.

Objections to Intervenors' "Revised Emergency Planning Contentions," dated August 2, 1983, at 47. (Emphasis supplied). That is, when the Revised Emergency Planning Contentions were submitted, and the process which led to the filing of the Proposed Contentions was begun, LILCO took a position that is directly contrary to the "untimeliness" argument it now asserts. LILCO's attempt to reverse itself, now that what it itself suggested has occurred, is both unjustified and inexplicable. LILCO should not be heard to complain of the fact that the County did precisely what LILCO suggested.

Furthermore, in light of LILCO's objection, the Board's denial of admission to original training Contentions 35 through 38, and the Board's subsequent order relating to training materials[1/], the Board also expected the County to wait until LILCO had produced what it considered to be "a complete set of the training materials" before filing new contentions. Thus, in ruling on the original contentions, the Board explicitly recognized that "the unavailability of [LILCO's] training materials preclude[d] Intervenors from filing specific contentions." August Order at 17. Furthermore, the Board made clear that the proper course of action was for Intervenors to file new contentions once LILCO had completed and made available a full set of all its training materials. Id. at 18. Presumably to facilitate this suggested procedure, the Board ordered LILCO to notify the Board and parties when LILCO considered its training materials to be complete. September Order at 7. Based on the Staff's response to the County's Motion, it is clear that the Staff also understood the Board's intent to be for the County to wait until LILCO's materials were said to be

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1/ See Special Prehearing Conference Order (Ruling on Contentions and Establishing Schedule for Discovery, Motions, Briefs, Conference of Counsel, and Hearing), dated August 19, 1983 at 17 ("August Order") and Order Ruling on Objections to Special Prehearing Conference Order, dated September 30, 1983, at 7 ("September Order").

complete before new training contentions were to be filed. See NRC Staff Response to Suffolk County Motion for Leave to File New Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program, dated February 28, 1984, at 4.

Indeed, it would have made no sense for the County to have been required to pursue the alternative course of action now suggested by LILCO -- that is to file a piecemeal series of contentions as LILCO produced each of its training documents over a seven month period. This process would have resulted in a waste of effort on the part of the Board and all the parties. The County could not have filed contentions with requisite specificity if some documents were not available. In addition, the County would have had to revise the earlier of such piecemeal contentions several times as LILCO produced each of its new training documents, and the County would not have been able to evaluate the completeness or adequacy of the LILCO training program as a whole, if it had only received portions of the relevant materials.2/

2/ LILCO cites Catawba for the proposition that the County was required to have submitted new contentions as each document became available. (Objections at 8). In reaching its decision in Catawba, the Commission balanced fairness to intervenors against the need to conduct licensing hearings efficiently. 17 NRC at 1045. Clearly, the Commission's effort in Catawba to assure efficient conduct of hearings cannot be used to argue that the County should

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Accordingly, LILCO's argument that the County improperly awaited LILCO's notice of completion of its training materials before filing contentions should be denied.

2. The County had not received "most" of LILCO's training materials by "Fall" of 1983

LILCO's argument that the County had received "most" of LILCO's training materials by the "Fall" of 1983, citing the Schedule filed by LILCO on October 11, 1983, is factually incorrect. (See Objections at 3-4).

As of last Fall, the County had not received anywhere near all the LILCO training materials, despite LILCO's oft-repeated assertion to the contrary. For example, the LILCO Plan lists 13 drills as part of the LILCO training program. (See Plan at figure 5.2.1.) When LILCO filed its Schedule on October 11, 1983, the County had not received a single drill scenario from LILCO. Indeed, by December 1983, the County had been given scenarios for only six of the 13 drills listed in Figure 5.2.1 of the plan. (See Objections at 4.)

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have pursued a course that would have needlessly wasted the time and energy of everyone involved.

Similarly, it was not until February 1984, that the County was given a complete set of LILCO's classroom materials, despite LILCO's assertions to the contrary. (See Schedule at 1; Objections at 5.) For example, LILCO first produced copies of the outlines for its "tabletop" sessions on February 2, 1984. ("Tabletop" sessions are 10 seminar sessions which complement the 11 lecture sessions that are part of the classroom training.) Together, the "tabletop" sessions touch upon almost every major subject in LILCO's classroom program, including communications, decontamination, dosimetry, traffic guidance and transportation coordination. (Objection at 5.) Moreover, it was not until February 2, 1984, that LILCO first informed the County that none of the "Practical Demonstrations" listed on pages 5.1-5 and 5.1-6 of the Plan existed. (See letter dated February 2, 1984 from J. Monaghan to J. Birkenheier, supra, at 4.)

Finally, as of March 7, 1984, the County still has not received all of LILCO's training materials, because LILCO has not yet finished those materials despite its submission of the Notice that training materials are complete. See letter dated February 2, 1984 from Monaghan to Birkenheier. LILCO's counsel informed County counsel by letter dated February 2, 1984, that five of the 13 drills listed in Figure 5.2.1 of the Plan,

including the Communications Drills, the Radiological Monitoring Drills, the Medical Emergency Drills, and the Health Physics Drills, "have not been developed." Id. These drills, according to LILCO's own plan, are to be "conducted as part of the overall LERO Drill Program to meet established federal regulatory guidelines." (OPIP 5.1.1 at 9.)

