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NUCLEAR REGULATORY COMMISSION '84 MAR 12 AM 12:27Before the Atomic Safety and Licensing BoardDOCKETING & SERVICE  
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In the Matter of )

LONG ISLAND LIGHTING COMPANY )

(Shoreham Nuclear Power Station,  
Unit 1) )Docket No. 50-322-OL-3  
(Emergency Planning)SUFFOLK COUNTY MOTION TO STRIKE PORTIONS  
OF LILCO'S GROUP II-A TESTIMONY

On March 2, 1984, LILCO filed 21 separate pieces of Group II-A<sup>1/</sup> testimony. For convenience of reference, these 21 pieces of testimony are listed in Attachment 1 to this Motion. In accordance with the schedule established by the Board, Suffolk County now moves to strike portions of the LILCO Group II-A testimony.

Suffolk County is filing a single motion to strike regarding the LILCO Group II-A testimony because a number of County objections apply to portions of more than one set of LILCO Group II-A testimony. For instance, as discussed in detail in Section I.A of this Motion, the County is moving to strike portions of 14 pieces of LILCO Group II-A testimony because the designated portions are not proper expert testimony but, rather, represent improper

<sup>1/</sup> The County uses the term "Group II-A" in the same sense as the Board used the term in its March 2, 1984 Order Confirming Schedule Changes.

attempts to provide legal conclusions. Since multiple portions of the LILCO testimony have the same defect, the County has addressed such matters in a single consolidated filing. Therefore, in Sections I.A thru I.E of this Motion, the County sets forth its arguments for striking multiple portions of LILCO testimony, each time for the same basic reason.

The County also has discrete additional reasons for striking particular portions of certain of the LILCO Group II-A testimony. These are discussed in Section II of this Motion.

I. Suffolk County Motion to Strike Portions  
of More Than One Set of LILCO Testimony

A. LILCO Witnesses Improperly Attempt  
to Provide Legal Conclusions

It is settled, as this Board already has recognized (Tr. 2407, 2482-83), that the witnesses in this proceeding are not permitted to testify as to legal conclusions. Nevertheless, repeatedly the LILCO witnesses have not only testified regarding the disputed facts in this proceeding, but also have attempted to testify as to legal conclusions. These portions of the LILCO testimony do not provide proper or probative expert testimony and must therefore be struck.

The improper LILCO testimony regarding legal matters falls into three categories. First, in a number of instances LILCO witnesses have not only testified as to disputed facts, but also have expressed the purely legal conclusion that LILCO has complied with particular regulatory requirements. For example, in its

testimony on Contentions 28-32 and 34 (Testimony #7 on Attachment 1 hereto), the LILCO witnesses state that LILCO complies with regulations and guidelines for offsite emergency planning (page 4, lines 2-3). Later, these witnesses again testify that the LILCO Plan complies with Section II.F.1.c of NUREG-0654. (See p. 7, Ans. to Q.8, lines 1-4). Similarly, in LILCO's testimony on Contention 20 (Testimony #1 on Attachment 1), LILCO witnesses testify that the "Plan complies with 10 C.F.R. § 50.47(b)(5) through its Prompt Notification System and the Emergency Broadcast System." (p. 4, Ans. 6, lines 1-3). This testimony constitutes legal conclusions which are improper. Accordingly, the following portions of LILCO Group II-A testimony should be struck for the same basic reason:<sup>2/</sup>

<u>Item on Attachment 1</u>	<u>Contention Addressed in LILCO Testimony</u>	<u>Portion of LILCO Testimony to be Struck</u>
1	20	p. 4, Ans. 6, first sentence
7	28-32, 34	p. 3, last line, through p. 4, line 3  p. 7, Ans. 8, all  p. 8, first full sentence (lines 3-5)  p. 8, last 3 lines  p. 9, Ans. 10, all after quote of con- tention

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<sup>2/</sup> For convenience, the table below and other tables in this Motion list the items which already have been discussed in the text, as well as other items which fall within the same category.

p. 26, Ans. 32, word  
"Yes"

10

58

p. 11, Ans. 14, all

Second, in many instances, LILCO witnesses have attempted to interpret what the regulations or other laws require. For example, in its testimony on Contention 22.D (Testimony #3 on Attachment 1 hereto), the LILCO witnesses state that an EPZ of 13 miles would "violate the requirement that the EPZ boundary approximate a ten-mile radius . . . ." (p. 21, lines 5-6, emphasis supplied). This is improper testimony for technical experts. It would be proper for them to testify regarding what is provided in the LILCO Plan or to quote the regulations, and even to state what they understand the regulations to require. However, it is for the Board to determine whether LILCO has complied with the regulations and to provide an interpretation of regulatory requirements. For the same reason, the following portions of LILCO Group II-A testimony also should be struck:

<u>Item on Attachment 1</u>	<u>Contention Addressed in LILCO Testimony</u>	<u>Portion of LILCO Testimony to be Struck</u>
1	20	p. 6, Ans. 13, lines 1-2
2	21, 21.C	p. 7, Ans. 7, lines 1-5
3	22.D	p. 6, Ans. 5, all p. 21, Ans. 29, lines 3-8



