LILCO, March 16, 1984





UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 MAR 19 A10:47



Before the Atomic Safety and Licensing Board

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

LILCO'S RESPONSE TO SUFFOLK COUNTY AND NEW YORK STATE MOTIONS TO STRIKE PORTIONS OF LILCO'S GROUP II-A TESTIMONY

On March 9, 1984, Suffolk County filed its "Suffolk County Motion to Strike Portions of LILCO's Group II-A Testimony" (hereinafter "County Motion"), and New York State filed its "Motion of Governor Mario Cuomo, Representing the State of New York, to Strike Portions of the 'Testimony of Matthew C. Cordaro and John A. Weismantle on Behalf of Long Island Lighting Company on Phase II Emergency Planning Contention 92 (State Emergency Plan)' and Statement of Governor Mario Cuomo, Representing the State of New York, in Support of the 'Suffolk County Motion to Strike Portions of LILCO's Group II-A Testimony" (hereinafter "State Motion"). For the following reasons, LILCO opposes the County's and the State's motions. We take up the County's generic arguments in part I of this response, and the County's and State's objections to particular portions of the LILCO testimony in part II of this response.

## I. The County's Generic Arguments

In part I of its motion Suffolk County makes five arguments that it says render inadmissible "multiple portions" of LILCO's testimony. We address below those five arguments in the order in which the County makes them.

### A. So-Called "Legal Conclusions"

Suffolk County claims that opinions by LILCO witnesses that portions of the emergency plan meet NRC regulations or guidelines are improper "legal conclusions" and should be struck. Here the County ignores both the nature of NRC regulation and the nature of the witnesses' testimony itself. The County would have the Board ignore the practical fact that the people who build, operate, and regulate nuclear power plants, and the people who develop provisions of emergency plans, most of whom are not lawyers, do so in accordance with NRC regulations and guidelines. Indeed, this Board -- of which two members are not lawyers -- will be called upon to decide whether the LILCO Transition Plan complies with NRC regulations and guidelines. When management planners and technical experts design particular provisions of an emergency plan for a nuclear plant, they do so with whatever NRC guidance exists before them, and the principal objective that guides them is to meet

NRC standards. In particular, guidelines like NUREG-0654 are as much technical requirements as legal ones. It is senseless to propose that the people who in fact apply these regulations and guidelines be prohibited from testifying as to how they have applied the regulations and guidelines and whether they think they have complied with them.

The fundamental flaw in the County's argument is revealed by the following passage from the County's motion to strike:

> It would be proper for [LILCO's experts] 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.

(County Motion at 4) (emphasis in original). LILCO and the County apparently agree on the obvious proposition that it is ultimately for the Board and the Commission to decide what the regulations require and whether the LILCO Transition Plan complies with the regulations. That decision will be facilitated by the testimony of experts as to how they believe the regulations and guidelines have been applied in developing the LILCO Transition Plan. Indeed, the County, recognizing that it is necessary for experts testifying in NRC proceedings to

discuss applicable regulations and guidelines in order to provide the framework for their testimony, asserts that it is proper for such experts to testify concerning "what they understand the regulations to require." (County Motion at 4) (emphasis in original). For purposes of ruling on the admissibility of the expert's testimony, there is simply no practical distinction between the statements "I understand that the regulations require . . ." and "the regulations require . . ."; in either case, the witness is laying a foundation and framework for his testimony which, altogether too obviously, is not binding on the Board as a conclusion of law. Implicit in any witness' statement as to applicable regulatory standards is that he is reflecting his understanding of the standards. The County would have the Board convert the admissibility of the testimony into a transparent game of "Simon Says," by striking portions of LILCO's testimony which do not incant "I understand . . ." while retaining the County's experts' opinions as to regulatory requirements simply because they are preceded by the County's proposed incantation.

The County's motion to strike divides LILCO's alleged transgressions as to statements of "legal conclusions" into three categories. The first category includes instances where LILCO witnesses express their view that specific provisions of

the LILCO Transition Plan comply with specific regulatory requirements. As noted above, there is no reason in logic or law to exclude this testimony.

The County's second category includes instances where LILCO witnesses "have attempted to interpret what the regulations or other laws require." (County Motion at 4). Most of the specific instances cited by the County (County Motion at 4-5) involve explanations as to why certain provisions of the LILCO Transition Plan were drafted as they were, or responses to contentions which themselves state or imply conclusions as to regulatory requirements. Certainly the LILCO witnesses are entitled to explain why specific provisions of the LILCO Transition Plan were developed as they were, and to state why they disagree with the County's contentions.

The County's final category includes instances where LILCO witnesses "cite to decisions in other emergency planning proceedings." These instances are much closer to "quoting regulations," which the County maintains would be proper (County Motion at 4), than they are to "purely legal citation . . . for post-trial attorney briefs" (see County Motion at 6); the portions of testimony the County seeks to strike only report specific conclusions of the cited decisions. These citations are used to explain why specific provisions of the LILCO Transition Plan are framed the way they are.

In short, the LILCO testimony is proper in that it provides a framework for the testimony of LILCO's experts. If, however, the Board sustains the County's motion to strike alleged "legal conclusions," then additional portions of the County's testimony must also be struck for the same reason. LILCO moved to strike certain portions of the County's testimony that stated legal conclusions only on the ground that the County's statements of regulatory requirements were without basis because they were incorrect as a matter of law, not simply because the County's witnesses purported to make statements as to regulatory standards. See, e.g., LILCO's Motion to Strike Portions of the Direct Testimony of Deputy Chief Inspector Richard C. Roberts, et al. on Contentions 24.T and 59, page 1-2. If LILCO witnesses are not permitted to state what they believe applicable regulations and guidelines require and how those requirements have been applied in developing the LILCO Transition Plan, then the County's witnesses should not be permitted to state what they "understand" regulations and guidelines to require (see, e.g., Direct Testimony of Deputy Inspector Regensburg, et al., Regarding Contentions 20 and 55-58, p. 4, lines 1-8).

Similarly, in a number of instances in the County's testimony, County witnesses are asked to state whether they agree with certain contentions, which contentions themselves contain express or implied assertions as to regulatory requirements. In each such instance, of course, the County's witnesses state that they agree with the contention (see, e.g., Direct Testimony of Deputy Inspector Regensburg, et al., Regarding Contentions 20 and 55-58, pp. 5-6, 13, 22, 24). If LILCO's witnesses are not permitted to testify that they disagree with the County's contentions because the LILCO witnesses do not believe applicable standards require certain things, then certainly the County's witnesses should not be permitted to testify that they agree with contentions that assert that provisions of the LILCO Transition Plan are "in violation of" expressly stated or implied regulatory standards (see, e.g., id.). If the County's motion to strike "legal conclusions" is granted, LILCO will promptly provide the Board with a list of additional portions of the County's testimony that must be struck in order to provide parity of treatment of LILCO and County testimony.

B. Pre-1982 Planning Efforts

The County claims that testimony about efforts by Suffolk County planners on which the present LILCO Transition

Plan is based are "not pertinent" to the contentions in this proceeding.

LILCO disagrees. The pre-1982 planning efforts by the County are relevant for two reasons. First, they are relevant as useful background information. For example, when the County's testimony repeatedly says that "LILCO's" EPZ boundary is inadequate in one way or another, it obviously is useful to have on the record that the boundary was drawn by Suffolk County planners in consultation with New York State officials.

Second, the information about what Suffolk County planners did pre-1982 is useful as rebuttal to Suffolk County's present position. It cannot be used in the customary sense as "prior inconsistent statements" of individuals on cross-examination, because Suffolk County has elected not to present as witnesses any of the people who were involved in the pre-1982 planning effort. However, it does point out unexplained inconsistencies in position over time of professionals performing the same or comparable functions or analyses in the normal course of business for the same organization. The most efficient way to get it into the record, then, is to include it as part of LILCO's testimony, sponsored by LILCO witnesses who, as a matter of fact, were themselves involved in the pre-1982 planning with the Suffolk County planners or who supervise other LILCO employees who were involved.

Suffolk County also suggests that using only its pre-1982 planning efforts, and not its later work by outside consultants, is somehow misleading. This is not the case. In the first place, to the extent that the later work is relevant and admissible in this proceeding, Suffolk County itself can be expected to present it. More important, Suffolk County ignores one crucially important distinction: the planning done by Suffolk County pre-1982 was guided by NRC regulations and guidelines; the later planning effort that Suffolk County now chooses to rely on did not purport or attempt to comply with NRC guidance but applied completely different standards developed by Suffolk County itself. The short of the matter is that the pre-1982 planning efforts in large part are relevant to compliance with NRC regulations and guidelines, and thus to this proceeding, while the later efforts in large p rt are not.

C. Other Nuclear Utilities

Suffolk County next alleges that LILCO improperly attempts to introduce evidence regarding other nuclear facilities. LILCO understands that Suffolk County does not want the Board to hear that LILCO is doing as much as or more than other utilities in the country. That is not, however, a reason for striking LILCO's testimony.