Thus, although LILCO's Schedule for Completion of Training Materials, dated October 11, 1983, asserted that "almost all the [training] materials are already in Suffolk County's hands," as demonstrated above the Schedule was so inaccurate that the County would have been remiss to have relied upon it, particularly in light of the Board's express requirement that LILCO file a notice when it considered its materials to be complete, and LILCO's failure to include such a statement in its Schedule. Clearly, LILCO's assertion that the County had received "most" of LILCO's training materials in the "Fall" of 1983 is without basis, and cannot be used to support an argument that the County should have filed its Proposed Contentions earlier or that those contentions are untimely.

3. The Proposed Contentions are based on LILCO's training materials.

LILCO's final assertion in support of its untimeliness argument is that portions of the Proposed Contentions are not "based on" LILCO training materials. (Objections at 6-8). Thus, LILCO argues that the County has failed to demonstrate that the Proposed Contentions are based on the contents of videotapes, workbooks, lesson plans or drill scenarios, and concludes that if portions of the Proposed Contentions refer to the Plan, or to materials obtained during discovery, they are not "based" on training materials, and, accordingly, could have been filed earlier. LILCO's argument should be rejected.

First, since LILCO's training materials were in the process of development, and since LILCO has not hesitated in the past to revise its Plan and Procedures, the County was reasonable in awaiting completion of the training materials, and completion of LILCO's Plan revisions, before filing contentions related to training. Certainly, in light of all the other revisions to the Plan which have been made by LILCO, it would have come as no surprise to anyone involved in this proceeding if LILCO had revised portions of its Plan related to training as its training materials changed or were created. In fact, each revision of LILCO's Plan, including Revision 3, has included changes in the training proposed by LILCO.

In addition, to the extent the County obtained information relevant to training from sources such as depositions or interrogatories, the discovery requests were attempts to clarify uncertainties and answer questions created by the LILCO training materials as they were received. That is, the discovery requests were based directly on LILCO's training materials. LILCO's argument that contentions, based on information obtained in an attempt to understand LILCO's training materials, are not "based on" the training materials is specious.

4. The County has established good cause for filing the Proposed Contentions now.

As noted previously, LILCO relies on the three arguments discussed in Parts I.A.1 through I.A.3 above as the foundation for both its untimeliness objection and its argument that the County has met the good cause Catawba standard with respect to the Proposed Contentions. The foregoing discussion demonstrates that LILCO's arguments are without merit. Consequently, there is no support for either LILCO's good cause argument or its untimeliness objection, and both should be rejected.

Moreover, the County has demonstrated that it satisfies the three elements of the good cause requirement of 10 CFR §2.714, as interpreted in Catawba. (See Suffolk County Motion for Leave to File New Contentions Concerning the LILCO Offsite

Emergency Preparedness Training Program, dated February 13, 1984, at 6-9 (the "Motion"). That demonstration is summerized below:

(a) The Proposed Contentions are dependent on the content of LILCO's training documents. Those contentions identify specific deficiencies in the content and the scope of the LILCO training program, including its classroom and drill components. Clearly, the contentions must be based on the documents which form the foundation of LILCO's tr ·ing program. Indeed, the Board recognized this dependency ·n it stated that without LILCO's training materials, Interv rs could not frame adequate contentions. (August Order at 17). Moreover, it is specious to suggest that portions of the Proposed Contentions are not dependent on LILCO's documents because they rely in part on information gathered in an effort to understand LILCO's training materials.

(b) Adequately specific contentions could not have been advanced before a complete set of the LILCO training materials became available. In its August Order the Board recognized that the unavailability of LILCO's training documents precluded the County from drafting specific contentions. (August Order at 17.) Further, it was impossible for

the County to formulate specific contentions that addressed the scope and adequacy of the LILCO training program, as the Proposed Contentions do, until it had received what LILCO considers to be a complete set of those materials. Accordingly, the Proposed Contentions could not have been advanced prior to receipt of LILCO's Notice.

(c) The County acted with the requisite degree of promptness once it received a complete set of LILCO's training documents. LILCO's Notice was received on February 3, 1984, and the Proposed Conl0tions were submitted 10 days later. There is no ba.is for characterizing this span as anything but prompt.

B. FEMA's Annual Exercises Are Not an Alternative Means of Protecting the County's Interest.

LILCO asserts that the County's interest in evaluating the adequacy of LILCO's training program can be protected even if the Proposed Contentions were not admitted, and therefore argues that the County fails to satisfy the second and fourth elements of 10 CFR §2.714. Although LILCO admits that no other party is likely to represent the County's interest in this proceeding, LILCO argues that this does not matter, because FEMA's annual exercises provide an alternative means of protecting the County's interest. (Objections at 10).

