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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION⁸⁴ MAR 19 110:52Before 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 CONTENTIONS 55-58I. Introduction

On March 9, 1984, LILCO moved to strike portions of the 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 55-58 (Notification to the Public) (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.^{1/}

^{1/} In responding to LILCO's "Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contention 26," LILCO asserted, and we

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II. Purposes and Conclusions

LILCO contends that lines 8-15 of page 5 of the SCPD testimony "attempts to resurrect the issue of the adequacy and dependability of commercial telephones." LILCO Motion, at 1. In LILCO's view, this issue was specifically raised and rejected by the Board in proposed Contention 26.B. Thus, LILCO asserts that the testimony should be stricken. LILCO Motion, at 1-2. LILCO's assertion is plainly wrong.

We address LILCO's identical objections to other SCPD testimony which discusses various problems identified in other admitted contentions relating to LILCO's reliance upon commercial telephones, and we incorporate by reference those arguments here. 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"). Quite simply, LILCO's

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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.

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 testimony challenged by LILCO relates to Contention 58 -- which was admitted by the Board and which does not deal with that issue at all. As is clear from a review of Contention 58, it concerns other problems created by LILCO's reliance upon commercial telephones, such as the fact that persons might be away from their telephones or for other reasons inaccessible by telephone.

Moreover, the testimony challenged by LILCO merely summarizes the allegations set forth in Contention 58,^{2/} and LILCO filed no objections to original Contention 58. See LILCO's Objections to Intervenor's "Revised Emergency Planning Contentions," dated August 2, 1983 (hereinafter, "LILCO's August 2 Objections"), at 54. Nor did LILCO object when Contention 58 was later modified to reflect Revision 3 of the LILCO Plan. See LILCO's Objections to Intervenor's "Proposed Emergency Planning Contentions Modified to Reflect Revision 3 of the LILCO Plan," dated January 19, 1984 (hereinafter, "LILCO's

^{2/} The passage sought to be stricken is set forth in the introductory section of the SCPD testimony. LILCO's petty objection to clearly introductory material should be rejected.

January 19 Objections"). Because Contention 58 has always addressed concerns about LILCO's reliance on commercial telephones, and because the Board has on two occasions admitted the Contention as stated,^{3/} without objection from LILCO, there is no basis for LILCO now to attempt, in essence, to argue that Contention 58 is not admissible. Thus, LILCO's motion to strike the passage on lines 8-15 of page 5 of the SCPD testimony should be denied.

III. Contention 55

LILCO seeks to strike the following portions of the SCPD testimony on Contention 55:

1. Page 6, line 9, thru page 8, line 9;
2. Page 9, lines 10-14; and
3. Page 10, line 6, thru end of page 12.

In moving to strike these portions of the SCPD testimony, LILCO asserts that they consist "almost entirely of matters

^{3/} Original Contention 58 was admitted by the Board in its Special Prehearing Conference Order of August 19, 1983 (hereinafter, "August 19 Order"), at 21. The Board was not required to rule on modified Contention 58 in light of the absence of any objection to the proposed modifications. 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"), at 6.

beyond the scope of the Contention" and are therefore irrelevant under 10 CFR §2.743(c). LILCO Motion, at 2. LILCO also asserts that some of the testimony it challenges (page 7, line 16, thru page 8, line 9; page 10, lines 6-10; and page 12, lines 19-21) is based upon what it characterizes as "erroneous interpretations" of applicable regulations and guidelines, which, in LILCO's view, renders the testimony irrelevant "to any issue in this proceeding." LILCO Motion, at 3, 4. Suffolk County strongly disagrees with LILCO's assertions and urges denial of LILCO's Motion.

Page 6, line 9, thru page 8, line 9: LILCO contends that since Contention 55 "refers exclusively to alleged communications deficiencies 'noted in Contention 26' that allegedly would prevent LERO from being able 'to contact its command and control personnel in a timely manner' [a]ny asserted delay in activating the siren system after the Director of Local Response is contacted is plainly beyond the scope of the Contention and therefore irrelevant." LILCO Motion, at 2-3. For several reasons, LILCO's argument should be rejected by the Board.

Contention 55 states:

Under the LILCO Plan, a system of 89 fixed sirens will be used to alert the public to an emergency at the Shoreham plant. (Plan, at 3.4-6). However, as a result of the deficiencies noted in Contention 26, LILCO

will be unable to contact its key command and control personnel in a timely manner, thus potentially delaying the decision to activate the siren system, in violation of 10 CFR Section 50.47(b)(5), Part 50, Appendix E, Section IV.D.3, and NUREG 0654, Sections II.E.6 and Appendix 3.

