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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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)	)	
_____	)	

SUFFOLK COUNTY'S RESPONSE TO LILCO'S MOTION  
TO STRIKE PORTIONS OF DIRECT TESTIMONY ON BEHALF OF  
SUFFOLK COUNTY REGARDING EMERGENCY PLANNING  
CONTENTIONS 28, 29, 30, 31, 32 AND 34

I. Introduction

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 Contentions 28, 29, 30, 31, 32 and 34 (Communications Among 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 County will address each specific portion of the SCPD testimony sought to be stricken by LILCO, following the format of the LILCO motion.<sup>1/</sup>

<sup>1/</sup> In responding to LILCO's "Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding

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## II. Contention 28

LILCO moves to strike all the SCPD testimony on Contention 28, primarily on the ground that the testimony "attempts to resurrect the issue of alleged overload" which was rejected by the Board in denying admission of proposed Contention 26.B. LILCO Motion, at 1, 3. LILCO's argument is without merit, and should therefore be rejected by the Board.

We have addressed LILCO's objections to SCPD testimony discussing problems created by LILCO's reliance upon commercial telephones elsewhere and we will not repeat all those arguments here, but incorporate them by reference. See Suffolk County Response to LILCO's Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contention 26 (hereinafter, "County's Contention 26 Response"); Suffolk County Response to LILCO's Motion To Strike Portions of

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Emergency Planning Contention 26," LILCO asserted, and we responded to, a number of generic objections to the County's proffered testimony. See Suffolk County Response to LILCO's Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contention 26 (hereinafter, "County's Contention 26 Response"), at 1-14. The arguments made to LILCO's generic objections are not repeated here; however, they are fully applicable to many of LILCO's arguments and are incorporated by reference in this Response.

Direct Testimony on Behalf of Suffolk County Regarding  
Emergency Planning Contentions 55-58 (hereinafter, "County's  
Contentions 55-58 Response"). Quite simply, LILCO's assertion  
that the challenged testimony "attempts to resurrect" an issue  
previously rejected by the Board is wrong. Contention 26.B  
concerned potential overload of the commercial telephone  
system. By contrast, the Contention 28 testimony challenged by  
LILCO, with one possible exception,<sup>2/</sup> does not deal with that  
issue, but with other problems created by LILCO's reliance on  
commercial telephones. In fact, the testimony references the  
portion of the SCPD testimony on Contention 26 which discusses,  
among other things, the fact that persons may be away from  
their telephones or for other reasons inaccessible by tele-  
phone. Thus, it is misleading for LILCO to assert that "[w]ith  
the exception of a reference to the testimony of FEMA witness  
Philip McIntire, to the effect that the commercial telephone  
system might become overloaded in the event of an accident at  
Shoreham, the purported reasons for the alleged inadequacy and  
unreliability of commercial telephones and the [Federal

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<sup>2/</sup> Potential overload of the commercial telephone system is  
only mentioned in one instance -- where the SCPD witnesses  
reference the testimony of FEMA witness McIntire which was  
already admitted into evidence in this proceeding. SCPD  
testimony, at 4.

Telephone System] are completely unspecified." LILCO Motion, at 2.

It is also misleading for LILCO to suggest that the SCPD testimony wrongly implies that the Federal Telephone System would be subject to overload resulting from calls by members of the public. LILCO Motion, at 2, n. 1. Nowhere does the SCPD testimony allege that the Federal Telephone System is part of the telephone system used by the public. What the SCPD testimony clearly states is that the Federal Telephone System is ineffective as a backup to commercial telephones, "since it is nothing more than the Federal tie-line telephone system and therefore also inadequate and unreliable under emergency conditions." SCPD testimony, at 4-5. Such inadequacy and unreliability result from problems other than overload of commercial telephone lines.<sup>3/</sup>

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<sup>3/</sup> LILCO contends that the SCPD testimony on page 5, lines 1-4, which asserts that commercial telephones and the Federal Telephone System "have common failure modes under adverse environmental conditions," should be stricken for lack of relevancy. LILCO also complains that these failure modes "are left completely to speculation and conjecture." Thus, LILCO appears to assert a "lack of basis" objection. LILCO Motion, at 2, n.1.

Since the issue in Contention 28 is whether there is an adequate communications link with Federal agencies, to act as a backup to commercial telephones, it is of course relevant to discuss whether the proposed "backup" -- the Federal Telephone System -- is likely to fail at the same

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LILCO also moves to strike the SCPD testimony on page 5, lines 8-17, on the grounds that the testimony is "idle speculation" that "lacks any factual basis and must be struck." LILCO Motion, at 4. LILCO attempts to support its "lack of factual basis" objection by arguing the merits of its case in its motion to strike.

A motion to strike is not the proper vehicle for persuading the Board that the opinions of one's opponent's witnesses are incorrect. In this proceeding, the Board resolves factual disputes between the parties by reviewing testimony, hearing cross examination, and reviewing proposed findings of fact and conclusions of law in which the parties' argue the merits of contentions based on the evidence.