Information about how the regulations and guidelines have been applied elsewhere is relevant to how they should be applied at Shoreham. The application of the rules by the NRC Staff and by other licensing boards creates a sort of "common law," which sheds light on what the standards mean in practice. And, as is well known, the way in which an administrative agency interprets its rules is relevant to what those rules mean. Suffolk County's argument would allow every other nuclear power plant in the country to meet the regulations in a certain way, and yet would prevent LILCO from meeting the same regulations in the same or a more comprehensive way. Suffolk County is, of course, free to make that sort of argument, but it should not be given the unfair advantage of striking the evidence that shows its arguments are contrary to NRC practice.

By a combination of its argument that LILCO witnesses should not be allowed to give "legal opinions" and its argument that LILCO should not be allowed to introduce evidence of what other utilities do to comply with NRC regulations, Suffolk County attempts to limit the information before the Board about what the NRC requirements mean to only those things that have made their way through the litigation process and have been addressed in reported NRC decisions that can be cited in a legal brief. Restricting the Board in this manner would be most

unwise. While many of Suffolk County's objections to provisions in the LILCO Transition Plan are at a level of detail that have not been brought to the forefront in reported decisions, provisions similar to those in the LILCO Transition Plan have been incorporated into other approved plans that LILCO witnesses have reviewed or, in some cases, have helped to develop. Preventing LILCO witnesses from testifying as to these facts would shut off highly probative evidence as to the acceptability of provisions of the LILCO Transition Plan.

Finally, the County's suggestion that LILCO witnesses are "incompetent" to testify as to similarities between the LILCO Transition Plan and other plans misses the mark. LILCO witnesses have looked to other plans in devising and evaluating the LILCO Transition Plan. They are competent to testify as to the content of any provisions of any other plans they have reviewed. If the County believes provisions in other plans are not comparable to provisions in the LILCO Transition Plan, the County may test the witnesses' conclusions or point out any differences in cross-examination; indeed, that is one of the principal uses of cross-examination.

D. "Speculation Regarding Future Events"

Suffolk County also seeks to prohibit LILCO from testifying about what it will do in the future. Apparently what the County is doing is rearguing its earlier motion to "define the data base," a motion it has already lost. See Suffolk County Motion for Change in Schedule (Nov. 9, 1983). Its present motions to strike should be denied for the same reasons that its request to "define the data base" was denied earlier. See Memorandum and Order Regarding Motion for Change in Schedule etc. (Nov. 14, 1983).

Apart from that, the County's proposal is intemperate. In the first place, it goes against the principle, well established in NRC case law, that emergency planning findings are "predictive." For that matter, emergency planning by its nature involves people testifying about what they will do in the unlikely and highly speculative event of an emergency at a nuclear power plant.

In the second place, the County's argument apparently seeks to pin LILCO down to emergency planning provisions that are less effective than they could be. If LILCO identifies ways in which the emergency plan could be improved, then it must be allowed to make those improvements. The public health and safety demand nothing less. If LILCO is allowed to make

improvements, then it must be allowed to tell the Board what really will be done, rather than what outdated documents say will be done. What Suffolk County wants LILCO to do is either to stop trying to improve the protection of the public or to give incorrect testimony based on outmoded plans. The latter would probably violate NRC law; the former, while it would give Suffolk County a tactical litigation advantage, has nothing else to recommend it. It is based on a false view of the NRC hearing process as a game in which both players start with a certain number of pieces and are limited to those same pieces throughout.

The County may be objecting simply because it is more difficult to litigate a plan that changes from time to time. This problem is inherent in NRC practice. Moreover, had Suffolk County itself not caused over a year's delay in this proceeding while it fruitlessly pursued its own emergency planning, and had it not scrapped, without warning, previous years of emergency planning work, then perhaps the offsite emergency plan, whether the County's or LILCO's, would today be more of a finished product (it can never be rendered completely unchanging). But that is not the case, and Suffolk County must now live with the fruits of its own activities, as the rest of us must.

E. Dr. Cordaro

The County then moves to strike Dr. Cordaro as a witness from all LILCO panels. This, of all the County's current requests, comes perhaps the closest to being frivolous.

The County makes a number of strong statements about how pitifully unqualified Dr. Cordaro is:

> Dr. Cordaro must be struck as a witness on these answers because Dr. Cordaro does not quality as a[n] expert on 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.
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> . . . .
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> 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.

County Motion at 17, 18. Curiously, the County does not cite its own voir dire examination of Dr. Cordaro, during which he said this, among other things:

> Witness Cardaro [sic] I've been involved in various ways in emergency planning for some 15 years. Initially, when Shoreham was in the construction permit licensing stage, I did review and contribute to sections of the preliminary safety analysis report on emergency planning. I did provide some testimony, not a significant amount in those days, in construction permit hearings, in the NEPA phase of the hearing, addressing emergency planning issues. I did get involved from an emergency planning basis on the siting of Shoreham, looking at 10 CFR 100 issues, whether indeed the plant would meet the siting criteria, dose levels. I did perform independent calculations on the transport time distribution of radiological accidents and what their impact health-wise would be very early on in the project itself. I did teach a graduate course at New York Polytechnic Institute which had, as one of its concepts, and addressed the technical factors associated with emergency planning.
>
> I am the Chairman of the Atomic Industrial Forum Technical Advisory Group for the National Environmental Studies Project, which is right now carrying on a study of emergency planning, evacuation sheltering, and technical factors associated with that.
>
> I have interfaced with Federal, State, local regulatory bodies and governmental bodies in emergency planning for some 15 years, and have testified in many proceedings on emergency planning.

Tr. 843-44 (December 6, 1983). The short of the matter is that the County had an opportunity to discredit Dr. Cordaro's qualifications and failed.

Equally important, the test of a witness's qualifications to testify is ultimately whether he can contribute to the record -- that is, whether he can answer the questions put to him. Suffolk County has failed notably to point out any areas in which Dr. Cordaro displayed a significant lack of knowledge upon questioning during the "Group I" litigation. Even less is the County able to establish that Dr. Cordaro will not be able to provide answers to questions on the Group II-A testimony. If the County believes Dr. Cordaro lacks knowledge of the issues, it can attempt to establish that by cross-examination.

Other weaknesses in the County's position come to mind as well. For example, the County did not move to strike Dr. Cordaro from any of the Phase I onsite emergency planning testimony, nor did it move to strike him from the Phase II Group I testimony on "role conflict," "shadow phenomenon," or evacuation time estimates. The County has decided quite belatedly that Dr. Cordaro is unqualified.

Finally, part of Suffolk County's complaint appears to be simply that Dr. Cordaro has a management position and that, while he is responsible for emergency planning, he is not involved with day-to-day details. This is, of course, no reason to strike a witness. Indeed, in our experience, some licensing boards have insisted on witnesses from upper management in

order to assess management's attitudes, objectives, and priorities. There are plenty of other witnesses who are involved with day-to-day details; Dr. Cordaro is uniquely able to offer a higher management perspective on emergency planning issues. The motion to strike him from the witness panels has no merit whatsoever.

## II. The County's and State's Objections to Particular Portions of the LILCO Testimony

Part II of Suffolk County's motion addresses "discrete additional reasons for striking particular portions" of LILCO's testimony. In part II of this answer we will proceed document by document and address both the County's generic objections and its "discrete additional reasons." In addition, we address the State's objections, all of which go to LILCO's testimony on Contention 92, in conjunction with the County's objections to testimony on that contention.

### LILCO Testimony on Contention 20

LILCO's testimony on Contention 20 contains question 6, which poses the question "How does LILCO propose to comply with 10 C.F.R. Section 50.47(b)(5)?" Suffolk County seeks to strike that part of LILCO's response to the question (p. 4, Ans. 6, first sentence) in which LILCO witnesses state that "the LILCO

Transition Plan complies with 10 C.F.R. Section 50.47(b)(5) through its Prompt Notification System and the Emergency Broadcasting System" based on the County's generic argument that it is a legal conclusion (County Motion at 3). The statement made by LILCO witnesses is not a legal conclusion concerning the interpretation or scope of regulations but, rather, reflects the way in which LILCO and its emergency planners have attempted to comply with the requirements of 10 C.F.R. Section 50.47(b)(5).

Suffolk County moves (County Motion at 4) to strike page 6, answer 13, lines 1-2 of the LILCO Contention 20 testimony on the ground that it is a legal conclusion. This single sentence is simply a general introduction to the three sentences that follow, which the County does not seek to strike and which are clearly based on past events and information about FCC practice. For this reason, and the generic reason stated in part I.A above, the County's motion to strike should be denied.

Suffolk County moves (County Motion at 14) to strike lines 13-21 on page 6 of LILCO's testimony on Contention 20. The County alleges that "LILCO's discussion on a procedure and other matters it expects to establish with WALK is unreliable and purely speculative." The County moves to strike page 8, answer 15, the last sentence of the testimony because "[d]iscussion of future EBS agreements is speculative." As

this Board is well aware, LILCO is in the process of finalizing certain procedures and negotiating agreements with additional outside organizations. The testimony in question is not speculative, because it documents what LILCO is currently doing and states LILCO's expectations based on those regulations.

Finally, the County moves (County Motion at 18) to strike Dr. Cordaro from the witness panel on Contention 20 based on its generic argument that he is unqualified. LILCO opposes that motion on the grounds stated in part I.E, above.