Contention 55 specifically addresses whether, given LILCO's reliance on sirens to alert the public to an emergency at the Shoreham plant, a delay in the decision to activate the sirens could result in a failure to provide timely notification to the public. Testimony which discusses why the activation of the siren system may be delayed is relevant. Whether any such delays are the result of LILCO's failure to contact key command and control personnel in a timely manner, or the result of actions required to be taken under the LILCO Plan after certain individuals have been contacted, makes no difference. Both are equally relevant to the admitted Contention. Indeed, any discussion regarding LILCO's decision to activate the siren system must necessarily include both LILCO's proposed scheme for notifying personnel responsible for activating the sirens and the actions required to be taken after notification but before activation can take place. That is what the SCPD witnesses do in the testimony which LILCO seeks to strike. LILCO therefore misconstrues Contention 55 in alleging the SCPD testimony to be irrelevant, and its restrictive reading of the Contention should be rejected.^{4/}

^{4/} LILCO's attempt to strike the SCPD testimony on Contention 55 is similar to its attempt to strike those portions of

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Moreover, LILCO simply has no basis to complain that the SCPD testimony is outside the scope of Contention 55. The SCPD testimony is consistent with a fair reading of the Contention. The thrust of the Contention concerns activation of LILCO's siren system. As a result, consideration of reasons which might delay such activation, including actions that must be taken by key command and control personnel after notification of an emergency, is essential to resolution of the Contention.^{5/}

One other point remains to be made. In asserting that the SCPD testimony is outside the scope of Contention 55, LILCO apparently assumes that, to be relevant and admissible, testimony must duplicate the words contained in the contention. Thus, in essence LILCO argues that all the County's testimony should be

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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.

^{5/} Moreover, the construction of the Contention apparently urged by LILCO would make Contention 55 identical to, or subsumed within, Contention 26, which would be ridiculous.

in its contentions, or else the testimony is "beyond the scope" of the contentions. Under the NRC rules, to be admissible a contention need only state its basis with reasonable specificity. 10 CFR §2.714(b). That is, the contention must be specific enough that the other parties "are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose." Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). There is no requirement, however, that a contention contain the details of the testimony that will be filed in support of the contention. A contention need not detail the evidence which will be offered in support of the contention. See Philadelphia Electric Company, supra; Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

Page 7, line 16, thru page 8, line 9: LILCO contends that there is an additional reason for striking this portion of the SCPD testimony. In LILCO's view, the testimony misconstrues applicable regulations and guidelines governing notification to the public of an emergency and is therefore irrelevant. For several reasons, LILCO's argument should be rejected.

LILCO argues that it is only required to provide notification to the public "within 15 minutes of the decision to

declare a general emergency or a decision to activate the system" (LILCO Motion, at 3), and that the SCPD testimony assumes, incorrectly, that the Director of Local Response must activate the siren system within 15 minutes of the declaration of an emergency. LILCO asserts that this assumption is incorrect as a matter of law. Although the County believes that LILCO's apparent interpretations of the regulations is incorrect, neither LILCO's motion nor this Response is the proper place for discussing that matter. In ruling on LILCO's strike motion, this Board must determine only whether the testimony at issue is probative, material and relevant to Contention 55, not the ultimate issue presented in the Contention -- that is, whether the LILCO Plan in fact complies with the regulations which the Contention asserts have been violated.

There are other reasons for denying LILCO's motion. First, in its motion, LILCO mischaracterizes the SCPD testimony. The SCPD testimony makes clear that because of deficiencies in LILCO's communications system for notifying emergency response personnel (including the Director of Local Response) of an emergency, and because of the actions required for siren activation under the LILCO Plan, LILCO does not have the capability "of notifying the public within even 30 minutes after the declaration of an emergency." SCPD testimony, at 7-8.

Second, Contention 55 has always alleged that LILCO's public notification scheme must be capable of essentially completing the initial notification of the public "within about 15 minutes." See Preamble to Contentions 55-59. LILCO's argument in its motion amounts to a disagreement with the Contention, which is not the basis for a motion to strike testimony. The Board has admitted Contention 55 and the Preamble thereto. See August 19 Order, at 20. The testimony at issue clearly is relevant to that Contention since it directly addresses the likely delays in LILCO's ability to activate sirens and accomplish notification of the public.

Finally, as noted above, the ultimate issue to be determined by the Board in this proceeding is whether LILCO complies with the NRC's regulations. Contention 55 deals with LILCO's alleged noncompliance with specific cited regulatory requirements. It has been admitted by the Board for litigation -- without objection to its admissibility by LILCO. The only question is whether the testimony filed in support of the Contention is "relevant, material and reliable evidence which is not unduly repetitious." 10 CFR §2.743(c). If LILCO disagrees with the County's interpretation of applicable regulations, it can argue in its post-trial briefs that the evidence shows that particular regulatory requirements cited in the Contention and

the testimony are satisfied. Indeed, resolving such basic disputes between the parties is the purpose of litigation. The Board should make its findings on such matters, however, after the parties present their evidence, not in deciding the admissibility of testimony. Any other result would permit LILCO, simply because it disagrees with proffered testimony, to have another party's testimony stricken based on unsupported assertions as to what the regulations do or do not require. LILCO's motion should be denied as to this portion of the SCPD testimony.

