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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))Docket No. 50-322-OL-3
(Emergency Planning)SUFFOLK COUNTY'S RESPONSE TO LILCO'S
MOTION TO STRIKE PORTIONS OF DIRECT
TESTIMONY ON BEHALF OF SUFFOLK COUNTY
REGARDING EMERGENCY PLANNING CONTENTION 26I. Introduction and General Response

On March 9, 1984, LILCO moved to strike portions of the direct testimony of Deputy Inspector Kenneth J. Regensburg, Deputy Inspector Robert A. Snow, and Police Officer Vincent R. Stile on behalf of Suffolk County Regarding Emergency Planning Contention 26 (Notification of Emergency Response Personnel) (hereinafter, "Suffolk County Police Department" or "SCPD testimony"), filed on March 2, 1984. Suffolk County hereby responds and urges that LILCO's motion be denied.

The SCPD testimony describes LILCO's proposals for notifying emergency response personnel in the event of an emergency at the Shoreham plant and identifies deficiencies and

inadequacies in LILCO's notification scheme. In the opinion of the SCPD witnesses, these deficiencies and inadequacies lead to the conclusion that LILCO's proposed communications system and procedures provide no assurance that there will be prompt and reliable notification to emergency response personnel. As a result, LILCO will not be able to mobilize promptly the personnel assigned emergency functions and duties under the LILCO Plan, and the protective actions contemplated by the Plan cannot and will not be implemented.

First, LILCO contends that portions of the SCPD testimony pertaining to the inadequacy of non-dedicated commercial telephone lines is barred by the Board's August 19, 1983 Special Prehearing Conference Order (hereinafter, "August 19 Order"), which denied admission of proposed Contention 26.B. LILCO Motion, at 1-3. Second, LILCO argues that portions of the SCPD testimony are not relevant and should be stricken "because they proceed upon an erroneous interpretation of applicable regulations and guidelines." LILCO Motion, at 4-5. LILCO contends that, while the SCPD testimony assumes -- as does Contention 26 and its preamble -- that after receiving notification of an emergency from the plant, LILCO must notify offsite response personnel within 15 minutes, there is no such requirement in the applicable regulations and guidelines. LILCO Motion at 4.¹/ Finally, LILCO asserts that portions of the SCPD

¹/ In LILCO's view, applicable regulations and guidelines only require that a licensee have the capability of noti-

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testimony amount to "conclusory statements and opinions for which there is no basis in the record." LILCO Motion, at 6. The testimony sought to be stricken by LILCO on this ground includes testimony which, in LILCO's view, offers no factual basis to support the conclusions reached and testimony which "is based upon an erroneous reading of the LILCO Plan." Id. LILCO also argues that some of these issues have been addressed in other contentions and should therefore be stricken because they are repetitious and cumulative. Id.

For the reasons discussed below, LILCO's arguments lack merit on all grounds and therefore, LILCO's motion should be denied. We first discuss the merits of each generic LILCO objection. Then we discuss its application of such objections to specific portions of the SCPD testimony.

A. Adequacy of Non-Dedicated Telephone Lines
Objection

Contrary to LILCO's assertions, the Board's August 19 Order does not preclude litigation of the inadequacy of

(Footnote cont'd from previous page)

tying offsite authorities (in this case LERO) within 15 minutes after declaring an emergency. LILCO Motion, at 4. LILCO contends that this issue was the subject of "Phase I" of this proceeding and is thus barred from litigation. LILCO Motion, at 5, n. 3.

non-dedicated commercial telephones. If anything, the Board's Order only precludes litigation of the single issue of potential overload of commercial telephone lines. That was the only issue addressed by Phase 1 Contention EP11 and Phase 11 Contention 26.B, which was not admitted by the Board in its August 19 Order.

Further, this Board has previously recognized that other problems created by LILCO's reliance upon commercial telephones as a means of communication are proper and appropriate subjects for litigation. For example, revised Emergency Planning Contentions 26.D and E, filed by intervenors on July 26, 1983, alleged, among other things, that some emergency response personnel will not be notified of an emergency at the Shoreham plant because they will not be near telephones, will be using their telephones or, for other reasons, will not be able to be contacted. LILCO raised no objection to these revised Contentions.^{2/} The Staff, on the other hand, objected to both Contentions as lacking basis. With respect to Contention 26.E, the Staff also asserted a Phase 1 objection.^{3/}

^{2/} See LILCO's Objections to Intervenor's "Revised Emergency Planning Contentions," dated August 2, 1983 (hereinafter, "LILCO's August 2 Objections"), at 45-46.

