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Before the Atomic Safety and Licensing Board

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In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY'S RESPONSE TO LILCO'S
MOTION TO STRIKE THE DIRECT TESTIMONY
OF DEPUTY CHIEF INSPECTOR RICHARD C. ROBERTS,
ET AL. ON CONTENTIONS 24.T AND 59

On March 9, 1984, LILCO moved to strike the testimony of Suffolk County's witnesses on Contentions 24.T and 59. That testimony focuses on the Coast Guard's inability to notify the public on the waters of the EPZ and LILCO's lack of an agreement with the Coast Guard to notify swimmers and people in marinas. The County responds as follows:

LILCO apparently moves to strike portions of the County's testimony which restate the requirement of NUREG 0654 that the public be notified of an accident in the 15 minute time period specified by NUREG 0654.^{1/} The asserted basis for this objection is the argument that, in LILCO's opinion, NUREG 0654 "contains no such legal requirement." LILCO counsel also asserts that NUREG 0654 at 3-3 "states that special requirements exceptions may

^{1/} Although LILCO's Motion is unclear, it is apparent that LILCO seeks to strike portions of the testimony at page 2, lines 13-16; page 3, lines 16-19; and page 6, lines 13-14.

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apply 'for extended water areas with transient boats.'" (Motion at 1-2 partially quoting NUREG 0654 at 3-3). There is, however, no basis for LILCO's objection.

LILCO's so-called "objection" amounts to no more than a legal argument on the issue of what NUREG 0654 requires with respect to notification of people on the waters within the EPZ. Legal arguments of this sort are not properly raised in a motion to strike. They belong instead in legal briefs submitted either on a motion for summary disposition or in post-trial proposed findings of fact and conclusions of law. The only question pertinent to a motion to strike is whether the testimony is relevant, material, reliable and non-cumulative. 10 CFR Section 2.743. LILCO raises no objections on these grounds. LILCO's legal argument must therefore be rejected.

Indeed, the testimony LILCO seeks to strike directly addresses the following specific statement in Contention 59:

However the Coast Guard does not have the capability of notifying the public within 15 minutes and thus the LILCO Plan fails to comply with ... NUREG 0654, Sections II.E.5, E.6, and Appendix 3.

Clearly, the testimony is relevant to the Contention, and there is no basis for striking it.

LILCO next argues (Motion at 2) that references in the County's testimony to swimmers, people on beaches and persons in marinas^{2/} should be stricken because, in LILCO's view: (1) Con-

^{2/} Page 4, lines 12-14; page 5, lines 7-9; page 5, line 10
(footnote continued)

tention 59 "asserts only that the U.S. Coast Guard is relied upon to provide notification to the general public on the waters within the 10-mile EPZ" and "makes no reference to swimmers, bathers, people on beaches or people in marinas;" and (2) Contention 24.T "makes no reference to beaches or marinas." (Motion at 2-3). LILCO is wrong on both grounds.

LILCO's motion appears to be based entirely on LILCO's interpretation of the phrase "on the waters." The County does not understand LILCO's semantic game. Does LILCO consider swimmers to be in the waters instead of "on the waters?" Likewise, are people on boats in marinas somehow less "on the water" than people on boats elsewhere in Long Island Sound? Is there a difference, for notification purposes, between a person who is sunbathing on the sand 10 feet from the water and the person on a raft 10 feet away in the water? Such distinctions are absurd and deserve no credence by this Board.

In any event, Contention 24.T has always expressly referred to swimmers and boaters in its discussion of the notification of the public "on the waters." Therefore, even if one erroneously assumes that the testimony regarding swimmers and people on boats at marinas is not within the scope of Contention 59, it is nevertheless clearly covered by Contention 24.T.

(footnote continued from previous page)
through page 6, line 5; page 6, lines 14-17; page 6, line 19;
Attachment 2, items 1-3 and 4(3).