Page 9, lines 10-14; page 10, line 6, thru end of page 12:
LILCO moves to strike these portions of the SCPD testimony on the same grounds that it seeks to strike the testimony at page 6, line 9, thru page 8, line 9, discussed above. We will not repeat the arguments made above, which are equally applicable to LILCO's objection to these portions of the SCPD testimony.

LILCO has no basis for asserting that the County is precluded from discussing why the need for broadcast of EBS messages will delay activation of the LILCO siren system. Contention 55 concerns potential delays in LILCO's activation of sirens. Since, under the LILCO Plan, the activation of the sirens must occur simultaneously with the broadcast of EBS messages (see, e.g., OPIP 3.1.1, at 8; OPIP 3.3.4, at 1),

testimony addressing the actions required to broadcast EBS messages is relevant, material and probative to the issues raised in Contention 55. Thus, there is no basis for LILCO's assertion that the testimony challenged is beyond the scope of the Contention and therefore irrelevant.

Page 10, lines 6-10, and page 12, lines 19-21: LILCO moves to strike these portions of the SCPD testimony on the same grounds that it seeks to strike the testimony at page 7, line 16, thru page 8, line 9. We will not repeat the arguments made above, which are equally applicable to LILCO's objections to these portions of the SCPD testimony.

IV. Contention 56

LILCO seeks to strike the following portions of the SCPD testimony on Contention 56:

1. Page 13, line 14, thru page 14, line 4;
2. Page 15, lines 15-23;
3. Page 16, lines 3-7;
4. Page 16, lines 13-17;
5. Page 16, line 21, thru page 17, line 5, including footnote 4, page 17;
6. Page 17, lines 9-12; and
7. Page 20, lines 16-19.

In moving to strike these portions of the SCPD testimony,

LILCO alleges that the testimony is deficient in a number of ways. The County disagrees and urges denial of the LILCO motion for the reasons discussed below.

Page 13, line 14, thru page 14, line 4: LILCO asserts that this portion of the SCPD testimony is "beyond the competence or expertise of the County's sponsoring witnesses." LILCO Motion, at 4. In support of this assertion, LILCO argues that although the issue of backup power to LILCO's sirens is squarely raised in Contention 95A, "[t]he County filed no testimony on that Contention, as the County presumably would have done if the County's witnesses had been competent to testify on that issue." Id. 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 Board has previously ruled that in moving to strike portions of testimony allegedly outside a witness' area of expertise, the moving party must make an "explicit, detailed showing as to exactly what that expertise is, and why specific

statements are outside it." January 16 Order, at 5. LILCO has failed to make such a showing and its objection to this portion of the SCPD testimony should be rejected. Moreover, it is clear that the SCPD witnesses are qualified to discuss issues relating to LILCO's lack of backup power to the siren system. The SCPD witnesses have a broad range of communications expertise and experience and are familiar with the issue in question, as set forth in their testimony and the attachments thereto. Further, the information regarding LILCO's siren system and LILCO's inability to confirm whether the sirens have activated was provided to the County by LILCO. (See deposition of William Renz, at 77-79). Thus, LILCO has no basis to complain about the "expertise" of the SCPD witnesses. Those witnesses are only testifying about LILCO's lack of backup power to the sirens, a fact which requires little expertise, based on the information provided to the County by one of LILCO's own witnesses.

LILCO also asserts that this portion of the SCPD testimony is irrelevant to Contention 56, since that Contention "focuses on the use of route alert drivers and makes no mention of a backup power source for the sirens." LILCO Motion, at 4-5. This assertion is equally without merit. The very first sentence of Contention 56 alleges that "[t]he LILCO Plan does

not provide adequate backup in the event of failure of the LILCO siren system." Clearly, lack of backup power for the sirens is relevant to this assertion in the Contention. Moreover, as noted previously, there is no basis for LILCO's assertion that the words in testimony cannot go beyond the words used to state a contention in order to be relevant and not subject to a motion to strike. Contention 56 was admitted by the Board, and the testimony at issue addresses a matter plainly set forth in that Contention. LILCO's relevancy objection should therefore be rejected.

Page 15, lines 15-23: In moving to strike this portion of the SCPD testimony, LILCO again asserts that the County seeks to resurrect Contention 26.B, which was rejected by the Board in its August 19 Order. LILCO Motion, at 5. We have previously addressed LILCO's objections to testimony which discusses problems created by LILCO's reliance upon commercial telephones, and we will not repeat those arguments here. See discussion above and County's Contention 26 Response. It is sufficient to note that the testimony challenged by LILCO does not involve potential overload of the commercial telephone system, which was the only issue raised in Contention 26.B. The testimony addresses Contention 56; which was admitted by the Board. The LILCO motion ignores the contents of that Contention;

instead, LILCO does nothing but seize upon the word "telephone" in the SCPD testimony and assert, without basis or explanation, that for that reason alone, the testimony should be stricken. LILCO's motion should be denied.