^{3/} See NRC Staff Response to Revised Emergency Planning Contentions, dated August 2, 1983 (hereinafter, "Staff's August 2 Objections"), at 24-25.

In its August 19 Order, the Board admitted Contentions 26.D and E without discussion. August 19 Order, at 16. As explained by the Board's Order, where a contention was admitted, without discussion, over objection by LILCO or the NRC Staff, the Board had "specifically considered and rejected the objection." Further, the Board had found the admitted contentions to meet the requirements of specificity and basis imposed by 10 CFR §2.714(b). August 19 Order, at 2-3. Thus, in admitting Contentions 26.D and E, the Board considered and rejected the argument that problems created by LILCO's reliance on commercial telephones, with the possible exception of potential overload of commercial telephone lines, are a Phase I issue barred from litigation.

If LILCO had any doubts as to the clear meaning of the Board's ruling regarding the admissibility of issues involving LILCO's reliance upon commercial telephones, those doubts should have been resolved by the Board's February 3, 1984 Order regarding Intervenors' modified emergency planning contentions.^{4/} Prior to the Board's February 3 Order, LILCO objected to revised Contention 26.F on the ground that

^{4/} See "Memorandum and Order Ruling on Intervenors' Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan," dated February 3, 1984 (hereinafter, "February 3 Order").

modifications made to the contention are an attempt to revive the issue of the inadequacy of non-dedicated commercial telephone lines for notification of emergency response personnel; that issue was denied admission by the Board's ruling on Contention 26.B in its Order of August 19, 1983.

LILCO's Objections to intervenors' "Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan," dated January 19, 1984 (hereinafter, "LILCO's January 19 Objections"), at 12-13. Notwithstanding this objection, the Board accepted Contention 26.E as modified. February 3 Order, at 9. Thus, the Board reaffirmed that the issues in the admitted portions of Contention 26 regarding LILCO's reliance upon commercial telephones are not Phase 1 issues barred by its August 19 Order from being litigated in this proceeding.

By seeking to strike portions of the SCPD testimony pertaining to the inadequacy of non-dedicated commercial telephones, LILCO is attempting to revive for a third time its argument that the County should be precluded from litigating these issues. Moreover, LILCO uses this argument to support its wholesale and indiscriminate attempt to strike any mention of the words "commercial telephone." The testimony sought to be stricken, however, addresses the subparts of Contention 26 which have been admitted for litigation by the Board's prior rulings and LILCO's motion should therefore be denied.

B. Erroneous Interpretations of Applicable Regulations
Objection

For a number of reasons, there is no basis for LILCO to suggest that portions of the SCPD testimony should be stricken because they proceed upon erroneous interpretations of applicable regulations and guidelines, and are thus irrelevant. For example, LILCO acknowledges that it must have the capability for notifying LERO within 15 minutes after an emergency is declared at the Shoreham plant, but asserts that there is no requirement that there be notification of emergency response personnel within that period of time. LILCO Motion, at 4. LILCO asserts that the County is attempting "to lift out of context the 15-minute limitation applicable to notification of LERO by the licensee and apply that limitation to a facet of the emergency response plan where it has no application." Id. This assertion makes no sense.

LERO is comprised of LILCO personnel who are assigned offsite emergency response functions and duties under the LILCO Plan. Therefore, by definition, "notification of LERO" requires LILCO to notify some emergency response personnel within the 15-minute limitation imposed by applicable regulations and guidelines. The questions which must be decided are: (1) which LERO personnel must be notified for there to be

"notification of LERC"; and (2) whether LILCO's proposed communications system and notification procedures provide adequate assurance that such notification can be provided within 15 minutes after an emergency is declared at the plant. These questions of fact are for the Board, not LILCO, to determine based on a review of the facts and evidence presented. The issue cannot be determined by striking the factual evidence proffered by the County simply because LILCO disagrees with it, or with the underlying interpretation of applicable regulations and guidelines.

In addition, Contention 26 itself has always alleged that emergency response personnel must be notified within 15 minutes after an emergency at Shoreham is declared. For example, the Preamble to Contention 26 states:

Procedures must be established regarding the bases for notification of response organizations, including means for verification of messages, and for alerting, notifying, and mobilizing emergency response personnel. NUREG 0654, Section 11.E.1 and E.2. Moreover, there must be the capability of notifying these emergency personnel "within 15 minutes after declaring an emergency." 10 CFR Part 50, Appendix E, Section IV.D.3.