LILCO Testimony on Contention 21 and 21.C

Suffolk County seeks to strike (County Motion at 4) the statement in LILCO's testimony on Contentions 21 and 21.C that "[t]he regulations and guidelines do not suggest that LILCO should provide special emergency planning information in Spanish when there are only 292 Hispanic residents (of over 100,000 residents) in the EPZ who speak English poorly or not at all" (p. 7, Ans. 7, lines 1-5). The County alleges that this testimony improperly interprets what the regulations and guidelines require. LILCO disagrees. The testimony merely states that the regulations and guidelines do not include language that would require LILCO to provide special emergency planning information in Spanish. Moreover, as emergency

planners, LILCO witnesses are required to apply the guidelines and regulations to draft emergency plans; clearly, within that context, they have an opinion as to whether the LILCO Transition Plan complies with what is understood by the industry to be the scope of the regulations and guidelines.

LILCO Testimony on Contention 22.D

Suffolk County moves to strike (County Motion at 4) two portions (p. 6, Ans. 5, all; p. 21, Ans. 29, lines 3-8) of the testimony on Contention 22.D on the ground that the opinions by LILCO witnesses are improper legal conclusions. First, Suffolk County states that all of the answer to question 5 appearing at page 6 of LILCO's testimony on Contention 22.D should be struck. An examination of the answer to question 5 demonstrates, however, that the LILCO witnesses are simply stating their understanding of what NRC regulations and guidelines tell them to do. As noted in part I.A above, the County's own motion states that "[i]t would be proper for them [the LILCO witnesses] 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."

Also, sentence 2 of the response to question 5 states that "the regulations and guidelines do not state that the boundary of the EPZ should be extended to include entire political or jurisdictional subdivisions." This is not a legal conclusion; it is the observation that the regulations "do not state" that the boundary of the EPZ must include entire political or jurisdictional subdivisions, and thus a statement of what the witnesses understand the regulations to require.

In addition, sentence 3 of the response to question 5 states that emergency planning principles, as well as the guidelines and regulations, suggest that the EPZ boundaries should follow the list of identifiable landmarks outlined above. As emergency planners, LILCO witnesses are qualified to testify concerning what emergency planning principles require in an emergency plan. The County's motion to strike page 21, answer 29, lines 3-8 is subject to the same response (see part I.A above).

Suffolk County has moved (County Motion 9) to strike substantial portions of the testimony on Contention 22.D on the ground that discussion of how Suffolk County and New York State planners set about arriving at an EPZ boundary is not relevant to the issue raised by the contention:

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

Contrary to the County's statements, the history of the LILCO EPZ boundary is relevant. What is evident from LILCO's testimony and Suffolk County's testimony is that planners must exercise judgment when defining a 10-mile EPZ boundary, that planners may define the exact location of a 10-mile EPZ boundary differently, and that there is not only one appropriate boundary. Since the options as to exactly where the 10-mile EPZ boundary should be drawn are numerous, the fact that Suffolk County planners and New York State planners agreed that the LILCO EPZ boundary, as currently configured, comported with good emergency planning principles is relevant to the issue of whether LILCO's boundary is proper.

Suffolk County also seeks (County motion at 11-12) to strike LILCO's testimony (p. 7, Q&A 7 and Attachments 1-3) concerning other nuclear power plants where municipal boundaries are crossed by the EPZ boundary on the ground that LILCO witnesses are not competent to testify regarding other plants and that such testimony is not relevant to the contentions that have been admitted. Again, LILCO witnesses, as emergency planners, must maintain an awareness of how regulations and guidelines are applied in the industry. Therefore, they maintain an

awareness of how other nuclear facilities apply the emergency planning regulations and guidelines. Likewise, the fact that the regulations have been applied in a certain fashion in other nuclear power plants is evidence that this is accepted emergency planning practice and, if the plant has been licensed, that it is accepted NRC practice. Thus, planning in other plants is relevant to the issues raised by the contentions.

In part II.J of its Motion (County Motion at 28), Suffolk County seeks to strike LILCO's testimony (Q&A 17, last two paragraphs (pp. 13-14) and Attachments 8-10) concerning the various boundaries present in Suffolk County, such as school districts, fire districts, water districts, sewer districts, and postal zones. The County's basis is "lack of relevance." As is clearly illustrated by LILCO's testimony, however, these are not the only "jurisdictional" boundaries in the County of Suffolk. There are many overlapping boundaries by which residents of Long Island define where they reside. These additional boundaries are clearly relevant as to what should be considered significant, readily recognizable landmarks for defining the boundary of the EPZ. Therefore, these paragraphs and attachments are relevant to the issue of where the EPZ boundary should be drawn.

LILCO Testimony on Contention 24

The County has moved to strike certain portions of LILCO testimony on Contention 24 on the grounds that it is speculative, irrelevant, and unreliable because it allegedly (1) "constitutes improper speculation regarding future events," (2) includes Dr. Matthew C. Cordaro as a witness where he is unqualified to testify, (3) discusses community ambulances available in the EPZ although those ambulances are not relied upon in the LILCO Plan, and (4) provides information regarding the Red Cross's pursuit of relocation centers. Each of the County's arguments is addressed in turn below.

First, the County has moved to strike the following sentence from LILCO's testimony: "[i]n addition, LILCO is finalizing similar contracts in the next few days with Guardian Ambulance Service, Inc., Nassau Ambulance Service, Inc., and Orlando Ambulance and Ambulette Service, Inc." (p. 9, last paragraph, first sentence). This testimony is offered in response to Contention 24.G, which alleges that LILCO has not obtained agreements for the number of ambulances and ambulettes relied upon in the LILCO Transition Plan. The sentence Suffolk County seeks to strike is relevant to Contention 24.G. The witnesses do not "speculate" as to future events, but merely indicate in that sentence that negotiations regarding additional ambulances were ongoing at the time the testimony was

submitted, and puts all parties on notice that additional agreements will be forthcoming. (When these agreements are signed, LILCO will submit them to supplement its testimony on Contention 24 so that the testimony remains accurate and up-to-date.) The County also moves to strike, as speculative, the statement by LILCO witnesses that "a permanent location nearby [the Shirley Drive-In] will be found [for use as a transfer point]" (p. 17, lines 13-14). This sentence is being offered in response to Contention 24.I, which alleges that LILCO does not have agreements with owners of designated transfer points not owned by LILCO. In the LILCO Transition Plan, the Shirley Drive-In is listed as a transfer point. The witnesses, in their testimony, explain a change that has occurred since Revision 3 of the Plan, by accurately stating that the Shirley Drive-In is not available for use as a transfer point. That statement, standing alone, leaves a gap as to what transfer point will be used instead, so the witnesses note that the Brookhaven Fire District has been used during drills as a temporary substitute, and that LILCO is finding a permanent location nearby. This is not "improper speculation" as alleged by the County in its motion to strike. It is a statement of fact by the witnesses who are working to continue to improve the LILCO Transition Plan.

Second, the County moves to strike Dr. Cordaro from the panel on Contention 24. Contention 24 deals with the various agreements that the County alleges LILCO has not obtained and needs in order to have an effective emergency plan. Dr. Cordaro is the LILCO officer ultimately responsible for seeing that the LILCO Transition Plan can and will be implemented. He is, therefore, familiar with all of the issues raised in Contention 24 and has ultimate responsibility for seeing that the agreements the County discusses in Contention 24 are obtained if, in fact, they are needed to assure a successful emergency plan. In addition, as noted above in part I.E of this response, the County has attempted to discredit Dr. Cordaro during cross-examination, has failed to do so, and has not shown any basis for its statement that his participation "adds nothing to the testimony being offered."

Third, the County seeks to strike the following passage in the LILCO testimony on the ground that it is irrelevant to Contention 24.G because LILCO does not rely in its Plan on community ambulances:

> Q. Are there other sources of ambulances in the community?
>
> A. Yes. Many of the towns and town volunteer fire districts within 20 miles of Shoreham have community ambulances (Attachment 22 to this testimony lists these ambulances). There are a

> total of 61 additional ambulances that are available for use in an emergency. While LILCO does not intend to rely upon community ambulances, special facilities and individuals may call for assistance from their community ambulance services. It is to be expected that at least some of the services would respond. But even if they do not, LILCO has contracted for sufficient ambulances.

(p. 13-14, Q&A 14). Contention 24.G questions whether LILCO will have sufficient ambulances to respond during an emergency. In considering whether the numbers of ambulances for which LILCO has contracted are sufficient, it is pertinent that there are additional ambulances available in the community that would not be committed to LILCO and that might be relied upon by the facilities needing ambulances to transport patients during an emergency. The testimony, therefore, is relevant. In addition, the County suggests that the testimony is not probative, material, or reliable because it consists of LILCO's speculation that community ambulances would be available in an emergency. In fact, the testimony identifies the number of ambulances that would be uncommitted and available in the community and states that these are the ambulances that nursing and adult homes call on a day-to-day basis when they require ambulance service. The witnesses then draw the logical inference from this information that it is likely that some of the nursing and

adult homes would rely upon these ambulance services in an emergency as well, thus lowering the number of ambulances required to be provided by LILCO. The testimony is relevant, probative, and material, and there is no reason to believe that it is unreliable. Therefore, the County's motion to strike this portion of the testimony should be denied.