5	26.A, C, D & E	p. 31, Ans. 79, word "No"
6	27	p. 26, Ans. 16, lines 14-20
7	28-32, 34	p. 4, Ans. 4, line 8, sentence starting "In fact . . . ."
		p. 4, Ans. 4, lines 21-22, sentence starting "There is no requirement . . . ."
		p. 10, Ans. 11, lines 7-10, beginning "There is . . . ."
		p. 11, Ans. 13, lines 1-6, ending with ". . . and main- tained."
		p. 26, Ans. 33, word "No"
		pp. 32-33, Ans. 43, all
		pp. 36-37, Ans. 49, lines 1-3, ending with ". . . of activities exist."
9	55-57, 59	p. 12, Ans. 10, lines 1-3, ending with ". . . the sirens."
		p. 14, Ans. 13, lines 1-5, ending with "about 15 minutes" and 10-11, sentence starting "Indeed, no backup . . . ."
		p. 15, Ans. 14, 2nd. sentence
		p. 19, Ans. 18, lines 1-4

		p. 20, Ans. 21, all
10	58	p. 9, Ans. 10, all
11	66	p. 13, Ans. 10, lines 4-8, sentence starting with "The presence . . . ."
16	75	p. 5, Ans. 5, last sentence
18	92	p. 4, Ans. 7, last 2 lines and all of page 5
19	93-95	p. 19, Ans. 30, all
20	96.A & C	p. 6, Ans. 10, 2nd sentence

Finally, in a number of instances, the LILCO witnesses cite to decisions in other emergency planning proceedings. This is not an attempt to set the context for discussion of some regulatory standard (such as was done early in this ASLB proceeding where North Anna was cited in testimony as constituting the standard for consideration of unresolved safety issues). Rather, this testimony not only is irrelevant (see Section I.C, infra), it also is purely legal citation which is appropriate, if at all, for post-trial attorney briefs, not expert testimony. Thus, the following testimony should be struck:

<u>Item on Attachment 1</u>	<u>Contention Addressed in LILCO Testimony</u>	<u>Portion of LILCO Testimony to be Struck</u>
9	55-57, 59	p. 22, Ans. 25, lines 9-18

		p. 23, last sentence
15	74	p. 12, lines 4-10
16	75	pp. 8-9, Ans. 7, 4th & 5th sentences

B. LILCO Improperly Seeks to Admit into  
Evidence Documents and Discussion  
Relating to the County's Pre-1982  
Planning Effort

In its testimony on Contentions 22.D (EPZ boundary) and 74 and 75 (relocation center location and capacity), the LILCO witnesses have testified at length concerning matters which allegedly took place during Suffolk County planning efforts prior to mid-March 1982. These matters are not pertinent to the contentions and are yet another effort<sup>3/</sup> by LILCO to litigate and put into controversy issues regarding what the County might have done if it had decided to adopt and implement a plan.

The County did conduct planning activities prior to mid-March 1982.<sup>4/</sup> The activities of certain County planners did result in a

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<sup>3/</sup> This latest LILCO effort is similar to LILCO's previous effort in Group I testimony to assert that County personnel would likely participate in LILCO's Plan. The County moved to strike such testimony as irrelevant since the only issue is whether LILCO's Plan complies with the regulations (see Suffolk County Motion to Strike Portions of LILCO Testimony on Contentions 25, 23 and 65, November 28, 1983, pp. 7-8). The Board granted the motion. Tr. 1298.

<sup>4/</sup> The County also conducted extensive planning activities between late March 1982 and February 1983 when the County Legislature adopted Resolution 111-1983 by which the County decided not to adopt or implement any plan. LILCO finds it convenient to rely on selective County planning materials from the earlier period, but to ignore the County's extensive planning efforts after March 1982 -- efforts which, for instance, found that a rigid 10-mile EPZ such as LILCO has adopted and which at one time was being considered by some County planners was completely inadequate. Thus, if LILCO is permitted on Contention 22.D to submit data  
(footnote continued)

draft of a portion of a plan, which draft then was categorically rejected by the County. Indeed, the head of the County Planning Department has testified during deposition by LILCO that the planning activities in the pre-March 1982 period were plainly inadequate. Deposition of Dr. Lee Koppelman, at 51-47.

LILCO has now attempted to insert into this litigation these old planning activities. These are not pertinent or relevant; the issue is whether LILCO's Plan complies with the regulations, not whether County planners several years ago in a draft of portions of a plan which was discarded came up with draft plan provisions which LILCO believes support LILCO today.

If LILCO is permitted to use these discarded County planning materials, the County will be forced to file rebuttal testimony to demonstrate that these prior County materials in fact do not merit any consideration. See footnote 4. That will of course delay the proceeding and will widen the controversy so that we are litigating whether the old County planning efforts were good or not. Again, that simply is not what the litigation is supposed to cover. Rather, the litigation should cover LILCO's Plan and LILCO itself should justify the provisions it has chosen to adopt.

With the foregoing introduction, the County will now designate the precise portions of the LILCO testimony that must be struck.

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(footnote continued from previous page)  
regarding the pre-March 1982 County planning effort, the County must have an opportunity to present data from its later effort, which show the need for a much larger EPZ and which rejected the very materials LILCO relies upon.

1. Contention 22.D

The following testimony should be struck:

pp. 9-10, Q&As 10-12  
p. 10, Q&A 14  
p. 15, lines 7-10  
p. 22, last sentence  
Attachments 4 and 5

These portions of Contention 22.D and the referenced attachments involve a discussion of how County planners in 1980-81 allegedly set about arriving at a draft EPZ boundary and how New York State planners allegedly commented on that boundary. All of this discussion and Attachments 4 and 5 must be struck because how certain County planners went about preparing a plan which never was adopted and in fact has been rejected is not relevant. The Contention alleges that LILCO's proposed EPZ boundary fails to meet the criteria of 10 C.F.R. § 50.47(c)(2). Thus, the issue in controversy is whether LILCO's boundary is proper. The history of that boundary as it allegedly may be connected to prior County planning efforts is not relevant at all.