Similarly, Contention 26.A.2, in asserting that the LILCO Customer Service Office is not capable of serving as the

primary notification point for LER0, responsible for, among other things notifying key emergency response personnel (including all personnel who do not acknowledge receipt of pager notification), states that:

The Plan does not indicate that there will be adequate equipment available to Customer Service personnel to permit the necessary notification in a timely manner, i.e., within 15 minutes after an emergency is declared. See 10 CFR Part 50, Appendix E, Section IV.D.3.

Since the Board admitted Contention 26, as stated (see August 19 Order, at 15), LILCO cannot now claim that it is either surprised or prejudiced by the testimony it seeks to strike. Nor is there any basis to claim that the testimony at issue is beyond the scope of the Contention and therefore properly stricken.

The Contention in question has been admitted by the Board for litigation. Moreover, neither LILCO nor the Staff objected to the portions of the Contention to which the testimony now sought to be stricken by LILCO relates. Accordingly, the only question now before this Board is whether the testimony provides "relevant, material, and reliable evidence which is not unduly repetitious" on the issues raised in the Contention. See 10 CFR §2.743(c). Clearly, the testimony does relate

directly to factual matters spelled out in the Contention admitted by the Board. Accordingly, the testimony cannot be stricken as irrelevant. Indeed, LILCO's motion to strike this testimony amounts to an attempt to reargue the admissibility of portions of Contention 26. LILCO's attempt to use a motion to strike testimony that addresses an issue in an admitted contention for the purpose of arguing the admissibility of the contention should be rejected by the Board.

Therefore, the Board should deny LILCO's motion to strike those portions of the SCPD testimony which mention the 15-minute time period for notification of emergency response personnel. If LILCO disagrees with the County's interpretation of applicable regulations and guidelines, it can argue that the particular regulatory requirements cited in Contention 26 and the SCPD testimony are satisfied without LILCO having to address the problems identified in the Contention and the testimony in its post-trial briefs. Lawyers' briefs are the proper place for such legal arguments on the merits of contentions. Resolving such disputes is not the purpose of motions to strike. However, resolving such basic disputes between the parties is the purpose of this litigation. The Board therefore should make its findings on such matters after the parties have presented their evidence and proposed findings of fact and

conclusions of law, not by striking testimony proffered by one party but disputed by the other. Any other result would permit any party, simply because it disagrees with the testimony and the conclusions reached by another party's witness, to prohibit the Board's consideration of such testimony based on bald assertions that the regulations do or do not require a particular action.^{5/}

5/ LILCO's argument that portions of the SCPD testimony should be stricken because there is no requirement to provide notification of an emergency to every RECS telephone location (LILCO Motion, at 5) is equally unpersuasive. LILCO is required to "have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency." 10 CFR Part 50, Appendix E, Section IV.D.3. This notification requirement does not turn on whether the State and local agencies are "response organizations," as alleged by LILCO.

Motions to strike provide a way to preclude proffered evidence which is not "relevant, material and reliable evidence." 10 CFR §2.757(b). Moreover, as recognized by this Board, a motion to strike must state with particularity how the proffered evidence deviates from that standard (10 CFR §2.743(b)). See Order Ruling on Motions to Strike, dated January 16, 1984 (hereinafter, "January 16 Order"), at 1. In moving to strike portions of the SCPD testimony addressing the RECS notification system, LILCO nowhere alleges that the testimony is not relevant, material or reliable. Instead, LILCO merely asserts that the testimony proceeds on an erroneous premise. Thus, LILCO's motion must be rejected for failing to state with particularity how the SCPD testimony is allegedly not relevant, material or reliable. In any event, as noted above, a motion to strike does not provide a means for arguing the merits of one's case. If LILCO disagrees with the County's interpretation of a regulation, it may argue its views at the appropriate time, i.e., after the parties present their evidence.