First, LILCO's suggestion is amazing in light of LILCO's frequent repetition of its view that FEMA exercises are outside the scope of this licensing proceeding. (See, e.g., Notice at 3; Letter dated November 15, 1983 from J. Monaghan to J. Birkenheier, at 4.) LILCO cannot have it both ways. If FEMA exercises are not requirements for completion of this licensing proceeding, those exercises cannot be an alternative means of resolving issues properly raised in this proceeding.

Second, LILCO's argument could be used by LILCO to avoid litigating all issues in this proceeding since, at least in theory, the FEMA exercises are designed to test all portions of a proposed plan. Such exercises, however, are clearly no substitute for the right of an intervenor to present its views as to deficiencies in plan proposals to the licensing board for its consideration prior to the issuance of a license. As LILCO well knows, even the initial FEMA exercise of the LILCO Plan is not likely to occur soon enough for its results to be considered by the board in this proceeding.

Moreover, even if the FEMA exercise were to occur promptly, the results of that exercise would not be an alternative means of resolving the issues raised by the County in the Proposed Contentions. Although exercises are designed to test

plans and organizations, they are not designed to test the skills or training of individual workers. See 10 CFR §50.47(6)(14). For example, it is doubtful that in a FEMA exercise LERO traffic guides would direct traffic on public streets or that LERO security personnel would control crowds at public relocation centers. Consequently, completion of a FEMA exercise is no substitute for the detailed and focussed evaluation of LILCO's training program that is necessary to protect the County's interests expressed in the Proposed Contentions. Clearly, there are no alternative means available for protecting the County's interest in demonstrating specific deficiencies and inadequacies in LILCO's training program. The County has satisfied the second and fourth elements of Section 2.714.

C. The County's Participation Will Add to the Development of a Sound Record

As it has throughout this proceeding, the County will contribute to the development of a complete record with respect to the Proposed Contentions. Through direct testimony of expert witnesses including Deputy Inspector Peter F. Cosgrove and Lieutenant John L. Fakler of the Suffolk County Police Department, and cross-examination of witnesses testifying on behalf of the other parties, the County will submit evidence

supporting the specific assertions contained in the Proposed Contentions. For example, the County will demonstrate on the record how and why LILCO's lesson plans are incomplete and inadequate, the reasons meaningful testing is necessary and why the LILCO program is deficient in that regard, how and why LILCO's program fails to provide sufficient practical experience and the result of such failure, why LILCO's drills are too short and too narrow in scope and the result of this deficiency, and the reasons why the lack of opportunity for trainees to practice job skills renders the LILCO training program inadequate. There is no basis for LILCO's suggestion that the County will not contribute to the development of a sound record on the issues raised in the Proposed Contentions. The County has satisfied the third element of Secion 2.714.

D. Admission of the Proposed Contentions Will Not Result in Delay

LILCO argues that admission of the Proposed Contentions would delay this proceeding, because the schedule for filing Group II testimony would be disrupted as a result. LILCO also asserts that a new schedule, including additional testimony and discovery, would cause delay. (Objections at 11.) After LILCO filed its Objections, the Board substantially revised the schedule. Included among the Board's changes were additional

time for discovery and postponement of the filing of training testimony until two weeks after the Board's decision regarding the Proposed Contentions. (See Order Confirming Schedule Changes, dated March 2, 1984). These subsequent schedule changes have rendered LILCO's argument groundless. Admission of the Proposed Contentions will not result in material delay in this proceeding.

II. Response To LILCO's Generic Objections

A. Untimeliness

The arguments used by LILCO to support its untimeliness objection have been refuted in Part I.A, above, and need not be repeated here. As stated in Part I.A, there is no basis for LILCO's objection, and it should be denied.

However, one additional point must be made with respect to LILCO's untimeliness objection. LILCO has consistently mischaracterized the subparts of Proposed Contentions 2 and 3 as separate contentions. Proposed Contention 2 alleges that LILCO's classroom training program is inadequate and deficient. Proposed Contention 3 alleges that LILCO's drill and exercise program is inadequate and deficient. The subparts of those contentions are not independent contentions; each one states

specific deficiencies, each of which constitutes one basis for the Proposed Contention.

In considering the timeliness of the County's submission of the Proposed Contentions, it must be remembered that whether contentions criticizing LILCO's classroom and drill programs were submitted in a timely fashion depends on the time at which the County was able to evaluate fully both programs. It is not dependent on the sequence or timing of LILCO's delivery of individual pieces of information or materials that might ultimately relate to some portions of contentions. Clearly, contentions evaluating LILCO's training program, filed 10 days after notice that the program was complete, are timely.