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time as the system it is supposed to back up. Furthermore, as has been discussed elsewhere (see County's Contention 26 Response; County's Contentions 55-58 Response), there is no requirement that every fact that supports a given conclusion be expressly stated in a witness' direct testimony. Moreover, whether the bases for conclusions or opinions stated in testimony are adequate or even correct is irrelevant to the issue of admissibility. The adequacy of the bases for an opinion goes to the weight of the evidence proffered, which is a matter to be determined after the parties have presented their evidence and conducted cross examination, not by striking testimony based on the opposing party's assertion of a disagreement with it.



As has been noted elsewhere (see discussion in note 2 and in County's Contention 26 Response and Contentions 55-58 Response) there is no requirement that a witness set forth in testimony every fact or other consideration that supports a given conclusion or opinion. Moreover, whether the bases for a witness' opinions or conclusions in testimony are adequate is irrelevant to the issue of admissibility. The adequacy of the bases for expert opinions goes to the weight of the evidence proffered, which is a matter for the Board to determine after the parties have presented their evidence and conducted cross examination. LILCO's motion should therefore be denied.

### III. Contention 29

LILCO seeks to strike the following portions of the SCPD testimony on Contention 29:

1. Page 6, lines 17-22;
2. Page 7, lines 1-12;
3. Page 8, lines 1-7; and
4. Page 9, lines 4-7.

In general, LILCO asserts that these portions of the SCPD testimony are beyond the scope of Contention 29 and therefore irrelevant. LILCO Motion, at 5. LILCO also asserts that some

of this testimony should be stricken for the additional reason that it lacks any basis in regulations or guidelines. LILCO Motion, at 6. Suffolk County disagrees with LILCO's assertions and urges denial of LILCO's motion.

Page 6, lines 17-22; page 7, lines 1-12; and page 8, lines 1-7: LILCO contends that since Contention 29 "asserts only that the LILCO Transition Plan does not specify the number of emergency personnel that will be assigned responsibility for manning communications equipment," these portions of the SCPD testimony are beyond the scope of the Contention. LILCO Motion, at 5, 6. For several reasons, LILCO's argument should be rejected by the Board.

Contention 29 states as follows:

The LILCO Plan does not specify the number of emergency personnel that will be assigned responsibility for manning communications equipment at the EOC, staging areas, transfer points, ambulance dispatch stations, or other communications posts. Further, the Plan does not provide for trained repair technicians capable of keeping communications equipment operational. As a result, there is no assurance that LILCO's communications system can or will be operated in the event of an emergency.

LILCO argues that Contention 29 is limited to only two issues: (1) that the Plan does not specify the number of

emergency response personnel that will be assigned responsibility for manning communications equipment; and (2) that the Plan does not provide for trained repair technicians capable of keeping communications equipment operational. LILCO Motion, at 4-5. Thus, LILCO objects to the SCPD testimony (page 6, lines 17-22) which alleges that prompt and reliable communications depend upon "an adequate number of qualified and trained personnel to man LILCO's communications system and to back up those personnel assigned primary communications responsibilities and duties." SCPD testimony, at 6.

In the County's view, LILCO simply has no basis to complain that this testimony is outside the scope of Contention 29. Contention 29 states that because the Plan does not specify the number of emergency personnel that will be assigned responsibility for manning communications equipment, there is no assurance that necessary communications will take place. Testimony which discusses why it is necessary to specify the number of such personnel -- for example, to ensure that there are sufficient personnel to back up emergency personnel assigned primary communications responsibilities and duties -- and which states that such personnel must be qualified and trained is within the scope of the Contention and therefore relevant. Such testimony does not "question the qualifications



or training of those individuals," as alleged by LILCO. LILCO Motion, at 5-6. Rather, it makes the rather obvious observation, which cannot be said to be "beyond the scope" of the Contention, that communications personnel, to be able to carry out the responsibilities for manning communications equipment assigned to them under the LILCO Plan the persons designated by LILCO, must be qualified and trained. Otherwise, there would be no assurance that such personnel, even if specified in the Plan, would be able to operate LILCO's communications systems and equipment in the event of an emergency.<sup>4/</sup>

Therefore, LILCO's restrictive reading of Contention 29 should be rejected by the Board. The SCPD testimony is consistent with a fair reading of the Contention. Indeed, the thrust of the Contention is whether LILCO's personnel are capable -- and sufficient in number -- to operate LILCO's proposed communications system and equipment. Thus, consideration of issues

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<sup>4/</sup> LILCO's attempt to strike the SCPD testimony on Contention 29 is similar to its attempt to strike those portions of the County's testimony on Contentions 65 and 23.H, which dealt with LILCO's proposed traffic control strategies, on the grounds that implementability of LILCO's traffic control plan was assumed as a given under Contention 65.C.4. The Board rejected LILCO's argument, finding the proffered testimony to be relevant to the thrust of Contention 65.C.4. See Order Ruling on Motions to Strike, January 16, 1984 (hereinafter, "January 16 Order"), at 2-3.

such as whether the individuals designated as communications personnel are trained and qualified, and whether there are sufficient personnel to back up those persons assigned primary communications responsibilities, are essential to resolution of the Contention.