Fourth, the County seeks to strike certain portions of LILCO's testimony in response to Contention 24.0 on the grounds that it is speculative, irrelevant, and unreliable. Contention 24.0 alleges that because Suffolk County refuses to allow Suffolk County Community College (SCCC) to be used as a relocation center, "there is no relocation center designated for a significant portion of the anticipated evacuees." The portions of the testimony that the County seeks to strike are quoted below.

> The Suffolk County Red Cross is pursuing agreements for facilities within Suffolk County sufficient to house anticipated evacuees. If for any reason sufficient Suffolk County facilities are unavailable, LILCO has an understanding with Nassau County Red Cross to provide sufficient relocation centers. Sufficient capacity will be available to house evacuees who need public shelter, whether Suffolk County allows SCCC at Selden to be used as a relocation center or not. (See LILCO's testimony in response to Contention 74 and 75.)

> . . . .
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> In LILCO's view, the real issue regarding relocation centers is whether sufficient capacity will exist, not whether Suffolk County will allow the Red Cross to use SCCC at Selden during an emergency. That issue is discussed in response to Contention 74 and 75.
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> . . . .
>
> LILCO has also obtained a letter of understanding with the Nassau County Red Cross to provide relocation centers. The letter is Attachment 27 to this testimony. As explained in response to Contention 74 and 75, the Nassau Red Cross relocation centers are available to be used as backup relocation centers. If for whatever reason, the Suffolk Red Cross is unable to provide sufficient relocation centers, the Nassau Centers will be used. The Director of Disaster Services for the Nassau County Red Cross participated in the February 15 LERO Drill.

(p. 24, line 7 through the end of the paragraph; p. 24, last 3 lines, to the end of the first paragraph on p. 25; Ans. 32. p. 26, first full paragraph, to the end of Ans. on p. 27; and Attachment 27.)

The County asserts that this testimony "includes no stated basis" for the discussion of the Red Cross's actions. In fact, the testimony is supported by letters of understanding with the Nassau and Suffolk County Chapters of the American Red Cross, as well as by numerous discussions and contacts between

representatives of the Red Cross and LILCO witnesses. If Suffolk County wishes to explore the basis for the testimony regarding the Red Cross, it may do so on cross-examination. There is no basis for Suffolk County's statement that LILCO's testimony "is speculative and unreliable." In fact, it is supported by the Attachment the County seeks to strike.

The County also asserts that this testimony is irrelevant because "Contention 24.O deals only with LILCO's designation of the SCCC as a relocation center in the LILCO Plan." As noted in LILCO's testimony and as indicated by the portion of Contention 24 cited above, the logical conclusion from Contention 24.O is that there is not sufficient relocation center capacity without the use of SCCC; otherwise, the unavailability of it would be without consequence. The testimony that Suffolk County seeks to strike refutes that proposition. Suffolk County's continued insistance that LILCO must have agreements directly with the facilities that are to be provided as shelters under the direction of the Red Cross is not a statement of unalterable fact, but a statement of the County's view of what emergency planning should entail. It is for the Board to determine whether LILCO's plan regarding facilities is adequate. LILCO's testimony seeks to establish that the LILCO Transition Plan is adequate. LILCO seeks to establish that, in part, by

noting that because agreements with certain facilities between the Suffolk County Red Cross and the facilities have not yet been obtained, LILCO also has sought assistance from Nassau County Red Cross so that it will have a backup if the Suffolk County Red Cross facilities are unavailable for any reason. This is reliable testimony relevant to the issue of whether LILCO will, in fact, have sufficient capacity in relocation centers. It should not be struck.

LILCO Testimony on Contention 26

The County seeks to strike Dr. Cordaro from sponsoring answers along with other members of the witness panel on Contention 26 (County Motion, Attachment 2, Item 5). For the reasons stated in part I.E. of this response, Dr. Cordaro is qualified to co-sponsor the various answers. Dr. Cordaro has knowledge of various aspects of the communications portions of the LILCO Transition Plan and thus is qualified to sponsor either the entirety of, or portions of, all of the answers to which he is ascribed.

The County seeks to strike questions and answers 65-70 on pages 27-28, solely because, the County asserts, workers in the LILCO Customer Service Office will not perform the duties assigned to them because of alleged "role conflict" and fear for their own safety (County Motion at pp. 20-21). The LILCO

testimony demonstrates that the workers in the Customer Service Office are qualified to, and have the capability to, perform the tasks assigned to them. The Hicksville Customer Service Office is located well outside the 10-mile EPZ. The County has raised the alleged "role conflict" issue in separate contentions that already have been litigated. The County is simply trying to reargue its own view on that issue, rather than invoking even a colorable basis for a motion to strike. The County's argument has no merit.

Next, the County seeks to strike the answer to question 79 on page 31 on the ground that it states a "legal conclusion" (County Motion at 5). The answer, which consists simply of the word "No," is to the effect that there is no 15-minute requirement in Section IV.D.3 of 10 C.F.R. Part 50, Appendix E, that states that LILCO must have the capability of notifying emergency response personnel within 15 minutes. Thus, the answer simply reports what is stated in a specific section of the regulations cited in Contention 26.A.2. For the reasons set forth in part I.A. of this response, the County's motion to strike should be rejected. (The County apparently agrees with all of the LILCO witnesses' statements as to regulatory requirements on page 30 of LILCO's testimony on Contention 26, because the County did not move to strike those statements.)

Finally, the County has moved to strike the last two sentences of the answer to question 110 on pages 42-43 under the County's generic heading as to "Improper Speculation Regarding Future Events" (County Motion at 15). For the reasons set forth in part I.D. of this response, this testimony is relevant and should not be struck.

LILCO Testimony on Contention 27

Suffolk County seeks to have this Board strike three portions of LILCO's testimony on Contention 27:

(1) page 26, lines 14-20 (County Motion at 5);
(2) page 8, lines 9-13 (County Motion at 15); and
(3) page 26, last 4 lines and all of page 27 (County Motion at 15).

For the reasons detailed below, Suffolk County's motion to strike is without basis and should be denied.

First, Suffolk County argues that page 26, lines 14-20 should be struck because it is assertedly an attempt to draw a legal conclusion. Contrary to Suffolk County's characterization, the cited passage does not seek to draw a legal conclusion but rather indicates that LILCO's planning approach follows the guidance offered by NUREG-0396. As such, the statement is useful to explain why the mobilization sequence for LERO workers presented in the LILCO Transition Plan was chosen. Further, NUREG-0396 is not a "legal requirement" with

which emergency plans must comply; rather, it is a guidance document for preparing those plans. Accordingly, citation to NUREG-0396 and the presentation of a direct quotation from it are not "improper legal conclusions" that should be struck.

Second, Suffolk County asserts that page 8, lines 9-13 should be struck because they contain "improper speculation regarding future plan revisions" (County Motion at 15). This objection is addressed in part I.D of this response. It is worth noting, however, that the County's attempt to strike this particular passage reveals that it seeks to have the LILCO Plan frozen in time. Suffolk County's request to strike a portion of page 8 would leave a portion of LILCO's answer that states that improvements to the time needed to mobilize LERO workers have been identified and that their implementation "has been, and will continue to be an ongoing process." (LILCO Testimony on Contention 27 at 8, lines 5-9). Suffolk County would then to strike the following passage:

> . . . as further drills are conducted, LILCO will revise either the Plan or its procedures to continue to minimize mobilization times consistent with the efficient implementation of the Plan, and to improve the Plan's flexibility.

This passage is a logical extension of the previous idea and merely identifies that future changes will be made by amending the Plan and Procedures. Suffolk County's motion with regard to page 8, lines 9-13 should be denied.

Finally, Suffolk County seeks also to strike the last 4 lines of page 26 through the end of LILCO's testimony on Contention 27, on the ground that it is "improper speculation regarding future plan revisions." For the reasons discussed in part I.D above, this request should be denied. The cited testimony contains a commitment by LILCO to include evacuation time estimates for an "uncontrolled" evacuation in the procedure used to determine the proper protective action recommendation -- OPIP 3.6.1 (LILCO Testimony on Contention 27 at page 26, line 23 to page 27, line 7). This commitment is certainly not "speculation" about future events. Indeed, if the County's desire is to avoid speculation about future Plan revisions, the proper approach, with regard to this particular commitment, is not to seek to strike it, but rather to request that the Board condition its approval of the LILCO Transition Plan on the implementation of this change. Accordingly, the County's request to strike should be denied.

LILCO Testimony on Contentions 28-32, 34

First, the County moves to strike Dr. Cordaro from sponsoring answers to numerous questions (County Motion, Attachment 2, Item 7). For the reasons stated in part II.E of this Response, Dr. Cordaro is qualified to co-sponsor the answers to which he is ascribed. The example highlighted by the County in this regard is

instructive. The County asserts that Dr. Cordaro is not qualified to discuss "technical aspects of LILCO's proposed communications system" because he is not "a communications engineer" or "an electrical engineer" (County Motion at pp. 18-19). The County points to the answer to question 25 on page 19 of LILCO's testimony on Contentions 28-32 and 34. That answer is co-sponsored by witnesses Cordaro, Daverio, Hobbs, and Renz. The first part of the answer discusses simplex frequencies. The last sentence of the answer, however, states that "under the current LILCO Transition Plan the appropriate staging area is the point for communications to and from field personnel." Dr. Cordaro is certainly qualified to discuss the organization of communications under the LILCO Transition Plan. Witnesses Hobbs and Renz are qualified to discuss simplex frequencies. There is no requirement that each and every witness sponsoring a given answer be qualified to express an expert opinion on each and every aspect of the answer, so long as each witness is qualified to support relevant portions of the answer. Thus, the County's objection is frivolous.