B. Lack of Basis

With respect to several portions of the Proposed Contentions, LILCO objects because of an alleged "lack of basis." This objection was made in a similarly wholesale fashion by LILCO both in its Objections to Intervenors' "Revised Emergency Planning Contentions," dated August 2, 1983, and in its Objections to Intervenors' "Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan," dated January 19, 1984. The County's general response to LILCO's lack of basis objection was stated in Suffolk County's Response

to LILCO's Objections to Intervenors' Consolidated Emergency Planning Contentions and to NRC Staff Response to Draft Emergency Planning Contentions, dated July 12, 1983 (the "July Response"), at pages 7-11, and repeated in Suffolk County Response to LILCO and NRC Staff Objections to Intervenors' Proposed Emergency Planning Contentions Modified To Reflect Revision 3 of the LILCO Plan, dated January 30, 1984. The discussion of legal authorities contained in the July Response is incorporated by reference and thus will not be repeated in full here.

To satisfy the requirement that a basis be stated for proposed contentions, an intervenor must assert the factual reasons for its belief that its contention is true. It is well established that an intervenor need not state in its contentions the underpinnings for, or the bases of, the factual assertions in the contentions in order to satisfy the basis requirement. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980); Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973).

Each of the Proposed Contentions sets forth the factual reasons which form the basis for the conclusions stated in the

contention. Indeed, Proposed Contentions 2 and 3 contain several subparts which state with particularity the specific factual bases for those contentions. It is settled NRC law that no more is required.

LILCO's "lack of basis" objections uniformly ignore the factual bases that appear on the face of the Proposed Contentions. In fact, almost all of LILCO's objections are directed to the subparts which are themselves the bases of Proposed Contentions 2 and 3, and argue, in effect, that evidentiary support should be provided in the contentions for the factual assertions that are themselves the bases of the contention. The remainder of LILCO's lack of basis objections are nothing more than disagreements with the factual assertions set forth in the Proposed Contention.

A challenge to the correctness of a factual assertion which forms the basis of a contention goes to the merits of the contention and is irrelevant to the issue of admissibility. That is an issue to be decided either through summary disposition or at the hearing. Therefore, whether the stated basis of a contention is itself correct is not a proper subject for a ruling on the admissibility of the contention. See Grand Gulf, supra, 6 AEC at 426; Allens Creek, supra, 11 NRC at 551.

Furthermore, in Allens Creek, supra, the Appeals Board expressly rejected the argument made by LILCO in most of its objections, that in addition to stating the factual assertions that form the bases of its contentions, an intervenor also must provide in the contention reasons for those factual assertions. Id., 11 NRC at 546-48. That is, intervenors are under no obligation to provide bases for the bases of their contentions in order to meet admissibility requirements.

Because LILCO's "lack of basis" objections either purport to challenge the correctness or the merits of the factual assertions which form the bases for the Proposed Contentions or merely assert that Intervenors have some obligation to provide in the contentions (as opposed to testimony) factual support for those factual assertions, LILCO's "lack of basis" objections must be rejected.

C. Lack of Specificity

LILCO also objects to certain portions of the Proposed Contentions because of an alleged "lack of specificity." As with the lack of basis objection, the County responded to LILCO's views concerning requisite specificity in its July Response. The legal discussion contained on pages 11-15 of the County's July Response is incorporated here by reference.

If a contention sets forth the issue raised with sufficient specificity to put the parties on notice of what will be litigated, that contention meets the specificity requirements of 10 C.F.R. § 2.714 and is admissible. See Allens Creek, supra; Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); Grand Gulf, supra. In every instance, the Proposed Contentions make clear the issue to be litigated, and thus satisfy the specificity requirement. LILCO never demonstrates what lack of specification allegedly exists. Rather, LILCO merely makes a generalized unsupported objection. Accordingly, LILCO's "lack of specificity" objections should also be rejected.

D. The "No Legal Requirement" Objection

LILCO invokes a "no legal requirement" objection to certain portions of the Proposed Contentions. These objections are discussed individually in the context of specific contentions. However, the following comments are generally applicable to such objections. First, the Proposed Contentions and their subparts must be viewed in their entirety and along with the Preamble to Contentions 35-44, since some of the regulatory bases for the Proposed Contentions or the subparts are set forth in the preamble or in contention introductions to avoid

repeating citations. Thus, it is usually inappropriate to look at a particular contention or subpart in isolation as LILCO does in its Objections, and then to assert that there is no stated applicable regulatory requirement. Most of the "no legal requirement" objections asserted by LILCO are without foundation when the portion of the contention objected to is viewed in the proper context.

Second, many of LILCO's "no legal requirement" objections in fact are arguments that what would be necessary to correct the deficiency identified in the contention is, in the view of LILCO, not required by the regulations. Such an argument does not constitute an appropriate admissibility objection. In determining the admissibility of a contention, this Board must look at the contention, not at what may be necessary, in LILCO's view, to correct an identified problem. If the contention is staced with the requisite specificity and regulatory basis, the contention is admissible.