C. Testimony Beyond Scope of Contention and/or without
Sufficient Foundation Objections

LILCO asserts that portions of the SCPD testimony amount to "conclusory statements and opinions for which there is no basis in the record." LILCO Motion, at 6. Further, it asserts that some of the testimony is based upon what LILCO believes is "an erroneous reading" of the LILCO Plan and, accordingly, should be stricken. Id. Before proceeding to discuss the merits of this LILCO objection, it should be noted that the example of such an "erroneous reading" provided by LILCO in its motion is a passage of testimony based upon information provided to the County by LILCO during discovery. Thus, there was no erroneous reading of the LILCO Plan, since the information relied upon, to our knowledge, is not in the Plan. Rather, LILCO's own motion would suggest that the information provided to the County was inaccurate. If that is the case, the fault is LILCO's and it is the County, not LILCO, which has a legitimate complaint before this Board.6/

6/ If the information provided to the County by LILCO is inaccurate, the County would request that the Board order LILCO to provide accurate information to the County and to explain to the Board and the parties the reason for LILCO's failure to have provided such information earlier. Upon receiving information from LILCO, the County will determine whether to amend or supplement its contentions and/or testimony.

There are several reasons why the Board should deny the portions of LILCO's strike motion which rely on the argument that SCPD testimony is based on erroneous factual premises. First, for the reasons noted above, LILCO's motion, if granted, would result in the Board resolving the merits of admitted contentions by effectively prohibiting litigation of those contentions. Clearly, such a procedure is improper. Whether the factual assertions which form the basis of contentions and/or testimony are themselves correct or adequate is irrelevant to the issue of admissibility of testimony which addresses the contention. Put another way, the correctness or adequacy of a factual assertion contained in testimony goes to the merits of the testimony, which is a matter to be determined at the hearing, after the parties have presented their evidence. LILCO is not precluded from examining during cross examination the basis for a witness' statement or opinion. It can also state its disagreement with factual premises or conclusions by submitting its own testimony. However, LILCO cannot use bald allegations by counsel of "no stated basis" to strike a witness' proffered testimony. Under the NRC's rules, there is no requirement that testimony have a stated basis in the record to be admissible. Rather, this kind of issue goes to the weight of the evidence.

Moreover, the bases for the SCPD testimony sought to be stricken by LILCO are clearly set forth in that testimony. The testimony is offered by witnesses who have a broad range of experience, training and expertise in communications-related subjects. Because the testimony offered by the County is competent testimony which is probative and material to the issues raised, LILCO has no basis for complaining that it is without "basis in the record."

II. Discussion

Set forth below is a listing of those portions of the SCPD testimony sought to be stricken by LILCO with the corresponding County response. This listing uses the same format as LILCO's motion to strike.

A. Adequacy of Non-Dedicated Commercial Telephone Lines

LILCO moves to strike the following testimony because, in LILCO's view, "it attempts to relitigate the question of the adequacy of non-dedicated commercial telephone lines." LILCO Motion, at 7. As noted in section I.A above, this Board has expressly ruled that, with the possible exception or potential overload of commercial telephone lines, other problems created by LILCO's reliance on commercial telephones which are

identified and referenced in the specific subparts of Contention 26 are proper issues for litigation. Thus, it is LILCO, not the County, which attempts to reargue a question previously decided by the Board. The portions of testimony listed below address admitted contentions and should not be stricken.

<u>Page and Line References</u>	<u>LILCO's Reason(s) to Strike</u>	<u>County Response</u>
1. 6, lines 12 thru 19	Attempts to relitigate commercial telephones.	Testimony merely summarizes specific issues raised in Contentions 26.D and E -- Contentions admitted by Board over the objections of the NKC Staff (<u>see</u> Starr's August 2 Objections, at 24-25). <u>See</u> August 19 Order, at 16. At that time, LILCO did not object to either Contention. <u>See</u> LILCO's August 2 Objections. Later, when the Contentions were modified to reflect Rev. 3 of the LILCO Plan, modifications were allowed by Board (<u>see</u> February 3 Order, at 9), over specific objection by LILCO to Contention 26.E on the ground that the modifications were an attempt to revive the inadequacy of non-dedicated commercial telephone lines. <u>see</u> LILCO's January 19 Objections, at 12-13.

<u>Page and Line References</u>	<u>LILCO's Reason(s) to Strike</u>	<u>County Response</u>
2. 22, lines 12 thru 19	Attempts to relitigate commercial telephones.	<p>Testimony does not deal with potential overload of commercial telephone system.</p> <p>Testimony addresses inaccessibility of telephones to LILCO personnel, an issue specifically raised and admitted for litigation by the Board in Contentions 26.D and E. See County Response 1 above. Only the last sentence and footnote on page 22 of the testimony mentions the issue of potential overload, and does so only by quoting the testimony by FEMA witness McIntire which is already in evidence, and the statement of LILCO's own employee, one of the Managers of LILCO's emergency response organization.</p>
3. 34, lines 21 thru 23	Attempts to relitigate commercial telephones. (This testimony also should be struck be- cause it is part of a body of testimony which proceeds upon the erroneous premise that there is a 15-minute time limitation, after LERO receives notifica- tion that an emergency has been declared, within which LERO must notify emergency re- sponse workers.)	<p>Testimony addresses specific issues raised in Contentions 26.D and E and admitted for litigation by the Board. See County Response 1 above. Testimony does not deal with potential overload of commercial telephone system. Further, despite LILCO assertion that testimony should be stricken because it proceeds upon "erroneous premise" that there is a 15-minute time limitation</p>