2. Contention 74

LILCO's discussion and use of prior County planning materials regarding Contention 74 is very similar to that on Contention 22.D. Thus, LILCO attempts to introduce evidence to justify the location of relocation centers designated in LILCO's Plan on the basis that County planners allegedly had selected these locations in its rejected pre-March 1982 draft of a plan, and because State of New York planners allegedly agreed. However, this time LILCO even goes further, attempting to introduce into evidence (Attachment 6) the September 1981 LILCO-County planning agreement that

later was rescinded. That agreement bears no relevance to the present contention.

The following portions of LILCO's Contention 74 testimony should be struck:

p. 8, line 5 through p. 11,  
end of Answer 10  
Attachments 6-11

The County repeats that the foregoing testimony and attachments are not relevant to the contention at issue. The issue is whether LILCO has complied with NRC regulations in its choice of relocation centers. This "evidence" is not needed in order to address this issue but rather presents new hearsay evidence from early and mid-1981 pertaining to what other planners were doing. The admission of this "evidence" will vastly expand this litigation, as it will necessitate the presentation of evidence to negate the implications of LILCO's testimony -- namely that the LILCO relocation centers are satisfactory to the County. We submit that the testimony should stick to the issue in controversy instead of being an historical dissertation.

### 3. Contention 75

The following portions of LILCO's Contention 75 testimony should be struck:

p. 6, last 8 lines  
p. 9, Answer 8 through first two  
lines on page 10  
Attachments 3, 6-8

The reasons for striking these portions are the same as for Contention 74 and hence will not be repeated.



C. LILCO Improperly Attempts to Introduce  
Evidence Regarding Other Nuclear Facilities

Suffolk County objects to and seeks to strike portions of the LILCO testimony which address emergency planning at other plants. First, the LILCO witnesses provide no data to demonstrate that they are competent to testify regarding such other plants. Hence, this is not reliable evidence and should be struck. See 10 C.F.R. § 2.743(c).

Second, the planning at other plants is simply not relevant to the contentions which have been admitted. For example, on Contention 22.D, at page 7, the following Q & A occurs:

Q. Are there examples at other nuclear power plants where municipal boundaries are crossed by the EPZ boundary?

A. [Cordaro, Daverio, Weismantle] Yes. There are a number of instances where municipal boundaries are crossed by the EPZ boundary. The attached maps of the Browns Ferry emergency planning zone show that the boundary of that EPZ passes through boundaries of Decatur and Athens (Attachment 1-3). Likewise, at Seabrook Station the 10-mile EPZ boundary divides the two cities of Haverhill and Portsmouth.

LILCO makes no attempt to document the facts at Browns Ferry or Seabrook which dictated the precise EPZ boundaries which were chosen, much less how those facts (which are not disclosed) provide pertinent data for this Board in considering Contention 22.D. Rather, LILCO witnesses have made only bald assertions but never have tied the assertions to the precise issues being con-

sidered in this proceeding on Contention 22.D.<sup>5/</sup> If this testimony is allowed to stand, the County submits that it would be without probative value but that, out of caution, the County will need to probe the assertions which are being made, resulting in litigation centered on emergency planning at other plants instead of focusing on the issues pending in the instant case.

The following portions of the LILCO Group II-A testimony should therefore be struck:

<u>Testimony Items From Attach. 1</u>	<u>Contention(s) Addressed</u>	<u>Portions to be Struck</u>	<u>Reason(s) for Striking</u>
3	22.D	p. 7, Q&A 7 Attach. 1-3	See preceding text.
9	55-57, 59	p. 13, 2nd. sentence of Answer 12	LILCO asserts its procedures are similar to other sites but never even identifies those sites, attaches the allegedly similar procedures, or explains why the fact that procedures are allegedly the same is pertinent to Contention 56.
		p. 22, Ans. 25, all, and Attach. 3 & 4	LILCO's assertion that LILCO's notification system is "essentially" the same as in Connecticut is irrelevant. If admitted we will need to examine the Haddam Neck and Millstone systems. These witnesses are not competent to testify regarding those systems, nor about the Coast Guard letter (Attachment 4).
11	66	p. 12, Ans. to Q9, 1st two sentences	LILCO discusses "other" evacuation plans without even identifying them. No effort to tie these "plans" to contention.

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<sup>5/</sup> The County recognizes that the Board earlier in this proceeding permitted some evidence of time estimates at other plants. See Tr. 1298. The County submits that in the testimony contested in the instant motion, however, LILCO has so failed to tie the data for other plants to the contentions being litigated that a different ruling is required.

18	92	p. 5, line 15 through p. 6, line 4 and Attach. 3-11	These are tables of contents and discussion of <u>other</u> New York plants. No showing how these <u>other</u> plants' plans are supposed to be relevant or how any of LILCO's witnesses can sponsor the Attachments or any other discussion of N.Y. plan.
19	93-95	p. 14, last 2 lines p. 15, top 2 lines p. 21, lines 11-14  p. 20, Ans. 32, lines 1 & 2	Discussion whether other plants in New York have backup power for electro-mechanical sirens. Contention does not involve other plants. Plus, this "evidence" is in support of an improper legal conclusion.  Discussion of sirens used by "majority" of other utilities is not relevant to contention.
20	96.A & C	p. 7, Q&A 11	Discussion of whether the witnesses "know" of other plans with measures like those contemplated in contention is irrelevant.