For the reasons stated above, LILCO's argument regarding the admissibility of the SCPD testimony on page 6, lines 17-22, should be rejected.<sup>5/</sup> Similarly, its attempt to strike the

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<sup>5/</sup> LILCO also asserts that there is "no requirement under applicable regulations or guidelines that specific personnel be assigned to back up everyone involved in communications." LILCO Motion, at 6. LILCO, therefore, moves to strike the SCPD testimony on page 6, lines 17-22, not only because it is beyond the scope of the Contention, but also because there is no legal basis for the testimony. Id.

LILCO's "no legal requirement" objection is nothing more than a naked assertion, without explanation, legal argument, or legal citation. Such an unsupported "objection" is clearly insufficient to justify a ruling that the testimony is inadmissible. Further, this so-called "objection" is plainly just LILCO's disagreement with what LILCO mischaracterizes as the SCPD testimony. LILCO attempts to take issue with the opinion of the SCPD witnesses that backup personnel are necessary for implementation of a communications system. Such a dispute is not the basis for a motion to strike. If the SCPD testimony is relevant to the contention, it is admissible even if LILCO disagrees with its substance.

Finally, LILCO's reference to legal requirements is somewhat puzzling. If, however, LILCO means by this argument to assert that the regulations cited in the preamble to Contentions 28-34 do not require backup personnel, a motion to strike is not the proper vehicle for that argument either. The time to make legal arguments on

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testimony on page 7, lines 1-12, and page 8, lines 1-7, should be rejected. That testimony asserts that the LILCO Plan fails to specify "the responsibilities or duties of the LILCO personnel assigned to man communications equipment" (page 7, lines 1-12) and submits that without "clear lines of responsibility and authority among LILCO's communications personnel, there is no assurance that LILCO's communications system will be properly coordinated or operated in the event of an emergency at the Shoreham plant" (page 8, lines 1-7). Such testimony discusses a matter relevant to the Contention 29 issue that without specification of the individuals assigned communications responsibilities, there is no assurance that necessary communications will be possible. It is therefore relevant testimony which should not be stricken.

LILCO asserts a different argument in moving to strike the SCPD testimony on page 9, lines 4-7, which questions whether communications under the LILCO Plan would be possible without

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whether LILCO complies with the interpretation of regulations or whether LILCO has complied with particular regulations, is in proposed findings of fact and conclusions of law. Thus, LILCO's "lack of legal requirement" objection to the SCPD testimony should be rejected by the Board.

trained repair technicians on duty at locations where communications posts are established. In LILCO's view, this testimony is without factual basis and should be stricken as lacking any foundation. LILCO Motion, at 6-7.

As previously noted, there is no requirement that every fact that supports an opinion be expressly stated, in direct testimony, and whether the bases for particular opinions or conclusions in testimony are adequate is irrelevant to the issue of admissibility. The adequacy of the bases for a witness' opinion goes to the weight of the evidence proffered, which is a matter for the Board to determine after the parties have presented their evidence, conducted cross examination, and submitted proposed findings. Thus, LILCO's "lack of basis" argument must be rejected.

There is at least one other reason for denying LILCO's motions to strike portions of the testimony on Contention 29. In asserting that the SCPD testimony is outside the scope of the Contention, LILCO appears to argue, in effect, that, to be relevant and admissible, testimony must use only the identical words contained in the contention. That is simply not the case. As has been noted elsewhere (see County's Contention 26 Response; County's Contentions 55-58 Response), there is no



requirement that a party include all its testimony, or plead its evidence, in its contentions. See, e.g., Philadelphia Electric Company, (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). A contention, to be admissible, need only state its basis with "reasonable specificity." 10 CFR §2.714(b). LILCO's tunnel visioned reading of contentions, and its proposed limitations on testimony, if adopted, would make the filing of testimony unnecessary, since it could only repeat the contention. Clearly, witnesses must be able to explain the reasons why they agree with statements in the contention, provide background and context for their opinions, and discuss them fully. As long as the testimony is material, probative and relevant to the contention, it is admissible.

#### IV. Contentions 30 and 31

LILCO seeks to strike the following portions of the SCPD testimony on Contentions 30 and 31:

1. Page 16, lines 11-20;
2. Page 18, lines 10-15, and page 20, lines 2-4;
3. Page 18, lines 15-21;
4. Page 20, line 10, thru page 21, line 6;

5. Page 22, entire page;
6. Page 30, lines 16-21;
7. Page 36, lines 6-7; and
8. Page 36, line 17, thru page 41, line 3.

LILCO asserts a number of arguments in moving to strike these portions of the SCPT testimony. LILCO's arguments lack merit for the reasons identified specifically below, and the Board is therefore urged to deny LILCO's motion.