Second, the County seeks to strike various portions of the testimony on the ground that they allegedly state "legal conclusions. These portions are listed on pages 3-5 of the County's Motion to Strike. As set forth by the County, they are:

p. 3, last line, through p. 4, line 3

p. 4, Ans. 4, line 8, sentence starting "In fact . . . . "

p. 4, Ans. 4, lines 21-22, sentence starting "There is no requirement . . . . "

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 contention

p. 10, Ans. 11, lines 7-10, beginning "There is . . . . "

p. 11, Ans. 13, lines 1-6, ending with "...and maintained."

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

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."

County Motion at pp. 3-5. For the reasons set forth in part I.A. of this Response, the County's objection should be rejected.

Third, the County moves to strike certain portions of LILCO's testimony (p. 4, lines 12-17; p. 8, lines 19-24; p. 10, lines 15-20; and Attachment 1) under the County's generic

heading "Improper Speculation Regarding Future Events" (County Motion at 15). For the reasons stated in part I.D of this Response, the County's objection is frivolous.

Finally, the County moves to strike the following sentence on page 20 of LILCO's testimony:

> To address the example used by the intervenors, Traffic Guides need not communicate directly with each other to insure coordinated information concerning traffic conditions.

(See Motion to Strike, pp. 21-22). The County asserts that LILCO's witnesses are not competent or qualified to make this statement because they allegedly "are not qualified to provide expert testimony on matters regarding traffic control functions...." (id.). The statement by LILCO's witnesses, however, is that traffic guides need not communicate directly with each other to insure coordinated information concerning traffic conditions. The statement is sponsored by communications experts and designers of the LILCO Transition Plan. The remainder of the answer (Ans. 26, pp. 19-20 of the LILCO testimony) explains why direct communications between traffic guides is unnecessary to insure coordinated information. The witnesses certainly are competent and qualified to draw this conclusion from the stated bases. The County apparently is attempting to strike the statement by the LILCO witnesses simply because the

County's witnesses disagree. Indeed, it is LILCO's view that the County's witnesses on this issue, who have asserted that traffic guides must be able to communicate with each other under the circumstances that would be involved in implementing the LILCO Transition Plan, themselves have no qualifications or reliable basis for making their assertion. Indeed, unlike the LILCO witnesses who have explained why traffic guides need not communicate with each other, the County's witnesses simply make the bald assertion, time and again, that the traffic guides must be able to communicate with each other. The County's objection to LILCO's testimony is without merit.

LILCO Testimony on Contentions 55-57, 59

The County seeks to strike lines 1-3 of the answer to question 10 appearing on page 12, as well as lines 1-4 of the response to question 18 appearing on page 19, on the ground that the answers reach legal conclusions. LILCO disagrees for the reasons stated in part I.A above. In addition, in both cases cited by the County, the testimony merely points out that the regulations do not contain certain language. Similarly, the County objects to LILCO's response to question 13, lines 1-5 and all of the answer in response to question 21 as reaching legal conclusions. Both of these answers merely paraphrase the

regulations. The County moves to strike the second sentence of the LILCO witnesses' response to question 14 as reaching an improper legal conclusion. As emergency planners, LILCO witnesses are required to apply the regulations and guidelines virtually on a daily basis and are competent to testify about the content of the regulations. Finally, the County objects to LILCO's testimony contained in lines 9-18 in response to question 25 on the ground that citation by LILCO witnesses to decisions in other emergency planning proceedings is irrelevant. LILCO disagrees. Such testimony concerning how other licensing boards have interpreted regulations and what the understanding is in the industry of NRC interpretation of the regulations is highly relevant. LILCO witnesses, as emergency planners, must be familiar with the interpretations placed upon the regulations and guidelines by licensing boards so that, as emergency planners, they can accurately apply the regulations as the licensing boards have interpreted them.

Suffolk County objects to the second sentence of answer 12, all of answer 25, and Attachments 3 and 4, on the alleged ground that LILCO's testimony refers to plans at other nuclear facilities. For the reasons stated in the response to the motion to strike the testimony on Contention 22.D above, LILCO witnesses are competent to testify and such testimony is

relevant to the issues raised in the contentions. In addition, the County's suggestion that the LILCO witnesses are not competent to testify as to LILCO's letter from the U.S. Coast Guard (County Motion at 12) smacks of people living in glass houses throwing stones. Major portions of the County's testimony on Contention 59 hinges on informal "conversations" with unspecified U.S. Coast Guard "representatives." If LILCO witnesses are not competent to testify as to U.S. Coast Guard commitments to LILCO that are specified in writing by a named Coast Guard representative, then the major portions of the County's testimony on Contention 59 that rely on conversations with unnamed Coast Guard representatives a fortiori is not competent and should be struck.

Suffolk County alleges that reference to procedures that are under development but are not in the Plan should be struck as speculative. First, any procedures developed by LILCO's System Operations Department to ensure prompt restoration of the power to the siren system following a widespread loss of power generation are not required to be included in the LILCO Transition Plan. Neither the regulations nor guidelines require that a backup power supply be provided for the sirens and therefore, such procedures need not be included in the Plan. Second, as discussed at length above, an emergency plan is a

"living" document which can never be rendered completely unchanging.

LILCO Testimony on Contention 58

The County has moved to strike the following portions of LILCO's testimony for Contention 58 based on the generic arguments indicated below.

| | | |
|---|---|---|
| A. | Cordaro, et al., Answer 10, page 9 | Improper attempt to provide a legal conclusion |
| B. | Cordaro, et al., Answer 14, page 11 | Improper attempt to provide a legal conclusion |
| C. | Cordaro, Answers 6-15 | Cordaro not qualified to sponsor answers |

For the reasons given in parts I.A and I.E above, the County's Motion as to these passages should be denied.

The County also has moved (County Motion at 31-32) to strike the second and third sentences of answer 13 of the testimony on Contention 58, in which the witnesses estimate that verification calls to special facilities would take about two minutes per phone call, or about 45 minutes for all special facilities. The County's argument is that there is "no basis" for the estimate and that the witnesses are not qualified to estimate how long a phone call will take. The "no basis"

argument is simply the County's way of disagreeing with LILCO's testimony. It is a dispute about the facts and not a ground of inadmissibility. If the County wants to probe the basis for the estimate, it can do so by cross-examination.

The argument that emergency planners are not qualified to estimate how long a phone call will take is frivolous. The County does not say what kind of expert it thinks is needed to make such an estimate. It can try, if it wishes, to show on cross-examination that the witnesses are not able to estimate the duration of phone calls.

LILCO Testimony on Contention 66

Suffolk County seeks to have this Board strike four portions of LILCO's testimony on Contention 66:

(1) page 13, lines 4-8 starting with "The presence . . ." (County Motion at 6);

(2) page 12, first two sentences of Answer 9 (County Motion at 12);

(3) page 13, first full sentence at top of page (County Motion at 13-14); and

(4) page 15, footnote 1 (County Motion at 14).

For the reasons detailed below, Suffolk County's motion to strike is without basis and should be denied.

First, Suffolk County attempts to strike page 13, lines 4-8 on the ground that it assertedly attempts, improperly, to

draw a legal conclusion. To determine the appropriateness of the statement in question one must examine the language of Contention 66.D and LILCO's entire answer to question 10. Contention 66.D states:

> D. The LILCO Plan does not provide for snow removal. (See FEMA Report at 11, citing non-compliance with NUREG 0654, Section II.J.10.k). Rather, the Plan assumes that "snow removal will be provided by local organizations in their normal fashion during an emergency." (Plan at 2.2-5). This assumption is unwarranted. LILCO has no agreements with local jurisdictions or other entities within and around the EPZ to provide snow removal services during an emergency, nor can it assure that local personnel assigned to snow removal duties will perform those functions during an emergency, for the reasons cited in Contentions 15, 25 and 27.

A review of the contention reveals that it quotes from the LILCO Transition Plan and then proceeds to attempt to rebut that statement by assuming as a given that an agreement with local governments is required to assure snow removal during an evacuation. The sentence from LILCO's testimony Suffolk County seeks to strike merely responds to the implicit assumption of the contention by explaining why LILCO has not sought to enter agreements with local governments. Suffolk County's attempt to strike this sentence from LILCO's testimony is inconsistent with its failure to strike similarly "offensive" language from the testimony of New York State witness Gibbons on Contention

66.D. Indeed, the question and answer on the top of page 3 of Mr. Gibbons' testimony can be interpreted as his agreement that LILCO is legally required to have agreements with local governments. Suffolk County's own testimony on Contention 66 is similarly "offensive" (see Testimony of Assistant Chief Inspector Monteith, et al. on Contention 66 at 5 (answer to whether witnesses agree with Contention 66)). If the Board were to strike the statement in LILCO's testimony, then these statements should also be struck. In addition, if read in the context of the previous sentence, the sentence in question merely states the witnesses' "understanding" of the applicable law; hence, under Suffolk County's own test (see County Motion at 4), the testimony should not be struck.