D. Improper Speculation Regarding  
Future Events

The purpose of this proceeding is to determine whether the LILCO Plan complies with NRC requirements. There must, therefore, be a definitive statement from LILCO regarding what it in fact proposes as its Plan and thus what it believes constitutes its compliance with the regulations. In this regard, the Board has recognized that LILCO's Plan will be revised. However, the County understands that it is the LILCO Plan, in its most recent version -- Revision 3 -- which the parties are to address in terms of LILCO's compliance/noncompliance with regulatory requirements.

LILCO, however, has repeatedly attempted to testify regarding steps it may or allegedly will take in the future. For example, the LILCO Plan specifies eleven bus transfer points. The adequacy of these transfer locations is addressed in detail in the County's

Contention 67 testimony. In its Contention 67 testimony, however, LILCO states (p. 20):

It should be noted that the exact locations of various of these transfer points are being, or may be, changed permanently or temporarily, in minor ways. For instance, the Coram Plaza Shopping Center, adjacent to the Coram Drive-In Theater, is being used instead of the Coram Drive-In. An A&P Shopping Center located across the street from the Miller Place right-of-way may be used rather than the right-of-way, which would require improvements subject to local permitting.

(Emphasis added). This testimony is improper. It speculates about what may be done instead of addressing the Plan which is before the Board and parties for adjudication. Such speculation regarding future events is irrelevant and not probative. It should be struck.

The following portions of LILCO Group II-A testimony constitute improper speculation regarding future events and thus the County moves that they be struck.

<u>Testimony Items From Attach. 1</u>	<u>Contention(s) Addressed</u>	<u>Portions to be Struck</u>	<u>Reason(s) for Striking</u>
1	20	p. 6, lines 13-21	LILCO discussion on a procedure and other matters it expects to establish with WALK is unreliable and purely speculative. Also not part of LILCO Plan. If and when a procedure is completed, LILCO can move to have something on it if LILCO believes it is important.

		p. 8, Ans. 15, last sentence	Discussion of future EBS agreements is speculative. Again, not part of Plan. If and when these are part of Plan, a hearing on them may be pro- per.
4	24	p. 9, last ¶, lst. sentence	Improper speculation regarding contracts LILCO expects to finalize.
		p. 17, lines 13-14	Improper speculation that a perman- ent location nearby will be found.
5	26.A, C, D	pp. 42-43, Ans. to Q. 110, second and third sentences	Improper to speculate that people will be notified when reception centers have not been identified.
6	27	p. 8, lines 9-13; p. 26, last 4 lines and all of p. 27	Improper speculation regarding future plan revisions
7	28-32, 34	p. 4, lines 12-17; p. 8, lines 19-24	Improper speculation regarding steps to obtain new radio.
		p. 10, lines 15-20 and Attach. 1	Discussion of future plan change. This is slightly different than other instances, since it is a change in Plan that has been made but not formally in a revision of of the Plan. This was a surprise to County and depending on import- ance and ASLB ruling, County may need to rebut.
9	55-57, 59	p. 12, Ans. 10, last sentence	Improper discussion of procedures that apparently are being developed but are not part of Plan.
12	67	p. 16, lines 8-13	Speculation about what LILCO may do if there are excess buses; not part of Plan.
		p. 20, lines 19-27	See discussion in text.
13	73.A	p. 9, lines 9-14; p. 13, lines 11-15	Speculation regarding list LILCO is obtaining.
15 & 16	74, 75	p. 6, lines 19 thru p. 7, line 8, p. 12, line 19 thru p. 13, line 9, and Attach. 3 & 4 of testimony on	Nassau relocation centers are not part of Plan and outside scope of contention. Further, the testimony constitutes speculation regarding future Plan changes to incorporate Nassau centers. If LILCO wants to



		Contention 74; and pp. 10-11, Q&A 10 & 11, p. 12, lines 3, 11-22 and Attach. 11 & 12 of testimony on Contention 75	rely on Nassau centers, the Plan should be changed and the parties deserve proper notice and conten- tion regarding their adequacy will need to be litigated.
19	93-95	p. 15, last 2 lines and p. 16, top 5 lines	Speculation regarding future LILCO power restoration procedure not part of plan.

E. Dr. Cordaro Should Be Struck  
From the LILCO Panels

Dr. Cordaro appears as a witness on each of LILCO's Group II-A witness panels. At the outset of each piece of testimony, Dr. Cordaro explains his participation as follows:

I am sitting on this panel to provide the LILCO management perspective on emergency planning, and to answer any questions pertinent to management. My role in emergency planning for Shoreham is to ensure that the needs and requirements of emergency planning are being met, and that the technical direction and content of emergency planning are being conveyed to corporate management.

None of the Group II-A contentions involve so-called "management perspective" and thus Dr. Cordaro's participation, in the County's view, adds nothing to the testimony being offered. Indeed, therefore, to the extent Dr. Cordaro is present to offer "management perspective," his testimony is irrelevant and thus he should not be permitted to testify.

Second, despite the preceding quote which purports to limit Dr. Cordaro's role as a member of each panel, Dr. Cordaro does attempt to do more than provide "management perspective." Indeed,



he attempts repeatedly to sponsor answers to substantive questions. See Attachment 2 hereto for a listing of all substantive questions on which Dr. Cordaro is listed as a sponsor of the answer. Dr. Cordaro must be struck as a witness on these answers because Dr. Cordaro does not qualify as a expert on emergency planning matters. There is nothing in the testimony of Dr. Cordaro on any contention which indicates any qualifications in emergency planning. Further, a review of Dr. Cordaro's statement of qualifications (Attachment 5 to the LILCO submittal entitled, "Professional Qualifications of LILCO Witnesses") reveals that not one word is said about Dr. Cordaro's training, education, or experience in emergency planning matters. LILCO has the burden of demonstrating that Dr. Cordaro is qualified to sponsor this testimony and such demonstration should have been in the testimony or in Dr. Cordaro's statement of qualifications. Since it is nowhere to be found, LILCO has failed to demonstrate that Dr. Cordaro is qualified and he must therefore be struck.