Page 16, lines 11-20: LILCO asserts that this testimony "lack[s] any basis whatsoever" and is therefore "irrelevant, immaterial and not probative." LILCO Motion, at 7. Our previous discussion of why a "lack of basis" objection, which merely disputes the factual premise of or the bases for opinions in proffered testimony, is not a proper ground for striking testimony is applicable to this portion of LILCO's strike motion, and we will not repeat those arguments here. See discussion above regarding Contentions 28 and 29. There are additional reasons, however, for denying LILCO's motion to strike this testimony.

This testimony asserts that the LILCO Plan makes no provision for lead traffic guides and traffic guides from different staging areas to communicate with each other. LILCO

complains that the SCPD testimony "proffers no reason" why such communications might have to take place, arguing that the "facts" make such communications unnecessary. LILCO Motion, at 7.

There is absolutely no basis for LILCO's assertion that the SCPD testimony "proffers no reason" why communications between and among the traffic guides would be necessary in a Shoreham emergency. In fact, the SCPD testimony explains in great detail why such communications would likely be necessary during an emergency at the Shoreham plant. For example, the SCPD testimony on page 31 states:

There is one more crucial deficiency in LILCO's proposed Emergency Radio System, a deficiency which renders LILCO's entire traffic control/emergency response scheme unworkable: it does not permit the various emergency workers in the field to communicate with other emergency workers on different radio channels. It is essential, particularly for effective traffic control, that LILCO's emergency workers be able to communicate with co-workers having similar or related functions. For example, LILCO's traffic guides must be able to communicate information to other traffic guides in order to coordinate traffic control strategy. In our experience as police officers, such direct communication between field officers is absolutely essential if there is to be any potential for effective control. Because, under the LILCO Plan, traffic guides dispatched from one staging area cannot communicate with the traffic guides from either of the other two staging areas,

in our opinion the LILCO Plan is unworkable.

In addition, the SCPD testimony on page 19, notes that

[f]or traffic control purposes, there should be a very low number of users per channel, probably no more than five or six. Moreover, the channel should not be used by persons involved in other functions. There should also be a separate radio channel for use only by the supervisors, or coordinators, of the personnel involved in the traffic control.

And, according to the SCPD witnesses, a low number of users per channel and a separate frequency for use by traffic coordinators are necessary because persons performing traffic functions "need to communicate over the radio on a very frequent basis" since "[t]raffic control requires a great deal of communications in order to coordinate traffic flow." SCPD testimony, at 19-20.

Based on the foregoing passages from the SCPD testimony, it is clear that the SCPD witnesses state in detail the bases for the testimony sought to be stricken by LILCO. LILCO may disagree with the opinions of the SCPD witnesses, but such a disagreement does not justify striking the SCPD testimony. LILCO's "lack of basis" objection to this portion of the SCPD testimony should be rejected.



Page 18, lines 10-15, and page 20, lines 2-4: LILCO again raises a "lack of basis" objection in moving to strike this testimony. We will not repeat here our previous discussions of this LILCO objection, but note that our prior arguments are equally applicable here.

In addition, the County fails to understand how LILCO can object to this testimony on the grounds that the experience of the SCPD witnesses is "unspecified" and thus lacks any relationship to "the circumstances applicable to traffic guides under the LILCO Transition Plan." LILCO Motion, at 8. The testimony sought to be stricken asserts that traffic guides may have to use their radios 15 minutes or more per hour. This testimony is offered by witnesses who have a broad range of radio communications experience and expertise, including communications between and among officers performing traffic control functions. Such experience and expertise are directly applicable to LILCO's traffic guides, since they will be using radios to communicate and coordinate their traffic control activities. Moreover, LILCO is well aware of the "specific" experience of the SCPD witnesses not only because their experience is detailed in their testimony and its attachments, but also because LILCO has deposed each of them, and inquired into their experience during those depositions.

LILCO's motion must also be denied because it fails to make an "explicit, detailed showing" as to exactly why the statements made by the SCPD witnesses are outside their expertise, in compliance with the Board's prior ruling with respect to motions to strike testimony based upon a witness' alleged lack of expertise. See January 16 Order, at 5. It is clear that the testimony is competent testimony which is probative and relevant to Contentions 30 and 31 which deal with communications between and among LILCO's field workers. LILCO has no basis for asserting that the testimony should be stricken.

Page 18, lines 15-21: LILCO's objection to this testimony -- which asserts that allotting a little over one minute per hour to each traffic guide for communications would be far too little time for traffic control purposes -- is similar to its objections to the above testimony and should be rejected for the same reasons. LILCO asserts that the testimony is "so vague as to make it impossible to discern any relationship" between the SCPD testimony and the LILCO Plan. The relationship, however, is plain. As the SCPD witnesses explain in their testimony, LILCO has overloaded its radio channels with too many users, thereby, in effect, limiting each traffic guide to but a little over one minute per hour for radio communications. In the opinion of the SCPD witnesses, this is far too

little time for traffic control purposes for reasons referenced above in our discussion of the previous portion of testimony sought to be stricken. In the words of the SCPD witnesses, under the LILCO Plan communications by traffic guides would be a "hit or miss" proposition. SCPD testimony, at 19. LILCO has asserted no cognizable basis for striking this portion of testimony. It is relevant to Contentions 30 and 31.