III. Specific Responses to Individual Objections.

A. Proposed Contention 1

LILCO objects to Proposed Contention 1 on the ground that it is untimely, because it allegedly is based on the LILCO Plan and not on training documents. It suggests that this contention should have been submitted in January with other modified contentions. (Objections at 12.) LILCO's argument, in essence, is that the County should have submitted new training contentions each time LILCO modified any portion of its Plan that mentioned the LILCO training program. As is discussed in Part I.A above, for the County to have done so would have been contrary to the course of action clearly suggested by the Board and would have wasted the time and energy of all concerned. LILCO's untimeliness objection should be denied.

LILCO's second objection to Proposed Contention 1 applies only to the first two sentences of the contention. LILCO argues that it is under no legal requirement to train the staffs of schools and special facilities "because they will not be called upon to assist in an emergency." (Objections at 12, 13). This objection must be denied. First, this "no legal requirement" objection is, in reality, a dispute with the merits of Proposed Contention 1, and as such is an improper admissibility contention. See discussion in Parts II.B and II.D

above. If LILCO believes it can comply with the regulatory requirements cited in Proposed Contention 1 without providing training to the staffs of schools and special facilities, it can argue that point in testimony or in a summary disposition motion.

Second, LILCO's argument is inconsistent with its own Plan, since the LILCO Plan states that staffs of schools and special facilities may be called upon "to take actions during an incident," (Plan at 5.1-6), and that training "will be offered" to them. The Plan also states that the staffs of such organizations are expected to implement LILCO's protective action recommendations for their facilities. (See Appendix A at II-19 to 21, IV-172 to 174). Thus, LILCO's assertion that such individuals "are part of the general population who will be protected by the local emergency response organization; they are not members of the emergency response organization itself," (Objections at 13) contradicts its Plan. Its objection is groundless and should be denied.

Finally, LILCO objects to the third sentence of Proposed Contention 1 which alleges that the Plan fails to demonstrate that training will be provided to personnel from non-LILCO response groups such as the Coast Guard, DOE-RAP, the American

Red Cross, and ambulance personnel. (Objections at 13). LILCO argues that the challenged assertion "is without basis," because the Plan states that such training "will be provided." (Id.) This LILCO objection should also be denied, because it is nothing more than a factual disagreement with the County's assertion. It is clear that the point of the contention is that despite the unsupported assertion in the Plan, LILCO has failed to demonstrate that its proposals would or could in fact be implemented. LILCO's factual disagreement with the substance of the contention is not grounds for denying admission to that portion of Proposed Contention 1.

B. Proposed Contention 2

LILCO objects to Proposed Contention 2 as a whole, on the ground of untimeliness. LILCO argues that to the extent Proposed Contention 2 asserts inadequacies in the format of LILCO's classroom training, it should have been submitted before completion of the training materials, and that the County had "the majority" of the materials LILCO believes are pertinent to classroom training, in October, 1983. (Objections at 13, 14). For the reasons discussed in Part I.A above, LILCO's untimeliness objection should be denied.

1. Untimeliness and Lack of Basis Objections to Subparts 2.A through 2.L

LILCO has objected to almost all of the twelve subparts of Proposed Contention 2 on the grounds of untimeliness, lack of basis, or both. That these two generic objections lack merit and should be denied has been demonstrated in Parts I.A, II.A and II.B, above. Those discussions will not be repeated at length in the following responses to specific objections. Instead the appropriate portions of Parts I and II will be cited, except when additional arguments are necessary with respect to a particular subpart.

2. Subparts 2.A and 2.B

LILCO's objection that subparts A and B of Proposed Contention 2 lack specificity should be rejected. Proposed Contention 2 states that LILCO's training is inadequate, and, as a result, personnel will neither understand nor be able to perform properly the functions assigned to them under the Plan. It then explicitly states: "The specific deficiencies in LILCO's training program each of which contributes to the overall inadequacy of the training proposed by LILCO, are set forth below." Thus, the 12 subparts of Contention 2 set forth 12 specific reasons that LILCO's training program is inadequate. Thus, reading the contention plainly reveals that the subparts,

including 2.A and 2.B, provide both the bases and necessary specificity for Proposed Contention 2. As explained in Part II.C above, to meet the specificity requirement, a contention must put the parties on notice of what issues will be litigated. Proposed Contention 2, including subparts A and B, satisfies that requirement.

Furthermore, the second sentences in both subparts A and B do provide additional specificity about the particular deficiency identified in each Subpart. Thus, the lesson plans discussed in subpart A are substantively[3/] inadequate and incomplete because "they do not provide instructions with sufficient guidance, substantive information, or resource references, or objective criteria by which to determine whether necessary learning has occurred." And, the workbooks and videotape scripts discussed in subpart B are substantively inadequate because "they do not contain sufficient, accurate or detailed information about important substantive matters." LILCO's assertion that even more specific information must be provided amounts to a demand that the County plead its evidence in its contentions. There is no such requirement in the

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3/ There is a typographical error in both subparts A and B of Proposed Contention 2. The word "substantially" which appears in the second line of each subpart, should read "substantively."

regulations. Proposed Contention 2, including subparts A and B, meets the specificity requirement and LILCO's objection should be denied.