Since Dr. Cordaro's testimony and resume are completely devoid of any evidence of emergency planning experience, the County has not gone through each item of Dr. Cordaro's testimony to "prove" his lack of qualifications. Instead, as noted above, the portions to which the County objects are set forth in Attachment 2. However, the County does provide below an example of the extent to which Dr. Cordaro has been listed as a sponsor of technical, emergency planning testimony, testimony which he is not qualified to sponsor.

In the LILCO testimony on Contention 22.D, Dr. Cordaro repeatedly discusses "good emergency planning principles." For example, Q&A 6 reads as follows:

6. Q. Are there any other principles that planners should consider when drawing the boundary for a 10-mile EPZ?
- A. [Cordaro, Daverio, Weismantle] Yes. In general, good emergency planning principles indicate that planners should try to avoid splitting major coherent populations that fall within the 10-mile radius to avoid the possible confusion that could be caused if neighbors received different protective action recommendations. Also, planners should avoid creating a boundary with elongated appendages. The reason is that during an emergency, confusion might result if, for example, protective actions were recommended for areas distant from Shoreham while closer-in areas were not covered by the protective action recommendations.

(Emphasis supplied). Dr. Cordaro, however, is not a planner. To our knowledge, he has never been involved or participated in any way in emergency planning or in any other aspect of planning which would render him qualified to provide the foregoing testimony. His Statement of Qualifications is silent on any such expertise. Thus, he is not qualified to render any opinion on matters related to "good emergency planning principles."

Similarly, in the LILCO notification/communications testimony (Contentions 20, 26, 28-32 and 34, 55-57 and 59, and 58) Dr. Cordaro frequently discusses technical aspects of LILCO's proposed communications system. For example, Q&A 25 to LILCO's testimony on Contentions 28-32 and 34 reads as follows:

25. Q. The intervenors also allege that simplex frequencies do not permit communications among emergency workers in the field. Would you concur?

A. [Cordaro, Daverio, Hobbs, Renz]  
This is simply incorrect. Unlike paired frequencies, which transmit and receive on different frequencies, simplex uses a singular frequency for transmission and reception, thereby allowing communication between any two simplex radios crystallized to the same frequency. LERO field workers could communicate with one another on a simplex frequency. However, under the current LILCO Transition Plan the appropriate staging area is the point for communications to and from field personnel.

Although listed as a sponsor of this testimony, Dr. Cordaro is not a communications engineer. Nor is he an electrical engineer. Nor to our knowledge has he any expertise whatsoever in designing or using communications systems or equipment. Thus, he is not qualified to render any opinion on matters related to LILCO's proposed communications system.

The above examples demonstrate that Dr. Cordaro is not qualified to sponsor answers to substantive questions involving technical, emergency planning issues. For this reason, and because none of the Group II-A Contentions involve the so-called "management perspective" that Dr. Cordaro claims as his basis for presenting testimony, Dr. Cordaro should not be permitted to testify.

II. Suffolk County Motion to Strike Particular  
Portions of LILCO Group II-A Testimony

The bases for this portion of the County's Motion are that the portions of the LILCO testimony described below are not relevant or material to the contentions being discussed, and they provide no probative or reliable evidence or data upon which the Board could base a finding relevant to the subject contentions. Each of the referenced portions of the LILCO testimony is discussed separately below.

- A. Cordaro, et al. on Contentions 26.A, C, D and E  
(Notification of Emergency Personnel) -- Questions  
and Answers 65-70, pages 27-28

This testimony asserts that LILCO's Customer Service workers are experienced in making manual callouts of LILCO personnel and that this experience somehow demonstrates that LILCO's Customer Service workers would be able to carry out the LILCO Plan's provisions for calling in backup personnel to the Customer Service Office in the event of a radiological emergency. This assertion is neither relevant nor probative of the issues raised in Contention 26. Even if the referenced LILCO employees have performed as described in the LILCO testimony, there is no basis for asserting that they will perform the duties assigned to them in the event of an emergency at Shoreham. The described actions by LILCO employees (during a thunderstorm, for example) have not involved the kind of role

conflict that would be experienced in a radiological emergency. The examples cited in the testimony (thunderstorms, wind storms, gas leaks, etc.) have not required LILCO employees to choose between caring for their families or responding to the emergency at hand. Nor have the examples required LILCO employees to risk their own safety. Thus, such responses are not probative and do not demonstrate that LILCO employees would carry out the duties assigned to them under the LILCO Plan. Similarly, the testimony is not probative with respect to whether backup personnel would report to the Customer Service Office in the event of an emergency at Shoreham.

- B. Cordaro, et al. on Contentions 28-32 and 34 (Communications among Emergency Response Personnel) -- First full sentence on page 20, Answer 26 (i.e., the sentence beginning "To address the example . . .")
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This testimony by LILCO witnesses Cordaro, Daverio, Hobbs and Renz asserts that "Traffic Guides need not communicate directly with each other to insure coordinated information concerning traffic conditions." This assertion is entirely outside the expertise of the LILCO witnesses. LILCO's witnesses are not qualified to provide expert testimony on matters regarding traffic control functions, nor do they claim to be so qualified. Further, their Statements of Qualification are entirely devoid of any data to suggest such expertise. Thus, the testimony sought to be stricken is incompetent



testimony, i.e., testimony which is not established as probative or material, as required by 10 CFR § 2.743(c).