Second, Suffolk County argues that the first two sentences of answer 9 on page 12 should be struck because they discuss "other evacuation plans without even identifying them" and because they assertedly make no effort to tie these plans to the contention (County Motion at 12). The County's proffered reasons for striking these sentences are meritless. The first sentence Suffolk County seeks to strike clearly states "[o]ther evacuation plans with which we are familiar. . ." Thus, LILCO witnesses have provided a discrete basis for their subsequent statements. The County will be free to question those

witnesses on what other plans they had in mind when they drafted the statement in question. The County is simply wrong if its motion to strike is really an assertion that LILCO is under an obligation to provide an exhaustive list of these plans in its testimony. In addition, the linkage of these statements to Contention 66.C is obvious: they are designed to demonstrate that emergency plans are not deficient simply because they do not contain provisions relating to how people will be transported out of the EPZ should they become involved in accidents. Accordingly, Suffolk County's motion should be denied.

Third, Suffolk County seeks to strike the first sentence on the top of page 13 on the ground that the witnesses' "subjective belief . . . 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." (County Motion at 28). Simply, Suffolk County would have this Board judge the admissibility of the statement in question against its own, incorrect, standard. The County would have this Board assume that LILCO must have agreements with local governments regarding snow removal. Read in the context of the entire answer, the sentence in question lays the groundwork for the assertion that LILCO does not agree with the County's

alleged premise of Contention 66.D -- namely, that LILCO must enter into an agreement with local governments on snow removal. As such, it is not a "subjective belief" about what local governments will do, but rather an explanation of the statement that appears in the LILCO Transition Plan. Suffolk County's reference to this Board's earlier ruling granting Suffolk County's motion to strike a portion of Contention 65 is inapposite. In that case, the material struck was a tangential statement relating to LILCO's belief that County personnel would respond during an emergency and assist LERO workers in the evacuation of the EPZ. The LILCO witnesses added, as Suffolk County noted in its November 28, 1983 motion to strike, that the LILCO Transition Plan could be implemented without County involvement (see November 28 Motion at 8). By contrast, the County has raised in the language of Contention 66.D the issue of whether agreements must be entered into with local governments regarding snow removal. The testimony presented by LILCO is directly relevant to that question.

Finally, Suffolk County argues that the footnote on page 15 should be struck since it is a "rehash" of testimony already submitted on Contention 65 (County Motion at 29). Read in context, this statement assists in providing bases for the statement in the text where it is signaled. Accordingly, Suffolk County's motion to strike is meritless.

LILCO Testimony on Contention 67

Suffolk County seeks to have this Board strike three portions of LILCO's testimony on Contention 67:

(1) page 20, lines 19-27 (County Motion at 13-14);

(2) page 16, lines 8-13 (County Motion at 15); and

(3) page 10, lines 11 through page 11, line 6 (County Motion at 29-30).

For the reasons detailed below, Suffolk County's motion to strike these three portions of Contention 67 is without basis and should be denied.

First, Suffolk County argues that the testimony on page 20, lines 19-27 should be struck because it assertedly involves improper speculation about future events. The testimony in question recognizes that the list of transfer points contained in Appendix A, and used as the basis for the bus schedules that appear in Appendix A, may not be the ultimate list. It then provides examples of two transfer points that have been or may be moved short distances. Clearly this testimony is not improper speculation about future events as the County suggests; rather, it recognizes changes in transfer point locations that are presented in other testimony filed by LILCO (see LILCO Testimony on Contention 24 at 16-18) and relates that information to the bus schedules that are

the subject of Contention 67. In addition, the County's request to strike is internally inconsistent because it does not attempt to strike subsequent testimony that explicitly refers to Contention 24 or that offers the following conclusion about the effect of moving transfer points:

> None of the relocations effected or contemplated to date affects the accuracy or logistics of the bus schedules set forth in Appendix A.

Accordingly, this request is without basis and should be denied.

Second, Suffolk County seeks to strike page 16, lines 8-13 on the ground that it involves "speculation about what LILCO may do if there are excess buses." (County Motion at 15). For the reasons discussed in part I.D. above, this request should be denied. LILCO would only add that the total number of buses needed to implement all parts of the LILCO Transition Plan is the subject of Contention 24.F, and that this statement provides useful background for the litigation of that contention.

Finally, Suffolk County seeks to strike page 10, line 11 through page 11, line 6 on the grounds that the passage "is blatant hearsay which is not reliable, meaningful or probative." (County Motion at 29-30). First, the County's requested relief is far too broad. Virtually all of the cited testimony (particularly page 10, line 21 to page 11, line 4) refers to readily ascertainable and verifiable facts that are a matter of public record, such

as railroad time schedules. For this material, the County's hearsay objection is inappropriate, and accordingly, the County's motion to strike should be denied. Second, the County's motion does not recognize that the hearsay rule is not strictly enforced in administrative proceedings. Indeed, Suffolk County's motion is really an argument about the weight to be accorded the testimony, and not its admissibility. Suffolk County complains that the phrases "very few" and "very low" are subject to a "wide range of interpretation," yet the County has made no attempt to use available discovery procedures to pursue the bases for these phrases, or to obtain the details of how they were procured. During the litigation of Contention 65, this Board was confronted by a similar request to strike by counsel for the State of New York regarding wind shift data (see Tr. 2766-72). In responding to that oral motion, the Board correctly noted that the proper approach is to examine all the foundations for the testimony, and only after that examination is complete should a ruling be made. In this case, the County has failed to examine any of the foundations for these statements, and therefore its motion to strike is premature. For these reasons, the County's request to strike should be denied.

LILCO Testimony on Contention 73.A

The County moves (County Motion at 15 and Attachment 2) to strike the following based on its generic arguments:

| | | |
|---|---|---|
| A. | Cordaro, et al., lines 9-14, page 9 | Improper speculation regarding future events |
| B. | Cordaro, et al., lines 11-15, page 13 | Improper speculation regarding future events |
| C. | Cordaro, Answers 4-10 | Cordaro not qualified to sponsor answers |

For the reasons given in parts I.D and I.E above, the County's motion as to these passages should be denied.

The County also moves (County Motion at 22) to srike the first two sentences of answer 7 on page 9. The County's argument about the pejorative use of "disabled" and "handicapped" simply takes issue with LILCO's characterization of the County's position. In point of fact, LILCO's characterization is perfectly accurate; the County's notion that handicapped people cannot be trusted to decide for themselves if they need help is, like the County's view of how people will behave in an emergency, paternalistic and insulting. But that is not important; what is important is that one party is perfectly entitled to characterize another party's position in order to show it to be wrong. That is

all LILCO has done here. The County's objection is nothing more than that it disagrees with LILCO's characterization, and that is no basis at all for a motion to strike.

The County next argues that a witness needs to be a certain type of expert to make the statement that people who do not think they are handicapped should not be considered handicapped for emergency planning purposes. The County does not say what kind of "expertise" it thinks would be necessary to make such a statement, but presumably it views the statement as coming within the expertise of physical therapists, social workers, or the like. In fact, nothing of the kind is involved. The statement, particularly when read in the context of the surrounding sentences, is a statement about emergency planning needs and nothing else. It also is an explanation of why LILCO's emergency planners have taken a particular approach to identifying the handicapped. It is, therefore, both probative and within the expertise of the witnesses.

LILCO Testimony on Contention 73.B

The County has moved (County Motion, Attachment 2) to strike Dr. Cordaro from answers 7-14, 16, 18 and 19 of LILCO's testimony on Contention 73.B. For the reasons set out in part I.E above, the motion should be denied.

The County also has moved to strike the last two sentences of answer 10, in which the witnesses estimate that it would take about 45 minutes for five LERO workers to call handicapped persons at home, based on an estimate that each call would take three minutes. Once again, the County alleges that estimates of the duration of phone calls are without "basis" and outside the expertise of the witnesses. And again, the answer is that the County is quarreling with the evidence and can explore the matter on cross-examination if it chooses.

LILCO Testimony on Contention 74

Suffolk County seeks to strike certain portions of LILCO's testimony on Contention 74 on the grounds that (1) it constitutes testimony on prior County planning, (2) it introduces new information outside the scope of the Plan, (3) Dr. Cordaro is not qualified to testify on the issue, (4) testimony regarding the Red Cross's activities is not probative or reliable, and (5) statements by New York State and FEMA regarding the relocation centers in the Plan are not relevant.

First, Suffolk County seeks to strike page 12, lines 4-10 of the LILCO testimony on Contention 74, which reads as follows: "[i]t should be remembered that NUREG-0654 is merely a guideline and not a requirement. See Long Island Lighting Company (Shoreham

Nuclear Power Station, Unit 1), LBP-83-22, 17 NRC 608, 616 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit #1), ALAB-698, 16 NRC 1290, 1296-1298 (1982)." LILCO offers this testimony in response to Contention 74, which states that two of the three primary relocaton centers designated in the LILCO Plan "are only 3 miles beyond the EPZ boundary contrary to the requirements of NUREG 0654, Section II.J.10.h" (emphasis added). The testimony the County seeks to strike is directly relevant to the County's contention. The witnesses merely note that contrary to the contention, NUREG-0654 is a guideline; they then give their basis for that statement by citing two NRC cases. This is not irrelevant, nor is it "purely legal citation" as asserted by the County in its motion to strike.