<u>Page and Line References</u>	<u>LILCO's Reason(s) to Strike</u>	<u>County Response</u>
		<p>for LILCO to notify emergency response personnel, the testimony has nothing to do with the 15-minute limitation raised in LILCO's objection.</p>
<p>4. 41, lines 8 thru 13</p>	<p>Attempts to relitigate commercial telephones. (Additionally, this testimony should be struck because it offers conclusory statements for which there are no supporting facts. There is no basis upon which these witnesses can testify that every paged worker will attempt to telephone somebody to verify the paged message.)</p>	<p>Any objection as to potential overload of commercial telephone system should be limited to lines 10-11 (beginning with "which are subject . . ." through "anticipated overload conditions"). Remainder of passage merely states that LILCO paging system is a commercial system, and discusses lack of backup to that system.</p> <p>LILCO also asserts that the testimony should be stricken because there is no basis for SCPD witnesses to testify that "every paged worker will attempt to telephone somebody to verify the paged message." The testimony referenced by LILCO, however, has nothing to do with paged workers telephoning anybody.</p>
<p>5. 47, lines 11 thru 23</p>	<p>Attempts to relitigate commercial telephones.</p>	<p>LILCO's objection should be limited to lines 21-22 (the phrase "overload commercial telephone lines and") since the remainder of testimony</p>

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addresses problems resulting from the Plan's failure to address confirmation of paged messages. Assuming that LILCO intended to move to strike testimony for reasons stated in County Response 4 above, LILCO objection should be rejected. There is no requirement that all facts supporting witnesses' competency testimony be expressly stated after every opinion. In any event, SCPD witnesses are qualified, based upon their extensive experience with respect to the use of pagers, to provide the referenced opinion. Further, LILCO's objection, if granted, would result in Board resolving merits of issue in dispute by striking evidence proffered by one party simply because the other party disagrees, which is not purpose of motion to strike.

6. 51, lines 1
thru 6

Attempts to relitigate commercial telephones. (This testimony is also subject to strike because it is not relevant to the contention for which it is proffered and, in fact, raises role conflict issues addressed in connection with other

LILCO's objection is overly broad and should be rejected. Contrary to LILCO's assertion, the testimony, with one exception (lines 4-5) deals not with commercial telephones, but with LILCO's reliance on pagers to notify emergency personnel.

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contentions.)

Further, the one phrase that addresses commercial telephones does not mention overload or commercial lines, but instead states that persons paged may not be able "to get through on a commercial telephone to notify other LEO workers." The testimony therefore raises concerns specifically admitted for litigation by the board in Contention 26.D. Indeed, the Contention 26.D testimony is cross referenced.

LILCO's objections that this testimony is not relevant and that it raises role conflict issues are without basis. LILCO fails to explain its relevancy objection. The testimony is directly relevant to the stated contention. Further, nowhere does the testimony raise role conflict issues. The testimony states that for every paged worker who chooses to ignore the paged message, other emergency workers could fail to be notified. Obviously, a worker could choose to ignore a paged message for any number of reasons, including reasons related to LILCO's failure to

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7. 53, lines 3
thru 20

Attempts to re-litigate commercial telephones. (Additionally, this testimony should be struck because it offers conclusory statements for which there are no supporting facts. There is no basis upon which these witnesses can testify that emergency workers will call their home, friends and relatives before calling out emergency workers. In addition, to the extent that this testimony addresses role conflict, it should be struck as repetitious and cumulative or testimony on other contentions.)

provide for verification of paged messages -- an issue squarely raised by Contention 26.C.