- C. Cordaro, et al. on Contention 73.A (Preregistration of the Handicapped) -- First two sentences, Answer 7, page 9
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The LILCO witnesses assert that "[n]either 'handicapped' nor 'disabled' should be used, as they are in this contention, as pejorative terms." This assertion is not relevant, material or probative and should be stricken. The assertion is also false. At no time has Suffolk County disparaged handicapped persons as alleged by the LILCO witnesses. There is no factual basis for the witnesses' assertion, nor is any asserted in the LILCO testimony. The County takes sharp exception to this mischaracterization of the Contention. Such a mischaracterization is inappropriate and should be stricken.<sup>6/</sup>

The LILCO witnesses also assert that "[i]f a person does not consider himself handicapped, then he is not handicapped." This statement is outside the expertise of the LILCO witnesses and is thus incompetent testimony, i.e., testimony which is neither probative nor material. Thus, the statement should be stricken.

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<sup>6/</sup> This LILCO testimony is similar to the portion of LILCO's Group I testimony which asserted that the Intervenor had put forth "the most derogatory possible picture of the people of Long Island . . . ." The County moved to strike that testimony (County Nov. 28, 1983 Motion, p. 6) and the Board granted the Motion. Tr. 1298.



- D. Cordaro, et al. on Contention 73.B (Notification and Evacuation of the Handicapped at Home) - Last two sentences, Answer 10, page 10

LILCO witnesses Cordaro, Robinson and Weismantle assert that if approximately 75 handicapped persons at home were to be telephoned, it would take about 45 minutes for five LERO workers to make the calls, based on an estimate that each call would take three minutes. This assertion is nothing more than sheer speculation by the LILCO witnesses. The testimony sought to be stricken provides no basis for the estimate of three minutes per telephone call, nor are the LILCO witnesses qualified to render such an estimate. Thus, the testimony is neither probative nor material. Further, the testimony is unreliable. Accordingly, the testimony should be stricken.

- E. Cordaro, et al. on Contention 74 (Location of Relocation Centers) - Sentence beginning on page 5 and continuing for first five lines, page 6 (i.e., the sentence beginning beginning "The Suffolk County Red Cross. . . ")

The LILCO witnesses assert that even though the Suffolk County Red Cross has not yet finalized written agreements with the relocation centers listed and relied upon in the LILCO Plan, "those are the centers the Red Cross is considering to provide shelter during an emergency at Shoreham." This assertion is not probative or reliable and should be stricken. It is also not material to the Contention, which deals with the facilities identified by LILCO in its Plan, which is the

subject of this litigation. Further, the testimony concerning what the LILCO witnesses think the Red Cross "is considering" is offered without any stated or independent basis; it constitutes gross hearsay. Testimony regarding what the Red Cross is or is not doing or considering is not relevant and, in any event, can only be properly offered by the Red Cross, not LILCO.

- F. Cordaro, et al. on Contention 74 (Location of Relocation Centers) - Questions and Answers 9 and 10, pages 10-11, and Attachments 9, 10, 11

This testimony is comprised of statements and characterizations of the LILCO witnesses regarding the alleged views of New York State and FEMA with respect to the locations of two of the primary relocation centers designated and relied upon by LILCO in the LILCO Plan. This testimony and the related Attachments (Attachments 9, 10 and 11) are outside the scope of Contention 74 and are thus not relevant to issues in this proceeding and not admissible as evidence under 10 CFR § 2.743(c), which restricts admissible evidence to "relevant, material and reliable evidence . . . ."

As stated in the Board's June 10, 1983 Order Limiting Scope of Submissions, this litigation is to focus upon the LILCO Plan. The LILCO Plan designates relocation centers which, in the County's view, fail to comply with specific regulatory requirements because of their proximity to the Shoreham plant and the EPZ. The only issue presented in Contention 74

is whether the locations of the relocation centers designated by LILCO in the Plan to be adjudicated by this Board comply with the regulatory requirements cited in that Contention. Therefore, the Board should restrict the testimony on this Contention to that issue. Testimony regarding irrelevant matters such as what various individuals or entities may or may not have said or done regarding the facilities should be stricken.

G. Cordaro, et al. on Contention 75 (Capacity of Relocation Centers) - First two paragraphs of Answer 6, pages 5-6, and Attachments 1 and 2

The LILCO witnesses assert that "evacuees prefer not to go to public relocation centers, but stay instead in the homes of family or friends, or in a hotel." The LILCO witnesses support this assertion by referencing the studies appended to the LILCO testimony as Attachments 1 and 2.

The LILCO testimony and Attachments are outside the expertise of the LILCO witnesses. LILCO's witnesses are not social scientists or psychologists, nor do they claim to be qualified in these areas of expertise. Thus, the testimony sought to be stricken is incompetent testimony, i.e., testimony which is neither probative nor reliable.

- H. Cordaro, et al. on Contention 92 (State Emergency Plan) - Questions and Answers 4, 7, and 9, Answer 8 (second and third sentences and last paragraph), Answer 10 (only second sentence, i.e., the sentence beginning "In fact, as previously stated . . ."), Answer 11 (all but last two sentences, first paragraph, i.e., "No site-specific annex . . . license proceeding"), and Attachments 1-11

The LILCO witnesses discuss such matters as New York State's radiological emergency plan, the functions generally performed by New York State personnel in an emergency at a nuclear plant, and New York State's position with respect to the Shoreham plant. They also state that, in LILCO's view, New York would "certainly participate" in a response to an actual emergency. (See Answer 10, page 8). This testimony is irrelevant to this proceeding.