3. Subpart 2.C

LILCO makes two objections to subpart C of Proposed Contention 2. First, LILCO argues that the County should have submitted a contention about the qualifications of LILCO's training instructors last Fall. (Objections at 15.) For all the reasons discussed in Parts I.A. and II.A above, LILCO's untimeliness objection should be denied.

LILCO's second objection to subpart C is that it lacks basis. (Id.) LILCO's objection should be denied for the reasons stated in Part II.B. The factual assertion that comprises subpart C is one of the bases for Proposed Contention 2. There is no requirement that bases be provided for the bases of a contention.

4. Subpart 2.D

LILCO makes an untimeliness objection to subpart D of Proposed Contention 2, because it allegedly does not rely on the content or availability of a complete set of LILCO's training materials. (Objections at 15.) For the reasons discussed in Parts I.A and II.A., LILCO's untimeliness objection should be denied.

LILCO's "lack of basis" objection to subpart D is also without merit. The factual assertion in subpart D, that LILCO's instructors were not monitored properly or effectively, is one of the bases for the allegation in Proposed Contention 2 that LILCO's training program is inadequate. For the reasons discussed in Part II.B, LILCO's argument that the County should be required to provide in its contention evidentiary support for the factual basis of Proposed Contention 2 lacks merit and must be denied.

5. Subpart 2.E

Although LILCO describes its objections to subpart E of Proposed Contention 2 as a lack of basis objection (Objections at 16), it is obvious that LILCO's objection is really a factual disagreement with the merits of the assertion contained in

that subpart. As discussed in Part II.B, such a factual dispute is a matter for hearing and is not a proper objection to the admissibility of a contention.

LILCO's second objection -- that there is no legal requirement for graded testing (Objections at 16) -- misses the point of Proposed Contention 2, and suffers from the defect discussed in Section II.D above. There is, without question, a requirement that offsite response personnel be trained adequately in their emergency roles, as set forth in the regulations cited in Proposed Contention 2. (See 10 CFR §50.47(b)(15), 10 CFR Part 50, Appendix E, Section IV.F, NUREG 0654, Section II.O). Proposed Contention 2 asserts that LILCO's training program is inadequate because, among other reasons, it lacked meaningful and graded testing. When the Proposed Contention is read in its entirety, the legal requirement is readily apparent. Accordingly, LILCO's objection should be denied.

6. Subpart 2.F

LILCO makes a lack of basis objection to the portion of subpart F of Proposed Contention 2 which alleges that there is no provision in LILCO's training program for evaluation of the abilities of personnel who have completed training. (Objections at 16). LILCO's objection appears to be a disagreement on the merits of that portion of subpart F, since LILCO appears to believe that there are provisions in the Plan for trainee evaluations. For the reasons given in Part II.B, such factual disputes are not proper admissibility objections, and the County is under no obligation to prove in its contention the factual assertions in subpart F which form the bases of Proposed Contention 2. LILCO's objection should be denied.

7. Subpart 2.G

LILCO's objection that subpart G of Proposed Contention 2 lacks basis is improper for the reasons set forth in Part II.B above. The County is not required to set forth evidentiary support for one of the bases of Proposed Contention 2. LILCO's disagreement with the facts asserted in subpart G are the proper subject of testimony, not an objection to the admissibility of the subpart.

8. Subpart 2.H

LILCO objects to subpart H of Proposed Contention 2 for two reasons (Objections at 17). That subpart states:

> Many trainees have never reviewed the LILCO Plan or the implementing procedures.

That factual assertion is one basis for the allegation in Proposed Contention 2 that the LILCO training program is inadequate. LILCO's first objection is really a disagreement with the factual assertion contained in subpart H. Such a disagreement, as discussed in Part II.B, is no reason for denying admission to the subpart. LILCO's assertion that "the County cites no specifics whatsoever of failure to train the LERO workers in the necessary procedures" (Objections at 17) misses the point of the contention, namely that LILCO's attempt to train its workers in necessary procedures is inadequate because (among other reasons) the trainees have not even reviewed the Plan or the OPIPs.

Finally, LILCO raises a "no legal requirement" objection to subpart H. This objection must be denied for the reasons stated in Part II.D above. It is not a proper objection to admissibility. If LILCO believes it can or has complied with the regulatory requirements cited in Proposed Contention 2 or that

its training program is adequate, despite the fact that trainees have not reviewed the Plan or the OPIPs, it should so state in testimony. Moreover, contrary to LILCO's characterization, subpart 2.H does not assert that LILCO offsite workers should be able "to cite the LILCO Plan or implementing procedures chapter and verse" (Objections at 17). The subpart states that many workers have never even reviewed the Plan or its procedures, and that this fact contributes to the inadequacy of the LILCO training program. LILCO's objections should be denied.