Second, the County seeks to strike page 8, line 5, through page 11, end of answer 10, plus Attachments 6 through 11, on the ground that it is irrelevant to Contention 74 because it refers to County planning and not LILCO planning. This is LILCO's testimony in response to the question "[d]o you think that SCCC at Selden and SUNY at Stonybrook are satisfactory relocation centers for licensing purposes even through they are less than 5 miles beyond the EPZ?" (LILCO Testimony at 7.) The LILCO witnesses describe the reasons why they think these relocation centers are satisfactory even given their location. Contention 74 challenges the

relocation centers due to their location. Pages 8 through 11 of the LILCO testimony describe how these relocation centers were chosen and how they came to be in the LILCO Transition Plan. The bases for selecting the relocation centers are also described in Attachments 6 through 11, which are as follows:

> Attachment 6 -- Contract between LILCO and Suffolk County to prepare an offsite emergency plan.
>
> Attachment 7 -- Deposition of Lee D. Koppelman dated October 6, 1983, pages 44 through 48.
>
> Attachment 8 -- Report on relocation centers by the Suffolk County Department of Planning to the New York State Nuclear Emergency Planning Group, dated April 29, 1981.
>
> Attachment 9 -- Letter from New York State Nuclear Emergency Planning Group to Region II of the Federal Emergency Management Agency (FEMA), dated May 19, 1981.
>
> Attachment 10 -- Letter from FEMA Region II to New York State Nuclear Emergency Planning Group, dated June 4, 1981.
>
> Attachment 11 -- Letter from Suffolk County Department of Planning to the New York State Department of Health, dated September 2, 1981.

The testimony and attachments show that prior to the County's abandoning its planning efforts for Shoreham, the County, the State, and FEMA considered the relocation centers and had no

objections to their location. The fact that the County and the State, who now challenge the location of these centers, did not object to them and generated documents that formed the basis for LILCO's choosing these relocation centers for its Plan is relevant evidence.

The County alleges in its motion to strike that "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." This is nonsense. It is clear from the face of the contention that the County now alleges that the LILCO centers are not satisfactory to it. In explaining why the centers are satisfactory, LILCO is entitled to describe its basis for choosing the centers. Part of its basis was documentation at the County and State levels regarding the high quality of the centers. That information should not be struck from LILCO's testimony.

Third, Suffolk County asks this Board to strike any reference to the letter of understanding obtained with the Nassau County Red Cross, and the discussion of the relocation centers available in Nassau County for use during an emergency at Shoreham, on the ground that steps LILCO "may or allegedly will take in the future" are "improper speculation regarding future

events." The agreement between the Nassau Red Cross and LILCO is not speculation about anything that is to take place in the future. It is a description of an agreement, which exists and is attached to the testimony, stating that the Nassau County Red Cross will provide relocation centers if they are needed. The testimony supports the letter of agreement by also noting that a member of the Nassau County Red Cross staff has participated in the LERO drill. The witnesses testifying on Contention 24, who are emergency planners for LILCO and are charged with updating and implementing the LILCO Transition Plan, state in their testimony that the Nassau Centers will be used in the Plan should the Suffolk County centers be unavailable prior to operation of Shoreham above 5% power. This is not speculation, but relevant evidence regarding LILCO's ability to assure that sufficient relocation centers will be available. The County is free to cross-examine the LILCO witnesses regarding the use of the Nassau Centers or the nature of the agreement between LILCO and Nassau County.

Fourth, the County once again seeks to strike testimony by Dr. Cordaro, in this case as to relocation centers. Dr. Cordaro is familiar with pertinent emergency planning regulations and it is his corporate responsibility within LILCO to see that sufficient relocation centers are provided for in the

LILCO Transition Plan. For the reasons stated above in part I.E of this response, the County's motion is without merit.

Fifth, Suffolk County also seeks to strike the following sentence from the LILCO testimony on Contention 74: "[t]he Suffolk County Red Cross has not yet finalized written agreements with the relocation centers listed in the LILCO Transition Plan, but those are the centers the Red Cross is considering to provide shelter during an emergency at Shoreham." (LILCO Testimony on Contention 74 at pages 5-6.) The County asserts that this testimony is not probative or reliable, is not material to the contention, and can only be properly offered by the Red Cross. As explained by LILCO's witnesses and supported by the letter of understanding and the statement of Suffolk County's role in response to an emergency that is attached to LILCO's testimony on Contention 74, the Red Cross obtains letters of agreement for shelters to be used during an emergency. LILCO is working with the Red Cross as part of its ongoing planning effort and therefore is aware of what the Red Cross is doing regarding shelters. LILCO witnesses are qualified to state what they know the Red Cross is doing and what planning efforts are taking place. The County can explore the reliability of this testimony during cross-examination. It is not necessary, however, although the County would prefer it,

that LILCO introduce in this proceeding witnesses from every single organization that will take part in an emergency response, nor would it be a good use of the parties' and the Board's time. As with all other phases of the construction and qualification of a nuclear power plant, certain key witnesses in emergency planning must be relied upon to describe the work of many. The LILCO witnesses on Contention 74 have worked with the Red Cross and are aware of what the Red Cross is doing. They are perfectly qualified to discuss the location of relocation centers, and the Red Cross's role in finding them. This testimony should not be struck.

Finally, the County moves to strike questions and answers 9 and 10, and Attachments 9-11, of LILCO's testimony on Contention 74, arguing that they are outside the scope of the contention. The attached documents consist of descriptions by County and State employees of the relocation centers relied on in the LILCO Plan; the testimony the County seeks to strike describes these documents. The basis upon which LILCO chose the relocation centers in the Transition Plan is, in part, the County and New York State documents the County wishes to strike. These documents are relevant. In addition, LILCO submits that it is material evidence that while the County and New York State now challenge the location of the centers they

previously expressed no concerns whatsoever regarding the relocation centers, and in fact supported the choice of these centers despite their location.

LILCO Testimony on Contention 75

Contention 75 deals with the capacity of relocation centers. The County seeks to strike the first two paragraphs of answer 6, pages 5-6, and Attachments 1 and 2 of LILCO's testimony on Contention 75 on the grounds that (1) it contains improper legal citation, (2) it contains improper assertions based on sociological materials that the witnesses are not qualified to testify about, (3) it improperly designates prior County planning documents, (4) it speculates on future behavior by mentioning the Nassau County relocation centers, and (5) Dr. Cordaro is not qualified to testify on this issue. The first two of these assertions are addressed below. The remaining three have already been addressed above in response to challenges to testimony on Contention 74, and will not be repeated.

As to the County's argument on improper legal citation, Contention 75 alleges that the LILCO Plan provides no estimates of the number of evacuees who may require shelter during an emergency, and does not show that the buildings designated as shelters have adequate capacity and facilities such as food,

shower, toilet, and space. Contention 75 also cites NUREG-0654, II.J.12, but makes absolutely no mention of the registration or monitoring of evacuees at relocation centers in the text. The sentence in the LILCO testimony that the County seeks to strike states: "[t]his standard [NUREG-0654, II.J.12] addresses the registration or monitoring of evacuees at relocation centers; it is not pertinent to Contention 75." This is not a case of "LILCO witnesses attempting to interpret what the regulations or other laws require," as asserted in the County's motion at 4. It is a statement by the witnesses, who are familiar with NUREG-0654 II.J.12 and Contention 75, that NUREG-0654, II.J.12 is improperly cited in Contention 75. Their testimony should not be struck.

The County also seeks to strike as improper legal citation LILCO's testimony on pages 8-9, where LILCO witnesses state in response to the question "[w]hy do you think that 20% is an appropriate number for use in planning?" the following:

> And in In Re Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1) LBP-82-48, 15 NRC 1549, 1589 (1982), the Board found that [i]ndividuals leaving the plume exposure zone may in many cases go to friends' homes or some other location and not to a relocation center. Approximately 20% of an evacuating population will proceed to a relocation center.

Contention 75 asserts that LILCO has not designated the number of evacuees that will require shelter in an emergency, and that LILCO does not have sufficient capacity at the relocation centers designated in the Plan. In response to this contention, the LILCO witnesses have described how many evacuees they think will require shelter in an emergency. They have chosen 20% as their planning basis. In the answer that the County seeks to strike, they are describing the reasons why they chose 20%. The citation and quote in the sentences that the County wishes to strike is the NRC case law on which LILCO is relying for its 20% capacity. This testimony is not, as the County asserts, "purely legal citation" (County Motion at 6). It is given as the part of the basis for the planning that LILCO is doing and therefore should not be struck.