Again, LILCO's objection is overly broad. Testimony addresses a variety of concerns specifically admitted for litigation by Board in Contentions 26.D and E -- for example, inaccessibility of telephones and fact that persons will be using their telephones and thus not be able to be contacted or make calls. See County Response 1 above. Problems with overload of commercial telephone system not mentioned and thus LILCO objection should be rejected. Further, there is no basis for LILCO objection regarding conclusory statements of SCPD witnesses. There is no requirement that every "supporting fact" be stated in witnesses' testimony. If LILCO disagrees with the SCPD witnesses' conclusions, the basis or supporting facts can be probed by LILCO on cross examination. Furthermore, SCPD witnesses are qualified, based on their experience in responding to emergency situations, to

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testify about how LILCO's emergency response personnel would likely react in the event of an emergency at Shoreham. LILCO has stated no basis for questioning their competence other than bold assertion. Finally, the testimony does not mention role conflict. The basis for statement "it is questionable whether this LILCO employee would really want to get to a telephone to make telephone calls" can be probed by LILCO during cross examination.

8. 55, lines 4
thru 11

Attempts to relitigate
commercial telephones.

Testimony addresses problem of accessibility to telephones -- an issue specifically raised and admitted by the Board under Contention 26.D. See County Response 1 above. In fact, the testimony specifically assumes no problem with overloading of telephone lines. Thus, any objection by LILCO should be limited to the parenthetical (lines 8-10).

9. 60, line 22
thru page 61,
line 22

Attempts to relitigate
commercial telephones.

Testimony addresses the very issues objected to by LILCO in its January 19 Objections, at 12-13. The Board previously rejected these objections (see February 3 Order, at 9), and LILCO should not

be permitted to reargue its case a second time. In other words, it is LILCO, not the County, which attempts to reargue an issue previously decided by the Board, and LILCO's objection should be limited to the phrase "or because the lines will be overloaded" (lines 6-7, page 61).

B. Testimony Alleged by LILCO to be Based on Erroneous Interpretations of Applicable Regulations

LILCO moves to strike the following testimony because, in LILCO's view, it proceeds upon an erroneous interpretation of applicable regulations and is thus irrelevant. LILCO's argument lacks merit for the reasons noted in Section 1.B above and identified specifically below.

10. 12, line 21
thru page 17,
line 20

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified. (Additionally, page 16, lines 6-9 and 15-18, should be struck because there is no factual basis in the record to support these conclusory statements that "the LILCO paging system might malfunction.") (Emphasis added).

LILCO objection is overly broad and without any basis for a number of reasons. First, it is not for LILCO, but this Board, to interpret applicable regulations following the briefing of legal issues by the parties. Second, notification of LERO, by definition, requires notification of some emergency response personnel. LILCO acknowledges that LERO must be notified within the 15-minute limitation and it is

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therefore for this Board to determine the factual issues of (1) which personnel must be notified and (2) whether LILCO's proposed communications system and notification procedures provide adequate assurance that notification can be provided within 15 minutes after an emergency is declared. Third, Contention 26, as admitted by the Board, specifically alleges that emergency personnel must be notified within 15 minutes after an emergency is declared. LILCO cannot now claim that it is either surprised or prejudiced by the testimony. It's strike motion is an effort to argue the admissibility of Contention 26, which is untimely and improper. Fourth LILCO's motion improperly seeks to have the Board resolve the merits of an admitted contention before litigation. If LILCO disagrees with the County's interpretation of applicable regulations which is the ultimate issue in this case, and in this Contention, it can argue its views in its post-trial briefs. The Board can only make its findings on such matters, however, after the

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parties present their evidence at the hearing, not in deciding the admissibility of testimony. Any other result would permit LILCO, simply because it disagrees with proffered testimony and the conclusions reached, to strike such testimony based on bald assertions of what it believes the regulations do or do not require.

LILCO's motion to strike page 16, lines 8-9 and 15-16 is also without basis. LILCO objects to the statements in the testimony that "the LILCO paging system might malfunction" on the ground that there is no basis in the record to support the statement. There is no requirement that every fact which supports witnesses' opinion be expressly stated in testimony. Moreover, the SCPD witnesses have articulated in great detail the problems that can be expected to occur with LILCO's paging system (see testimony on Contention 26.C, pages 40-54). Further, SCPD witnesses are qualified to discuss such problems based upon their extensive experience and expertise with

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paging systems such as the one relied upon by LILCO. Moreover, the adequacy of factual assertions goes to the merits, which is a matter to be determined at the hearing, not in deciding upon the admissibility of testimony.

11. 30, lines 6
thru 15

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified.

For all the reasons stated in County Response 10 above (first paragraph), the LILCO objection to this testimony should be rejected.