9. Subpart 2.I

LILCO objects to subpart I of Proposed Contention 2 because of an alleged lack of specificity (Objections at 18). However, when one reads all of subpart I, instead of the limited portion quoted by LILCO in its Objections, it is clear that subpart I puts LILCO on notice of what the County seeks to litigate. The subpart states:

> Because training materials have been written for large groups of trainees assigned to several different emergency job categories, trainees receive much general and in many cases irrelevant information rather than sufficiently detailed information concerning their individual job functions.

(Portions omitted by LILCO in its Objections have been underscored.) Subpart I concerns the LILCO training program as a whole; it plainly alleges that in its training program, LILCO tried to teach large numbers of people too many different jobs with too few training materials that are too general. This fact contributes to the overall inadequacy of the training program alleged in Proposed Contention 2. The subpart meets the specificity requirement, and LILCO's objection should be denied.

10. Subpart 2.J

LILCO objects to subpart J of Proposed Contention 2 because it allegedly lacks basis. For the reasons stated in Part II.B, LILCO's objection is, once again, an inappropriate disagreement with the factual assertion contained in the subpart. Moreover, LILCO is simply wrong in stating that "many of the classroom training modules include practical hands-on demonstrations" simply because the Plan "notes" that they do. The Plan is inaccurate. For example, the Plan refers to 12 formal "Practical Demonstrations" which do not exist, were not used in training, and which LILCO apparently no longer even intends to develop. (See Plan at 5.1-5, 5.1-6; and letter, dated February 2, 1984, from J. Monaghan to J. Birkenheier, supra, at 2.)

And, the allegations in subpart J clearly apply even to classroom sessions that do purportedly include "practical demonstrations", including LILCO's "tabletop drills." LILCO's objection must be denied.

11. Subpart 2.K

LILCO asserts that subpart K of Proposed Contention 2 lacks basis because the County "has offered no reason for its Statement that the videotapes 'fail to promote attentiveness, understanding, participation or retention of information by trainees,' nor for the statement that the videotapes are nothing more than taped lectures." (Objections at 19). Thus, LILCO objects to the statements in subpart K that are themselves part of the factual bases for Proposed Contention 2. Clearly, LILCO is suggesting that the County is required to state the underpinnings for the factual assertions contained in the subpart or otherwise plead its evidence in the contention. The County is under no obligation to provide in its contentions bases for the bases of its contentions, and for the reasons given in Part II.B, LILCO's objection must be denied.

Finally, LILCO's assertion that subpart K "is not specific" because it does not state how or why the videotapes "fail to promote attentiveness, understanding, participation,

or retention of information" should also be denied. (Id.) A reading of the entire subpart and the main contention puts LILCO on notice of the issue the County seeks to litigate -- whether the nature and content of the LILCO videotapes renders them ineffective as educational tools, which contributes to the overall inadequacy of the LILCO training program, because trainees will not pay attention to them, understand them, participate in the sessions, or retain the information in the videotapes. LILCO's objection should be denied.

12. Subpart 2.L

LILCO asserts a lack of basis objection to subpart L of Proposed Contention 2. (Objections at 19). Once again, LILCO asserts that the County is required to state a basis for one of the bases of Proposed Contention 2. LILCO's objection should be denied for the reasons discussed in Part II.B.

C. Proposed Contention 3

LILCO objects to Proposed Contention 3 as a whole because it allegedly is untimely. (Objections at 19, 20). It also raises the same untimeliness objection to subpart C. (Objections at 21). LILCO argues that the County did not have to wait for completion of LILCO's training materials in order

to file a new contention about LILCO's proposed training drills. LILCO suggests that contentions could have been filed earlier because what LILCO characterizes as "representative" drill scenarios "upon which [according to LILCO] the County could have drafted this contention" have been in the County's possession since November 16, 1982. (Objections at 19-20). As discussed in Part I.A, this argument contradicts LILCO's previous position and the Board's Orders, and it is nonsensical. Clearly, until it had been told by LILCO that its training materials were complete, the County could not have determined that any drill scenarios were "representative" of others. For the reasons stated in Part I.A above, the untimeliness objection to Proposed Contention 3 and to subpart 3.C is without merit, and should be denied.

1. Subpart 3.A

Proposed Contention 3 alleges that LILCO's proposed drill and exercise programs violate cited regulations because they are inadequate and do not prepare or train LERO personnel to perform properly or effectively their assigned functions. The specific deficiencies in the drill or exercise programs which contribute to their inadequacy are listed in the seven subparts of Proposed Contention 3.

LILCO objects to subpart A of Proposed Contention 3 on the ground that it lacks basis and specificity for its assertions. (Objection at 20). LILCO's objections are without merit.