The County also seeks to strike (County Motion at 25) the first two paragraphs of answer 6, pages 5-6, and Attachments 1 and 2 of LILCO's testimony on Contention 74, as outside the expertise of the witnesses. In this testimony, LILCO witnesses explain, in response to the question "[h]ow many persons are estimated to seek shelter in a relocation center?" (LILCO Testimony at 5), that "[o]rdinarily, evacuees prefer not to go to public relocation centers, but stay instead in the homes of family or friends or in a hotel" (LILCO Testimony at 5). Their

bases for this assertion are two studies, one by Quarentelli and Dynes, the pertinent portions of which are Attachment 1 to the testimony, and the other by Hans and Sell for EPA, the pertinent portions of which are Attachment 2 to the testimony. While the LILCO witnesses, as the County asserts in its motion to strike at 25, are not social scientists or psychologists, their testimony is not incompetent. Regarding capacity, the LILCO witnesses indicate that they have researched the issue and have found in two studies that most evacuees in disasters have gone to public relocation centers. These studies have been provided to the County and are part of the bases upon which LILCO chose 20% as the capacity it must provide for at relocation centers. The testimony is probative of the basis on which capacity was chosen for the Plan. If the County doubts the reliablity of the testimony, it can cross-examine the witnesses regarding their reliance on these reports. If the County has a basis to doubt the studies relied upon by LILCO planners, it can seek to file rebuttal testimony challenging the studies. The County's argument for striking the testimony -- that LILCO's witnesses are not social scientists or psychologists and therefore presumably are not qualified to testify about what they read in reports by social scientists and how they use those reports in their planning efforts -- goes, if

anything, to the weight that the testimony should be given. That is not a reason to strike it.

LILCO Testimony on Contention 77

The County moves (County Motion, Attachment 2) to strike Dr. Cordaro from answers 6-8, 12, and 14 of the LILCO testimony on Contention 77. For the reasons recited in part I.E above, the motion should be denied.

LILCO Testimony on Contention 92

Both Suffolk County and New York State have moved to strike portions of LILCO's testimony on Contention 92 dealing with the New York State Plan. The County has moved to strike portions of the testimony on the asserted grounds that it improperly includes legal conclusions, citations to plans at other facilities, testimony that Dr. Cordaro is not qualified to sponsor, irrelevant information regarding the New York State Plan and speculation about the State's possible response during an actual emergency at Shoreham. The State has moved to strike virtually all of LILCO's testimony on Contention 92 on the grounds that it is irrelevant, speculative, and constitutes ad hominem statements that are not admissible in this proceeding. Suffolk County's and the State's grounds for to striking testimony on Contention 92 can be reduced to four objections:

(1) the testimony contains assertedly improper legal conclusions, (2) Dr. Cordaro's qualifications, (3) discussions of other facilities and plans used at other facilities, and (4) it includes assertedly speculative and ad hominem statements. Each of these will be discussed below.

First, Suffolk County seeks to strike page 4, answer 7, last two lines and all of page 5 of LILCO's testimony on Contention 92 on the ground that it constitutes interpretation by LILCO witnesses of what regulations or other laws require. The testimony the County seeks to strike recites regulations and the State's interpretation of those regulations as stated in the portions of the New York State Plan attached to the testimony. It does not constitute an interpretation by the LILCO witnesses of those laws, but is merely a description of how the State has interpreted its laws and applied them to every nuclear power plant in New York except Shoreham. Contrary to Suffolk County's assertion, the LILCO witnesses are not "attempting to interpret what the regulations or other laws require." Therefore, this testimony should not be struck.

Second, the County once again seeks to strike Dr. Cordaro from the witness panel. As the member of LILCO's management responsible for seeing that the LILCO Transition Plan is developed and implemented properly, Dr. Cordaro has reviewed

documents over the years and has interacted with officials at all levels government regarding emergency planning for Shoreham. He is familiar with the New York State Plan and with the specific areas where that Plan is taken into account in the LILCO Plan. There is no basis for the County's assertion that he is not qualified to testify on these issues. The County is entitled to cross-examine him regarding his familiarity with the issues; for these reasons, and the reasons stated in part I.E of this response, they have shown no basis for striking him from the panel.

The mainstay of the County's and the State's complaints regarding LILCO's testimony on Contention 92 is that it constitutes irrelevant information regarding other New York plans and what the State might do in an emergency. Both the County and the State incant repeatedly that the focus of this proceeding is "on the LILCO Plan," and therefore that mention of any other plans is irrelevant (County Motion at 26, State Motion at 2). But it is the County that has raised in the first instance the issue of the New York State Plan, not LILCO, and it is the State that supports the County's Contention 92. That contention provides as follows:

> There is no New York State emergency plan to deal with an emergency at the Shoreham plant before this Board. (See Plan, at Attachment 1.4.2.) In addition, the LILCO Plan fails to provide for coordination of LILCO's emergency response with that of the State of New York (assuming, arguendo, such a response would be forthcoming). (See FEMA Report at 1.) In the absence of a State emergency plan for Shoreham, there could be no finding of compliance with 10 CFR Section 50.47(a)(2), 50.47(b), or NUREG 0654, Section I.E, I.F, I.J or II. [Footnote ommitted.]

This contention asserts that (1) there is no New York State Plan, and that (2) assuming for a moment that the State would respond in an actual emergency, LILCO's Plan fails to provide for coordination of LILCO's emergency response with that of the State of New York. The contention requires LILCO to assume that New York State would respond and to explain what that response might be and how New York State's response would be coordinated with LILCO's. Neither the County nor the State, however, want LILCO to use any document other than the LILCO Transition Plan to explain on what basis LILCO provides for coordination of what kind of response from the State, or why there is no New York State emergency plan before this Board. In any event, LILCO witnesses do not "speculate" as to whether the State will or will not respond, but simply quote the Governor of New York's public statements on that issue.

In response to Contention 92, LILCO is entitled to file with this Board and offer into evidence the State of New York's Plan; to discuss what tasks set out in the State Plan are performed by LERO personnel in the LILCO Plan because the State has thus far refused to do at Shoreham what it does at other power plants; and to measure what LILCO is doing at Shoreham against what the State has accepted at other nuclear power plants in New York. None of LILCO's testimony on Contention 92 should be struck.

LILCO Testimony on Contentions 93-95

These contentions involve alleged loss of offsite power; the County filed no testimony on them. The County moves to strike Dr. Cordaro from sponsoring several answers in LILCO's testimony (County Motion, Attachment 2, Item 19). For the reasons set forth in part I.E of this response, the County's objection to the answers co-sponsored by Dr. Cordaro has no merit.

The County also moves to strike various portions of LILCO's testimony (p. 14, last two lines; p. 15, top two lines; p. 20, Ans. 32, lines 1 and 2; p. 21, lines 11-14) on the ground that this testimony allegedly is irrelevant because it discusses provisions in plans at other nuclear facilities (County Motion at 13). For the reasons set forth in part I.C

of this response, this testimony is clearly relevant. It is certainly relevant to know that plans for other nuclear power plants in New York and elsewhere do not have independent backup power supplies for electro-mechanical sirens, and that electro-mechanical sirens are used by the majority of other utilities for warning systems for nuclear power plants. This demonstrates that the LILCO Transition Plan is in accordance with plans that have been approved not only under NRC practice, but also that provisions like those in the LILCO Plan are contained in the approved plans of utilities and local governments in the State of New York. The County apparently wishes to impose a double standard, supported by the State of New York (which, as an active participant in this proceeding, has stated that it supports the County's contentions), which would find every other plan in the State of New York and around the country acceptable, yet would reject identical provisions in the LILCO Transition Plan. The County's objection to LILCO's testimony on the asserted ground of irrelevance is absurd.

The County moves to strike the last two lines of page 15 and the top five lines of page 16 of the LILCO testimony because it allegedly "speculates" as to power restoration procedures for the sirens that, as the LILCO testimony states, are now being developed by LILCO's System Operations Department

(County motion at 16; LILCO Testimony at 15-16), under the County's generic heading of "Improper Speculation Regarding Future Events." This example reinforces LILCO's position, set forth in part I.D of this response, that the County's Motion on this ground has no merit. The LILCO testimony states that these procedures are now being developed. If the County wishes to probe the state of development and nature of these procedures, it may do so on cross-examination.

Finally, the County objects to the answer to question 30 on page 19 on the ground that it purports to interpret regulations and hence draws an "improper legal conclusion" (County Motion at 6; see County Motion at 13). For the reasons set forth in part I.A of this response, the County's objection should be rejected. The answer by the LILCO witnesses, in effect, paraphrases a specific regulatory requirement referred to in a previous answer, and explains which specific provisions of the LILCO Transition Plan are provided to fulfill that requirement.

LILCO Testimony on Contention 96

The County moves to strike the following testimony on the basis of its generic arguments:

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|---|---|
| Cordaro, et al., second sentence of Answer 10, page 6 | Attempt to provide a legal conclusion |
| Cordaro, et al., Question and Answer 11, page 7 | Testimony about other nuclear facilities |
| Cordaro, Answers 8-21 | Cordaro not qualified to sponsor answers |

For the reasons recited in parts I.A, I.C, and I.E above, the motion should be denied.

LILCO Testimony on Contention 97.B

The County moves to strike Dr. Cordaro from Answers 6-12 of LILCO's testimony on Contention 97.B. For the reasons recited in part I.E above, the motion should be denied.

IV. Conclusion

For the reasons stated above, LILCO requests that the County's Motion to Strike Portions of LILCO's Group II-A Testimony be denied.

Respectfully submitted,

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