Moreover, LILCO has also failed to disclose pertinent discussions between counsel for the parties in its argument on the Contention 24.T. As LILCO points out in its Motion at 2-3, the County, in January 1984, did propose a modification to the July 26, 1983 version of Contention 24.T in an effort to narrow the focus of that contention in light of the "agreement" LILCO had obtained from the Coast Guard. The proposed modification was intended to limit the issue in that contention to Coast Guard notification of "persons on beaches or at various marinas in and around the EPZ." In discussions prior to LILCO's filing of objections to the proposed modified contentions, counsel for the County informed Ms. McCleskey, counsel for LILCO (not the counsel who was the author of LILCO's Motion to Strike), of the above-described intent and effect of the proposed modification. It was also explained to Ms. McCleskey that the County considered the original unmodified version of Contention 24.T which referred to people "on the waters" in the EPZ and also expressly to swimmers and boaters, to include people on beaches and on boats in marinas. The County withdrew the proposed modification^{3/} because it, in fact, only limited the scope of the contention and, thus, would have no effect whatsoever on the testimony to be filed by the County on that contention. It was withdrawn for the sole purpose of reducing the number of modifications the County would

^{3/} Suffolk County Response To LILCO And NRC Staff Objections To Intervenors' Proposed Emergency Planning Contentions Modified To Reflect Revision 3 Of The LILCO Plan at 33, n. 8 (January 30, 1984).

have to argue about with LILCO. Thus, insofar as LILCO's Motion rests on the proposed modification to Contention 24.T, it is without basis.^{4/}

Finally, LILCO moves to strike a sentence of the County's testimony found on page 5, lines 22-23 in which the County's witnesses state that it is unlikely that people on boats in marinas or on beaches would hear LILCO's sirens. LILCO offers as grounds for its objection, (1) that the testimony is speculative and beyond the expertise of the County's witnesses, and (2) that the testimony at issue is relevant to a Phase I issue and hence not appropriate for Phase II.

With respect to LILCO's first asserted grounds, LILCO offers no reasons why it believes the County's witnesses are not qualified to determine whether sirens can be heard by people on boats in marinas or people on beaches. Furthermore, an examination of the resumes of Sergeant Hoffman and Officer Read show that LILCO's argument is without factual support. Between them, Sergeant Hoffman and Officer Read have 36 years of experience in the Marine Bureau of the Suffolk County Police Department and consequently are intimately familiar with the beaches, harbors and navigable waters within the EPZ. Thus, they are well qualified to determine whether sirens could be heard on beaches or in marinas.

^{4/} It should also be noted that LILCO's attempt to strike Attachment 2, item 4(3), is overinclusive, given LILCO's asserted grounds. Item 4(3) estimates the number of boats in the western portion of the EPZ on the Long Island Sound. Only Items 4(3)A and 4(3)B estimate the number of boats in marinas.

LILCO's Phase I objection is equally without merit. LILCO raised similar Phase I arguments against Contentions 24.T and 59 in its Objections^{5/} to the Intervenor's Revised Emergency Planning Contentions at 43, 54 (August 2, 1983). In admitting Contentions 24.T and 59, the Board rejected LILCO's Phase I argument. It is improper for LILCO to attempt to reargue the admissibility of a contention in the guise of a motion to strike since the Board has already ruled on the subject. Furthermore, LILCO addresses siren coverage in its own testimony and has even attached several siren coverage maps. (Testimony at 22-23 and Attachment 1). LILCO cannot have its cake and eat it too. Therefore, LILCO's Phase I argument should be rejected.

Conclusion

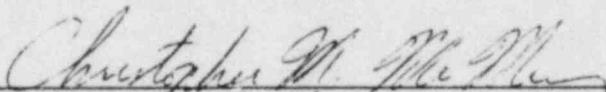
For the reasons stated above, LILCO's Motion To Strike Portions Of The Direct Testimony Of Deputy Chief Inspector

^{5/} Special Prehearing Conference Order at 15, 21 (August 19, 1983).

Richard C. Roberts, Et. Al., On Contention 24.T and 59 should be denied.

Respectfully submitted,

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