Page 20, line 10, thru page 21, line 6: LILCO asserts that this testimony, which contains "a number of assertions and opinions as to how police officers purportedly prefer to assign radio channels" for performing traffic control functions, "must be struck as irrelevant to any issue in this proceeding." LILCO Motion, at 8. In LILCO's view, "[t]he methods allegedly used by the police, or the methods the police prefer to use, have no probative value in deciding whether the means of communications with traffic guides under the LILCO Transition Plan will be effective." LILCO Motion, at 9. According to LILCO, "simply suggesting that one method of communications used by the police is effective does not tend to prove or disprove whether another method will be effective. . . ." Id.

LILCO's argument is totally without merit. The testimony sought to be stricken explains why the very nature of traffic

control functions requires a very low number of users per radio channel. In the opinion of the SCPD witnesses, whether such traffic control functions are being performed by police officers or by LILCO's traffic guides is irrelevant to this conclusion.<sup>6/</sup> Indeed, it is difficult to imagine how the SCPD witnesses could have made this conclusion more clear. For example, the paragraph following the testimony which LILCO seeks to strike states that

[T]here is no single function that generates more radio traffic than vehicular traffic control. Therefore, the number of users on a channel must be severely limited. LILCO cannot expect effective communications with the number of traffic guides assigned to its radio channels. The nature of traffic control functions simply demands many two-way communications and a very small number of users per channel.

SCPD testimony, at 21. (Emphasis added).

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<sup>6/</sup> Of course, if LILCO wishes to challenge the SCPD's belief that the performance of traffic control functions by police officers is instructive or relevant to their analysis of the likely or necessary performance of such functions by LILCO's traffic guides, it can do so during cross examination of the SCPD witnesses, or it can seek leave to file rebuttal testimony. The desire to make such a challenge however, cannot be used to justify striking the SCPD testimony.



The SCPD testimony must be viewed in its entirety, and it is inappropriate for LILCO to look at a particular passage, sentence, or phrase in isolation, as it does consistently throughout its motion to strike, and to assert that there is no basis or relevancy of that isolated statement to issues in the proceeding. Clearly, LILCO's objection is without any foundation whatsoever when the testimony is read in its entirety. LILCO has failed to state any cognizable basis for striking this testimony and its motion should be denied.

Page 22, entire page: This testimony addresses problems that the SCPD witnesses believe are likely to occur if the LILCO Plan were implemented because of the number of users assigned to the single radio channel to be used by LILCO's road crews and evacuation route spotters. LILCO complains that the testimony asserts simply that the channel for these emergency response personnel "could become overloaded," not that "it would, or even would be likely to, become overloaded." (Emphasis added). LILCO then asserts that the testimony should be stricken because "it amounts to nothing more than speculation and conjecture." LILCO Motion, at 9-10.

This LILCO objection is a petty, semantic game, which carries LILCO's common practice of viewing testimony out of

context to the ultimate extreme. Here, instead of focussing on a passage or a sentence in isolation, LILCO extracts one word from a page of testimony and asserts that it renders all the testimony "speculative." The objection barely merits a response.

The testimony makes very clear that the SCPD witnesses believe problems, including channel overload, are likely to, and will occur because of the number of users assigned to this single radio channel. That is why the witnesses respond to the question "Do you expect problems to occur because of the number of users assigned to the single channel to be used by LILCO's road crews and evacuation route spotters?" by answering "yes." SCPD testimony, at 21-22. The witnesses then explain the basis for that affirmative answer, in detail, in the passage "LILCO seeks to strike." Clearly, the testimony is relevant and within the scope of Contentions 30 and 31, which, among other things, allege that "[t]he amount of radio traffic anticipated for an emergency at Shoreham could not be adequately handled" by the radio channels which LILCO intends to make available to emergency response personnel. See Contention 31. The SCPD's witnesses' use of the word "could" in describing what they expect to occur in the future renders their testimony no more "speculative" than that of LILCO's witnesses, who opine

constantly that various problems identified in the contentions "could not" or "would not" occur in their view of the future. See, e.g., LILCO testimony, at 19 ("LERO field workers could communicate with one another on a simplex frequency"), 24 ("in the event of a radio outage at a staging area, the outage would be of minimal duration"), 27 ("[i]t is highly unlikely that an entire channel would fail to operate"), and 32 ("[b]y establishing an organizational structure with a chain of command, emergency action will be implemented without delay. . . [since] [u]sing the staging areas as satellite control centers for implementation of detailed emergency responses in the field should not delay, and in fact should expedite, the flow of information and instructions to and from [t]raffic [g]uides and transfer points"). (Emphasis added).