As stated in the Board's June 10, 1983 Order Limiting Scope of Submissions, this litigation is to focus on the LILCO Plan. That Plan calls for LILCO to assume the command and control of a Shoreham emergency and to provide all necessary offsite response through "LERO," which is comprised almost entirely of LILCO personnel. No New York State agencies belong to LERO. Thus, the only relevant question before the Board is whether LILCO can implement the LILCO Plan. Speculation by LILCO's witnesses about whether New York State personnel will or will not respond to an emergency at the Shoreham plant is equally irrelevant.<sup>1/</sup> LILCO asserts that its Plan can be

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<sup>1/</sup> Such speculation by LILCO regarding County, participation was stricken from LILCO's Group I testimony on the ground of irrelevance. Tr. 1298.

implemented by LILCO and the Board should restrict the testimony to the issue of whether LILCO can and will be capable of implementing the Plan. In fact, under Contention 92, the only issue is whether there is a New York State plan to deal with an emergency at Shoreham. LILCO's own testimony acknowledges that there is no such State plan and other matters, including speculation by the LILCO witnesses as to whether New York State personnel would or would not respond, should be barred. Moreover, the LILCO witnesses have no basis upon which to speculate on future actions of New York State. They are not qualified or competent to testify on that subject, and neither their testimony nor their professional qualifications provide any basis for this Board to find that they are qualified to offer such testimony.

- I. Cordaro, et al. on Contentions 24.F, G, I, K, L, O, P, R, S and T (Lack of Agreements) - Question and Answer 14, pages 13-14

Even though LILCO does not rely in its Plan on so-called "community ambulances," and even though Contention 24.G does not pertain to such ambulances, the LILCO witnesses assert that such ambulances would be available for use in an emergency. This testimony is irrelevant to this Contention and thus to the proceeding. Further, the testimony is neither probative nor material and is unreliable, since it consists of nothing more than the LILCO witnesses speculating that community ambulances



would be available in an emergency at Shoreham. As previously noted, this litigation is to focus on admitted contentions and the LILCO Plan. The LILCO Plan does not rely on community ambulances, and Contention 24.G does not mention them. Therefore, the testimony offered by the LILCO witnesses should be stricken.

- J. Cordaro et al. on Contention 22.D (EPZ Boundary) -- Question and Answer 17, last two paragraphs (pages 13-14) and Attachments 8-10

These two paragraphs and accompanying Attachments concern boundaries of areas other than the EPZ, including postal districts, school districts and fire districts. There is no explanation, however, why these boundaries are relevant to the drawing of the EPZ boundary. Therefore, these paragraphs and attachments should be stricken for lack of relevance.

- K. Cordaro et al. on Contention 66 (Removal of Obstacles) --, Question and Answer 10, first full sentence at top of page 3

This sentence states the belief of LILCO's witnesses that local governments have a responsibility to provide services, such as snow removal, during an emergency at Shoreham. The witnesses' subjective belief, however, is irrelevant to the question of whether local governments have agreed to, and will in fact, provide such service, which is the issue raised by the Contention. Such speculation is similar to LILCO's speculation



in its Group I testimony that the County would participate in an emergency. The Board struck that portion of LILCO's Group I testimony. (Tr. 1298). Therefore, this sentence should be stricken.

L. Cordaro, et al. on Contention 66 (Removal of Obstacles) -- page 15, footnote 1

This footnote, which takes issue with Suffolk County witness Peter Polk's estimate for cars running out of gas, is nothing more than a rehash of testimony already submitted to the Board in LILCO's supplemental testimony. (See Supplemental Testimony of Cordaro, et al. on Contention 65, at 29-31). Therefore, this footnote should be stricken because it is cumulative and unduly repetitious, contrary to the requirements of 10 C.F.R. § 2.743(c).

M. Cordaro et al. on Contention 67 (Evacuation of Persons Without Cars) -- Question and Answer 5, page 10, line 11 through page 11, line 6

In this passage, LILCO describes information derived from telephone calls to bus companies and the Long Island Railroad during which bus ridership was described as "very few" and train ridership was described as "very low." This passage is blatant hearsay which is not reliable, meaningful or probative. First, the information allegedly given by some unidentified persons to some unidentified representative of LILCO over the telephone is so vague as to be subject to a wide range of

interpretation. For instance, is "very few" three or three thousand? Furthermore, the names and titles of the people contacted are not listed, so there is no way to determine if the people contacted are in a position to know the information LILCO was seeking. In light of the absence of any indicia of reliability, much less any indication of what these vague terms mean, this passage should be stricken.

- N. Cordaro, et al. on Contentions 24.G, I, K, L, O, P, R, S and T (Lack of Agreements) -- Answer 29, page 24, line 7, (beginning with "The Suffolk County Red Cross . . ."), through end of paragraph; page 24, last three lines (beginning with "In LILCO's view . . .") to end of Answer 29 on page 25; Answer 32, from page 26, first full paragraph (beginning with "LILCO has also . . .") to end of Answer on page 27; and Attachment 27
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The LILCO witnesses assert that the Suffolk County Red Cross is pursuing agreements for facilities within Suffolk County" to house evacuees and that, if sufficient facilities are unavailable, "LILCO has an understanding with the Nassau County Red Cross to provide sufficient relocation centers." This testimony is speculative, irrelevant, and unreliable. First, the LILCO witnesses are not competent to testify about what the Suffolk County Red Cross may or may not be doing, including whether it is pursuing agreements. Moreover, the testimony includes no stated basis for the assertion by LILCO concerning its understanding of what the Red Cross is doing. LILCO's testimony is speculative and unreliable and should be