12. 31, line 11
thru page 35,
line 12

All of this testimony should be struck because it proceeds on the erroneous premise that various governmental entities, such as Suffolk County, are "response organizations" within the meaning of 10 CFR §50.47(b)(5) and (6). Such is not the case in this proceeding.

LILCO's objection mischaracterizes the SCPD testimony, is overly broad, and without any basis in fact. The testimony does not proceed on the assumption that various governmental agencies are "response organizations." Indeed, the testimony makes clear that LILCO itself is the primary response organization relied upon by the LILCO Plan. Nonetheless, LILCO is required to "have the capability to notify responsible state and local governmental agencies within 15 minutes after declaring an emergency" (10 CFR Part 50, Appendix E, Section IV.D.3). This

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notification requirement does not depend upon whether State and local agencies are "response organizations" -- a fact recognized in the LILCO Plan by the placement of RECS telephones at State and local government agencies. The SCPD testimony discusses problems with the RECS notification scheme and is therefore relevant, material and probative. Indeed, LILCO nowhere alleges to the contrary. Thus, LILCO's motion fails to meet the minimum requirements of a motion to strike and must be rejected. See January 16 Order, at 1. See also County Response 10 (first paragraph) above for additional reasons why LILCO's objection should be denied.

13. 52, line 15
thru page 52,
line 16

All of this testimony proceeds upon the erroneous assumption that there is a 15-minute time limitation within which emergency workers must be notified.

For all the reasons stated in County Response 10 above (first paragraph), the LILCO objection to this testimony should be rejected. Indeed, in this instance, the testimony sought to be stricken by LILCO simply states that there will be delays in mobilizing emergency response personnel and in implementing command and control decisions due to

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problems in notifying emergency response personnel. This conclusion has nothing to do with whether LILCO must provide notification within 15 minutes.

C. Testimony Alleged by LILCO to be Beyond Scope of
Contention and/or Without Sufficient Foundation

LILCO moves to strike the following testimony because, in LILCO's view, it is beyond the scope of Contention 26 and/or is without sufficient foundation. LILCO's arguments lack merit for the reasons noted in Section I.C above and identified specifically below.

14. 20, line 11
thru page 21,
line 2

This testimony makes numerous assumptions for which there is no basis in the record. Upon what basis can these witnesses assume that a call made by a customer service operator to a LERO emergency worker will be more time consuming than a call made by one police officer to another off-duty police officer? This testimony is based upon rank speculation. Finally, the testimony seems to raise questions as to the adequacy of the training of LERO

There is no requirement that every fact in support of witnesses' opinions be expressly stated in direct testimony or in the record. Moreover, the SCPD witnesses specifically explain why the telephone calls made during the SCPD notification/mobilization test would take less time than would telephone calls made by LILCO's Customer Service operators and other emergency response workers. See SCPD testimony, at 20-21. If LILCO disagrees with the conclusions, or factual

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workers. Training issues are addressed in other contentions and testimony as to training is irrelevant to the issues presented by Contention 26.

bases for the opinions of the SCPD witnesses, it can examine the basis for the witnesses' opinions and statements during cross examination. However, there is no basis for striking the testimony, as such would result in the Board resolving the merits of the Contention by effectively prohibiting its litigation.

LILCO's training objection is totally without basis, since the testimony does not raise training issues.

15. 21, line 20
thru page 22,
line 12

This testimony is based on speculation and assumptions which find no factual basis in the record. Additionally, the testimony seeks to raise issues being addressed in other contentions. For example, the issue of role conflict, raised at the top of page 22, is not relevant to the issues presented by Contention 26.

There is no requirement that every fact in support of witnesses' opinions be expressly stated in direct testimony or in the record. Moreover, the SCPD witnesses specifically set forth why LILCO's notification success rate would likely be lower than the success rate obtained during the SCPD notification/mobilization test. See SCPD Testimony, at 21-22. If LILCO disagrees with the witnesses' conclusions, it can examine the bases for the witnesses' opinions and statements during cross examination. However, there is no basis

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for striking the testimony, as such would result in the Board resolving the merits of the Contention by effectively prohibiting its litigation.