First, subpart A is one of the bases of Proposed Contention 3, and there is no legal requirement that the County state in its contention the evidentiary underpinnings of the bases for its contentions. In addition, LILCO's assertion that "the contention, as drafted, fails to sufficiently particularize why LILCO's drills are inadequate" is simply wrong. Subpart A plainly states: "The drills are too short and too narrow in scope to provide meaningful or realistic experience to trainees, or to prepare trainees properly for their emergency roles." LILCO knows the length and scope of its drills, and it knows that the County believes they were not long enough or broad enough in scope. Obviously, LILCO is on notice of the issues it will have to litigate, and its objection should be overruled. LILCO's discussion of FEMA exercises is incomprehensible and, in any event, appears to have no bearing on subpart A. The County is unable to respond to that discussion, since it does not understand it.

2. Subpart 3.B

LILCO does not object to subpart B of Proposed Contention 3.

3. Subpart 3.C

LILCO objects to subpart C of Proposed Contention 3 on the ground that "there is no legal requirement for stress training." (Objections at 21). This is a classic example of LILCO's improper "no legal requirement" objection, as discussed in Section II.D above. Proposed Contention 3 alleges that LILCO's drill program failed to provide the adequate training required by the regulatory provisions cited therein for a number of specific reasons. The lack of training with respect to how to deal with stress is one factor that, in the County's view, renders the LILCO program inadequate. Thus, it is the requirements of 10 CFR §50.47 (b)(15), 10 CFR Part 50, Appendix E, Section IV.F and NUREG 0654, Section II.O, cited in Proposed Contention 3, that the County believes have not been satisfied by LILCO. If LILCO believes it can or has satisfied those requirements, even without stress-related training, the proper place to demonstrate that is in testimony. It has not raised a cognizable admissibility objection. LILCO's objection should be overruled for the reasons stated in Part II.D above.

4. Subpart 3.D

LILCO does not object to Subpart D of Proposed Contention 3.

5. Subpart 3.E

LILCO makes a "no legal requirement" objection to subpart E of Proposed Contention 3, asserting that "there is no legal requirement that LERO workers interact with school officials, special facility administrators and the public during the drill program." (Objections at 21). LILCO's "objection" is apparently based on a misunderstanding of the point of subpart E. That subpart addresses the fact that LILCO employees receive no training to prepare them to deal with the public and officials in an emergency, despite the fact that the LILCO Plan clearly defines the emergency roles of many LILCO workers as including interaction with such officials and the public. LILCO's arguments about the training of the public or non-LILCO officials, and their responsibilities in an emergency are irrelevant to subart E.

Similarly, LILCO's argument that there is no legal requirement that members of the public participate in training is irrelevant to Subpart E. That subpart asserts that LILCO

workers were not adequately trained to interact with the public, because the LILCO drills did not provide such training. Subpart E does not allege that LILCO should be required to enforce public participation in offsite training. LILCO's objection to subpart E is not a proper admissibility objection and accordingly should be denied.

6. Subpart 3.F

LILCO argues that subpart F of Proposed Contention 3 lacks specificity. Its objection is groundless, because it is based on a mischaracterization of the subpart. LILCO is mistaken when it asserts that the subpart provides no examples of skills not taught to LILCO workers. Subpart F plainly states: "For example, the drills provide inadequate opportunities for LERO personnel to develop communications skills, and in drills LERO personnel have not been provided adequate opportunities to learn how to deal with unexpected difficulties or to develop and exercise good judgment." When one reads subpart F, as opposed to LILCO's selectively edited version, it is clear that LILCO is on notice of the issue the County seeks to litigate with respect to subpart F. LILCO's objection should be denied.

7. Subpart 3.G

LILCO purports to make a "lack of basis" objection to subpart G of Proposed Contention 3, which alleges that LILCO's drills are inadequate because they contain no terminal performance standards and, consequently, there are no objective, observable criteria to be used by instructors in evaluating the performance of trainees. (Objections at 23). LILCO's objection is unexplained and makes no sense. The basis in subpart G for the allegation in Proposed Contention 3 that drills are inadequate is plainly stated in the subpart -- there are no terminal performance standards, and therefore, there are no objective, observable criteria to be used by instructors in evaluating the performance of trainees. The objection is without merit. Furthermore, LILCO's reference to FEMA graded exercises and other nuclear power plants is irrelevant to the issue raised in Contention 3 -- which relates to LILCO's drills, not FEMA exercises, or other plants.

IV. Conclusion

For the foregoing reasons, the Proposed Contentions should be admitted. Following the Board's ruling on the Proposed Contentions, the parties will discuss a numbering scheme for the new training contentions and will inform the Board of the agreed upon designations.

Respectfully submitted,

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March 7, 1984

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 (O.L.) (Emergency Planning)
(Shoreham Nuclear Power Station, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Suffolk County Response to LILCO's Response to Suffolk County Motion to File New Contentions Concerning the LILCO Offsite Emergency Preparedness Training Program and LILCO's Objections to Proposed Training Contentions have been served on the following this 7th day of March 1984 by U.S. mail, first class, except as otherwise noted.

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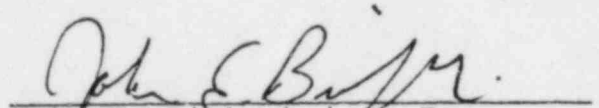

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