LILCO also seeks to strike the testimony on lines 10-13 of page 22 "because it lacks any factual basis or predicate in the LILCO Transition Plan or Procedures." LILCO Motion, at 9. This argument is without merit for several reasons.

The offending sentence apparently is:

Moreover, the road crews and the evacuation route spotters would have to communicate with each other -- for example to coordinate the removal of obstacles from roadways (see OPIP 3.6.3, Attachments 2 and 3).

First, LILCO simply ignores what the passage says in asserting that "it lacks any . . . predicate in the . . . Plan or Procedures." The SCPD give a specific OPIP cite. Second, Contention 30 has always alleged that "[i]t is essential that field workers be able to communicate with co-workers having similar or related functions." Thus, LILCO cannot claim that it is either surprised or prejudiced by the testimony it seeks to strike, or that the testimony is not relevant or material to the Contention. Third, there is no requirement that witnesses state in their direct testimony every fact which supports a particular opinion or conclusion. Fourth, LILCO's apparent disagreement with the opinions of the SCPD witnesses is not a proper or cognizable basis for striking relevant, material and probative testimony. LILCO can, if it wishes, challenge the stated and unstated bases for the SCPD witnesses' opinions in cross examination and, ultimately, in its proposed findings. It has stated no legitimate ground for striking the testimony.

Page 30, lines 16-21: LILCO asserts that this testimony, which states that LILCO does not appear to have backup transmitters, procedures in case radios become inoperable, spare radios or antennas, or backup generators, is both "outside the scope of Contentions 30 and 31 and without any factual basis." LILCO Motion, at 10. Clearly, the testimony is not outside the



scope of the Contentions which allege, among other things, that "[t]he LILCO Plan fails to demonstrate that there will be sufficient and adequate communications equipment to ensure effective communications among LILCO field emergency personnel" (Contention 30) and that "[i]n the absence of backup systems, there is no assurance that recommended and appropriate emergency actions can or will be implemented. . . ." (Contention 31). Further, as has been previously noted, there is no requirement that testimony, to be admissible, must set forth every factual basis for particular conclusions or opinions. The testimony is relevant to the Contentions and LILCO has stated no legitimate basis for striking it. LILCO's motion should be rejected.<sup>7/</sup>

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<sup>7/</sup> With respect to the SCPD testimony regarding backup generators, LILCO asserts that there is an additional reason for striking the testimony. In LILCO's view, the testimony is "incompetent" since the SCPD witnesses failed to file testimony on Contention 93, which asserts that there are no backup generators at the EOC or the staging areas. LILCO Motion, at 10-11. LILCO's argument is plainly without factual or legal basis. Under LILCO's reasoning, a witness would be judged incompetent to testify on an issue unless that witness had also filed testimony on every other subject related to that issue. The argument is ridiculous. Further, LILCO's presumptuous assertions about the County's decisions concerning testimony, or the competence of its witnesses, are inappropriate and should be disregarded. The testimony presented is relevant to Contentions 30 and 31, and therefore admissible for litigation.

Page 36, lines 6-7: LILCO asserts that this sentence, which states that "low band channels are more susceptible to outside interference," should be stricken because, according to LILCO, it "provides no hint" as to its significance and is thus neither relevant nor probative. LILCO Motion, at 11. This assertion is without merit and should be rejected. The question and portion of the answer immediately preceding the sentence extracted by LILCO states clearly both the "significance" of the statement and its relevance to Contentions 30 and 31. The SCPD testimony challenged by LILCO is one sentence in the response to a question which asks about problems with the broadcast range of the low band channels which are part of LILCO's proposed radio communications system. SCPD testimony, at 35. The response testimony notes that the range of a low band channel is generally better than that of a VHF channel (such as the one used by LILCO's road crews and evacuation route spotters, which the SCPD witnesses also discuss in their testimony), but that low band channels are more susceptible to outside interference. Obviously, the significance of such outside interference is that it impairs communications over the channel. The SCPD testimony, in its proper and complete context, is probative and relevant, and should not be stricken.

Page 36, line 17, thru page 41, line 3: LILCO asserts that all the SCPD testimony regarding problems with dedicated telephone lines should be stricken because it is outside the scope of Contentions 30 and 31. LILCO Motion, at 11-12. The County strongly disagrees and urges denial of LILCO's motion.