stricken. More importantly, the testimony is irrelevant. Contention 24.0 deals only with LILCO's designation of the Suffolk County Community College as a relocation Center in the LILCO Plan, and its unavailability for LILCO's use. That is the only issue presented by the Contention. LILCO's testimony that it believes agreements are being "pursued" concerning the use of unidentified "facilities" in Suffolk County is not tied at all to the issue in Contention 24.0 -- that is, the use of Suffolk County Community College. Moreover, the LILCO Plan, relies on 5 specific facilities in Suffolk County. The only relevant question in this proceeding, which deals with the LILCO Plan, is whether there are agreements concerning LILCO's use of those facilities. Testimony regarding facilities in Nassau County is not relevant to any admitted Contentions and unless LILCO revises its Plan to designate new and different relocation centers and Intervenors amend their contentions to deal with such a new LILCO proposal, such testimony should be stricken.

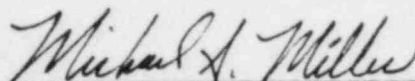
- O. Cordaro, et al. on Contention 58 (Notification to Special Facilities and Hearing Impaired Persons at Home -- Answer 13, second and third sentences, pages 10-11)

The LILCO witnesses assert that telephone calls to special facilities would take about two minutes per phone call, or approximately 45 minutes for all special facilities. This assertion is nothing more than sheer speculation by the LILCO

witnesses. The testimony provides no basis for the estimate of two minutes per telephone call, nor are the LILCO witnesses qualified to render such an estimate. Thus, the testimony is neither probative nor material. Further, the testimony is unreliable.

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LILCO GROUP II-A TESTIMONY

	<u>Contention(s) Addressed</u>	<u>Sponsor(s)</u>	<u>Subject Matter</u>
1	20	Clawson Cordaro Daverio	WALK Radio Broad- casting at Night
2	21 21.C	Clawson Cordaro Daverio	Spanish Translation of Public Information
3	22.D	Cordaro Lieberman Weismantle	Expansion of EPZ Boundary
4	24.F, G, I, K, L, O, P, R, S and T	Cordaro Weismantle Robinson	Letters of Agreement
5	26.A, C, D and E	Cordaro	Communications/Noti- fication of emergency workers
6	27	Cordaro Weismantle Lieberman Varley	Mobilization of LERO workers
7	28-32 34	Cordaro Daverio Hobbs Renz	Communications
8	51	Cordaro Daverio Miele	Preselected Dose Sampling Points
9	55 56 57 59	Cordaro Hobbs Renz Schiffmacher Weismantle	Notification to Public
10	58	Cordaro Robinson Weismantle	Notification to Special Facilities and Hearing Impaired Persons at Home



11	66	Cordaro Weismantle Lieberman	Removal of Snow and Obstacles
12	67	Cordaro Weismantle Lieberman	Bus Transportation
13	73.A	Clawson Cordaro Robinson Weismantle	Preregistration of the Handicapped
14	73.B	Cordaro Lieberman Robinson Weismantle	Notification and Evacuation of the Handicapped at Home
15	74	Cordaro Weismantle Robinson	Location of Relocation Centers
16	75	Cordaro Weismantle Robinson	Capacity of Reloca- tion Centers
17	77	Cordaro Daverio Miele	Thyroid Contamination Equipment at Reloca- tion Centers
18	92	Cordaro Weismantle	State Emergency Plan
19	93 94 95	Cordaro Hobbs Renz Schiffmacher Weismantle	Loss of Offsite Power
20	96.A, C	Cordaro Robinson Weismantle	Loss of Offsite Power
21	97.B	Cordaro Miele Weismantle	Evacuation in a Severe Snowstorm

Substantive Answers in LILCO  
Group II-A Testimony on Which  
Dr. Cordaro is Not Qualified  
to be a Sponsor

<u>Contention</u>	<u>Answers</u>
1. 20	4-11, 13
2. 21, 21.C	3-10
3. 22.D	5-31
4. 24.F, G, I, K, L, O, P, R, S and T	5-7, 9-14, 16-20, 22, 25-27 29, 31, 32, 34, 37-40 43-46
5. 26.A, C, D and E	5, 6, 13-83, 85-103, 105-111
6. 27	3-16
7. 28-32 and 34	3-5, 7-20, 25, 27, 29, 30 32-34, 36-45, 47-54
8. 51	5-8
9. 55-57 and 59	3-7, 9-16, 18-26
10. 58	6-15
11. 66	3-13
12. 67	3-5, 10, 12
13. 73.A	4-10
14. 73.B	7-14, 16, 18, 19
15. 74	6-12
16. 75	5-12
17. 77	6-8, 12, 14
18. 92	4-11
19. 93-95	3-13, 15-19, 22-31, 34, 35
20. 96.A and 96.C	8-21
21. 97.B	6-12

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
)  
)

LONG ISLAND LIGHTING COMPANY )  
)  
)

(Shoreham Nuclear Power Station, )  
Unit 1) )  
)

Docket No. 50-322-OL-3  
(Emergency Planning)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Suffolk County Motion to Strike Positions of LILCO's Group II-A Testimony" have been served on the following by U.S. mail, first class, except where noted, this 9th day of March, 1984.

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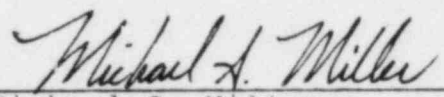
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