LILCO's role conflict objection should also be rejected. LILCO claims the issue of role conflict is not relevant to the issues presented in Contention 26. This is absurd. Contention 26 deals with notification of emergency personnel. In this regard, the testimony sought to be stricken questions whether such personnel will "respond" by answering notification telephone calls from other emergency workers. Thus, the testimony is relevant. Further, the testimony specifically references passages from the testimony of another witness (former SCPD Commissioner Dilworth), as suggested by the Board in its January 16 Order. Further, as noted by the Board (January 16 Order, at 6), witnesses may draw conclusions from other testimony and may recite other testimony to show the factual predicate of their own conclusions. This is the context of

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16. 38, lines 13 thru 22	This testimony should be struck because it addresses issues relating to training and role conflict. There is no factual basis in the record to suggest that these witnesses are competent to discuss these issues nor that the issues are relevant to Contention 26.	<p>the SCPD testimony objected to by LILCO, and there is no basis for striking it.</p> <p>LILCO raises both a training and a role conflict objection. However, the testimony in no way raises role conflict issues. With respect to training, LILCO argues that the testimony is not relevant and that the SCPD witnesses are not competent to testify on the issue of training. There are several reasons for denying LILCO's motion. Consideration of communications training is integrally connected with Contention 26. In addition, the SCPD witnesses were careful to limit their discussion of training to LILCO's communications training program. There was no attempt to address the kinds of training issues that will be considered in other testimony. The Board has previously ruled that such narrow training testimony, when directly related to the contention at issue, is relevant and admissible. See January 16 Order, at 4 (with respect to traffic guide training). Further, the SCPD witnesses are clearly</p>

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17. 45, line 16
thru page 46,
line 17

There is no factual basis in this record to support the conclusions set forth in this testimony. Upon what basis do these witnesses presume to testify that LERO workers, in violation of their training, will leave the area covered by the pager system while they are on duty? Additionally, upon what basis do these witnesses conclude that persons who are paged will choose to ignore the page?

competent to discuss such training issues based on their experience and expertise. In any event, as this Board has previously noted, "[w]here the extent of a witness's expertise is unclear, a moving party must make a much more explicit, detailed showing as to exactly what that expertise is, and why specific statements are outside it, than LILCO has provided. . . ." See January 16 Order, at 5.

There is no requirement that every fact which supports every conclusion reached by a witness be stated in testimony or in the record. Moreover, the SCPD witnesses are qualified to discuss concerns regarding LILCO's paging system, based upon their experience with systems like the one relied upon by LILCO. Further, the testimony specifically sets forth a number of the bases underlying the conclusions reached. For example, in response to LILCO's question regarding the bases for the SCPD witnesses' concluding that persons paged may not respond, the testimony expressly mentions two reasons:

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illness and the fact that persons may not be near their pagers (see lines 14-17, page 46). Moreover, the LILCO objection is overly broad and seeks to strike even portions of the testimony that merely recite specific provisions of the LILCO Plan -- for example, page 45, line 16, thru page 46, line 2.

18. 48, line 1
thru page 50,
line 7

This testimony, including the footnote incorporated therein, has no factual basis in the record relating to Contention 26. This testimony represents an effort by Suffolk County to relitigate the role conflict and credibility issues presented in other contentions. For example, on page 49, upon what factual basis to [sic] these witnesses proffer an opinion that "without some kind of confirmation before hand, many persons [who have been paged] will not really believe that there is an emergency requiring them to report for duty." This testimony should be struck.

LILCO's objection is overly broad and, in any event, lacks any basis. LILCO appears to object on grounds of relevancy, but the testimony sought to be stricken primarily deals with LILCO's failure to provide for confirmation of paged messages by paged personnel. LILCO therefore seeks to reargue an objection made at the time Contention 26.C was modified to reflect Rev. 3 of the LILCO Plan. (See LILCO's January 19 Objections, at 12). The Board denied LILCO's objection at the time (see February 3 Order, at 9), and LILCO should not be allowed to reargue admissibility a second time -- especially through the guise of a motion to strike.

Further, the testimony in no way seeks to

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relitigate either role conflict or credibility issues (indeed, credibility issues have not yet been litigated before this Board). The footnote objected to by LILCO fully complies with the Board's January 16 Order, where the Board noted that "[i]f a witness wishes to base any conclusion he or she draws upon the testimony of another, the witness should reference the specific passages relied upon." January 16 Order, at 6. The testimony does specifically reference the other testimony relied upon and therefore should withstand LILCO's objection. In addition, as noted by the Board, witnesses may draw conclusions from other testimony and may recite other testimony to show the factual predicate of their own conclusions. January 16 Order, at 6. Further, LILCO's objection does not make the explicit, detailed showing as to why the testimony should be struck, as required by the Board's January 16 Order, at 5.

iii. Conclusion

For the reasons set forth above, the Board should deny LILCO's "Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contention 26."

Respectfully submitted,

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