LILCO has no basis for its assertion that the SCPD testimony is outside the scope of Contentions 30 and 31. The testimony is consistent with a fair reading of the Contentions, which allege deficiencies in LILCO's proposed communications system and equipment during an emergency at the Shoreham plant. Moreover, Contention 31 specifically references LILCO's scheme to have dedicated telephone lines between the staging areas and the EOC, and notes that "[i]n the absence of backup systems, there is no assurance that recommended and appropriate emergency actions can or will be implemented, since command and control instructions may not be communicated to personnel in the field, and the status of the emergency response may not be communicated to those in command and control." As the SCPD testimony notes (at page 14) and the Contentions recognize, under the LILCO Plan, "command and control instructions" are primarily communicated to personnel in the field, through staging area coordinators and lead traffic guides stationed at LILCO's staging areas, via dedicated telephone lines. Thus,

problems with the dedicated lines are all that is necessary to prevent communications, because of the absence of backup means of communications. The SCPD witnesses' discussion of why the need for backup is so important -- i.e., because the primary system is likely to fail -- is clearly probative, material, and relevant to the Contentions.

Moreover, this LILCO objection, like others discussed previously (see discussion above and County's Contention 26 Response and Contentions 55-58 Response), amounts to an argument that testimony cannot deviate from the words used in a contention. There is no requirement that a contention include the evidence which supports the contention, nor can testimony, to be meaningful, be so unrealistically and rigidly limited as LILCO suggests. LILCO's motion has no merit.

LILCO also asserts that the SCPD testimony beginning on page 37, line 6, and ending on page 38, line 5, should be stricken on grounds of relevancy and because it allegedly lacks "factual predicate" in the testimony. LILCO Motion, at 12-13. Neither of these assertions has any merit.

The relevancy objection is the same as the "beyond the scope of the Contention" objection just discussed. It is invalid for the same reasons. The SCPD testimony challenged by

LILCO discusses various reasons that dedicated telephone lines fail. This testimony is relevant to the Contentions 30 and 31 issues of the adequacy and reliability of LILCO's communications system in light of its reliance on dedicated telephone lines and the absence of backup methods of communications.

LILCO's "lack of factual predicate" objection must be rejected for the reasons previously discussed regarding LILCO's "lack of basis" objections. (See discussion above and County's Contention 26 Response and Contentions 55-58 Response). LILCO's disagreement with the witnesses' opinions does not constitute a basis for striking the testimony.

LILCO also moves to strike the sentence beginning on line 8 and ending on line 11 of page 38 on the ground that problems with commercial telephone lines were raised in proposed Contention 26.B, which was rejected by the Board. LILCO Motion, at 13. LILCO's argument should be rejected for the reasons set forth in the County's Contention 26 Response and Contentions 55-58 Response, which are incorporated by reference. This sentence in the SCPD testimony does not address telephone line overload. Further, the testimony challenged here by LILCO relates to dedicated telephone lines, whereas Contention 26.B was limited to potential overload of commercial telephone



lines. There is no basis for striking this testimony which is relevant, probative and material for the reasons stated above.

Finally, LILCO moves to strike all the SCPD testimony (i.e., page 38, line 14, thru page 41, line 3) which discusses LILCO's so-called "priority service" agreement with the New York Telephone Company, and the following particular passages of that testimony: page 39, lines 9-11; page 39, lines 11-16; page 39, line 17, thru page 41, line 3; and page 40, line 22, thru page 41, line 3. LILCO Motion, at 13-16. LILCO's arguments for striking these portions of the testimony lack merit and should be rejected.

The sentence on page 39, lines 9-11, states that "[i]n most cases, the Telephone Company has not been able to restore a downed circuit in much less than approximately six hours." This testimony, contrary to LILCO's assertion, pertains to the Telephone Company's performance in restoring downed circuits covered by priority service agreements. Indeed, there is no other way to construe the testimony in light of the sentence which precedes the challenged sentence. That sentence states that

it is unrealistic for LILCO to assume that merely because of the Telephone Company's [priority service] letter, service would in fact be promptly restored if there were a problem during a Shoreham emergency.

Thus, the testimony challenged by LILCO is relevant and probative with respect to LILCO's priority service agreement with the Telephone Company, and LILCO's attempt to strike this testimony should be rejected.

LILCO also moves to strike the SCPD testimony on page 39, lines 11-16. Contrary to LILCO's assertions, this testimony, which notes that restoration of a downed circuit could take far longer than six hours during an emergency at Shoreham, is relevant, material and probative of issues raised by Contentions 30 and 31. This testimony does not relate in any way to proposed Contention 26.P. Further, there is ample factual basis for the testimony based upon the broad experience of the SCPD witnesses in dealing with emergency conditions. Thus, the testimony is not beyond the competence of the witnesses. In any event, for the reasons previously noted, LILCO's "lack of basis" objection is not a proper ground for striking testimony. Moreover, LILCO's "competency" objection does not make the "explicit, detailed showing" as to why the SCPD witnesses' statements are outside their area of expertise required by the Board's January 16 Order.<sup>8/</sup>

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<sup>8/</sup> LILCO also raises a role conflict objection to the testimony on page 39, lines 11-16. This objection is without merit, since the challenged testimony does not raise any role conflict issues discussed in Contention 25. It

(Footnote cont'd next page)

Finally, LILCO moves to strike the SCPD testimony beginning on page 39, line 17, thru page 41, line 3. LILCO asserts that this testimony should be stricken as irrelevant, because it bears "no apparent relationship to the agreement provided by New York Telephone Company to LILCO." LILCO Motion, at 15. This assertion is patently absurd. Indeed, there is no way to construe the SCPD testimony as anything but relevant to the LILCO agreement. As the SCPD witnesses clearly point out, so-called "priority service" agreements with the New York Telephone Company mean very little. SCPD testimony, at 39. In support of this assertion, the SCPD witnesses discuss their own experience with the Telephone Company, as well as the experience of a hospital whose priority service line was down for more than a month. SCPD testimony, at 40-41. The bottom line conclusion reached by the SCPD witnesses is that "even with

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(Footnote cont'd from previous page)

discusses how long restoration of service would take during a Shoreham emergency. LILCO has failed to state any reason to strike the testimony. Similarly, LILCO's objection to that portion of the testimony which notes that telephone crews might not be able to reach problem areas quickly because of the highway congestion expected to occur during an emergency should be rejected. The SCPD witnesses are entitled to rely upon the testimony of other witnesses for the factual predicate of their conclusions (see January 16 Order, at 6). Further, LILCO can explore the limits of the witnesses' expertise in this area on cross examination.

priority service agreements, there is no guarantee of quick service." SCPD testimony, at 40. Thus, the SCPD testimony is relevant to and probative of a matter placed in issue by LILCO itself -- that is, LILCO's reliance upon its letter agreement with the New York Telephone Company as a way to provide assurance that commercial and dedicated telephone lines will be available for use during an emergency at the Shoreham plant.

V. Contention 32

LILCO's motion to strike the SCPD testimony on Contention 32 has no basis in law, fact, or logic. LILCO argues that because Contention 32 asserts that a lack of direct communications between field emergency response personnel and the EOC "will" result in delaying the implementation of emergency actions, and in their testimony the SCPD witnesses say that there "may" be such delays, all the SCPD testimony on Contention 32 (pages 41-43) should be stricken on the grounds that it "does not support Contention 32 and is therefore irrelevant." LILCO Motion, at 16. LILCO does not explain, justify, or provide any legal basis for this objection. In fact, there is absolutely no basis or merit to it. The SCPD witnesses state in their testimony that they agree with Contention 32, and with the summary of it (which includes the word "will" which is

contained in the question on page 41. LILCO's extraction of the word "may" from the witnesses' answer provides no basis to strike their testimony. See also discussion above concerning Contentions 30 and 31 and LILCO's quibble with the witnesses' use of the word "could."

Moreover, LILCO's belief that the testimony "does not support Contention 32" is not a ground to strike it. If anything, one would think LILCO would be pleased to have the testimony in the record if it truly believes it supports LILCO's rather than the County's position. This LILCO argument is on its face ridiculous. The testimony clearly is relevant, material, probative and admissible.

#### VI. Contention 34

LILCO moves to strike the first paragraph on page 44 of the SCPD testimony on Contention 34 on the grounds that the Contention asserts that the lack of direct communications between the EOC and ambulance vehicles "will" delay the implementation of emergency actions, while the testimony uses the word "may." LILCO Motion, at 16-17. For the reasons stated above, this objection fails to provide a basis for striking the proffered testimony. Again, the testimony makes clear that the SCPD witnesses agree with the Contention, and their testimony is therefore relevant.



LILCO also moves to strike the second paragraph on page 44 of the SCPD testimony. LILCO asserts that this testimony is barred by the Board's rejection of proposed Contention 26.B. LILCO Motion, at 17. LILCO's assertion is simply wrong. We will not repeat here the arguments we have made elsewhere on this objection. However, given that the testimony at issue explicitly references the testimony on Contention 26, which includes only testimony on the subparts of that Contention that were admitted by the Board, the "problems" mentioned in this testimony, by definition, exclude those raised in Contention 26.B concerning overload.

Finally, LILCO moves to strike the second paragraph on page 45 of the SCPD testimony, which discusses LILCO's failure to have a communications link to all fixed and mobile medical support facilities relied upon by LILCO. LILCO argues that there is no factual basis for the SCPD testimony, and that it is therefore not probative and irrelevant. LILCO Motion, at 17. LILCO, however, has previously argued -- and lost -- its objection to the admissibility of Contention 34. See LILCO's Objections to Intervenor's "Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan," dated January 19, 1984, at 15; Memorandum and Order Ruling on Intervenor's Proposed Emergency Planning Contentions Modified to

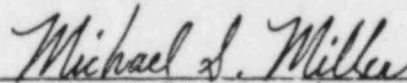
Reflect Revision 3 of the LILCO Plan, dated February 3, 1984, at 10. The Board should reject this attempt by LILCO to reargue the admissibility of Contention 34 through the guise of a motion to strike.

VII. Conclusion

For the reasons set forth above, LILCO's "Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contentions 28, 29, 30, 31, 32 and 34" should be denied by the Board.

Respectfully submitted,

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March 16, 1984

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