Page 16, lines 3-7: LILCO asserts that the SCPD witnesses are not competent to sponsor this portion of their testimony. Further, LILCO asserts the testimony is irrelevant. LILCO Motion, at 5. LILCO's assertions are both incorrect.

First, as this Board has previously ruled, bald assertions regarding a witness' alleged lack of expertise are insufficient to strike proffered testimony. Rather, an "explicit, detailed showing as to exactly what that expertise is, and why specific statements are outside it" is required. January 16 Order, at 5. LILCO fails to meet this requirement.

Moreover, this Board has also recognized that a witness may draw conclusions from the testimony of other witnesses and that a witness may recite the testimony of others to show the factual predicate of his own conclusions. January 16 Order, at 6. This is the context of the SCPD testimony challenged here by LILCO. It is, according to this Board's prior rulings, proper testimony.

Finally, there is no question that the challenged testimony is relevant to Contention 56, which discusses failure of

LILCO's sirens. The study referenced by the SCPD witnesses found, among other things, that a significant percentage of sirens generally fail to activate. There is no basis to strike the testimony.

Page 16, lines 13-17: LILCO claims that there is no predicate in the LILCO Plan or Procedures for this testimony, which asserts that "LILCO may not even be aware that route alert drivers need to be dispatched until 90 minutes or more after the sirens relied upon by LILCO to notify the public had failed to activate." SCPD testimony, at 16. LILCO's objection is simply wrong.

The SCPD testimony recognizes that LILCO's agreement with Marketing Evaluations requires Marketing Evaluations to notify LILCO whenever it determines that any siren has failed to activate. Thus, the testimony states that:

If it is determined that any siren is not working, the Marketing Evaluations representative(s) conducting the survey is expected to telephone the EOC to advise personnel of that fact. Marketing Evaluations will also telephone the EOC when the survey is completed.

SCPD testimony, at 14. (Emphasis added). This testimony is not inconsistent with other testimony proffered by the SCPD witnesses regarding the fact that LILCO may nevertheless not be aware that sirens have failed until the 90 minutes required to

complete the Marketing Evaluations survey have lapsed. For example, it may not be discovered until near the end of the survey that some sirens have failed. Then, even if LILCO is immediately notified of this fact by Marketing Evaluations, route alert drivers would not be dispatched until 90 minutes or more after the sirens had failed to activate.

More importantly, however, LILCO's opinion of the SCPD testimony, even if correct (and, as shown above, it is not), does not constitute a basis for striking the testimony. LILCO's agreement amounts to nothing but a disagreement with the conclusions drawn by the SCPD witnesses. Such disagreements are to be resolved by the Board after hearing the evidence, including LILCO's cross examination of the SCPD witnesses. Such disagreements are not the proper subject for a motion to strike. Clearly, the testimony at issue is material, probative, and relevant to Contention 56, and should not be stricken.

Page 16, line 21, thru page 17, line 5, including footnote 4, page 17: LILCO asserts that the SCPD witnesses are not competent to express an opinion regarding notification and mobilization of LILCO's route alert drivers. In addition, LILCO asserts that the cross reference to Contention 27 (Mobilization) "will simply be repetitious and cumulative" and should

therefore be stricken. LILCO Motion, at 6. Neither of LILCO's assertions is well founded.

LILCO's competency objection must be denied because it fails to make an "explicit, detailed showing" as to why the SCPD witnesses are not qualified to render such testimony. January 16 Order, at 5. Further, as previously noted, witnesses may draw conclusions from the testimony of other witnesses and may recite the testimony of others to show the factual predicate of their own testimony. January 16 Order, at 6. This is the context of the SCPD testimony challenged by LILCO, and LILCO's objection should therefore be rejected.

LILCO's repetitious and cumulative objection should also be denied. As this Board has previously noted, "[t]estimony is not made 'cumulative' or 'unduly repetitious' by a mere reference to the testimony of another." To succeed with a motion to strike on that ground, an "explicit showing, with citation to specific passages," is required. January 16 Order, at 6. LILCO has not made the requisite explicit showing. Nor does LILCO's objection cite to specific passages of the County's Contention 27 testimony which support its claim of repetitious or cumulative testimony. Indeed, LILCO merely alleges that the cross reference to Contention 27 "will simply be repetitious and cumulative." (Emphasis added). Thus, LILCO's objection should be rejected.^{6/}

^{6/} An additional reason for denying LILCO's motion is that consideration of mobilization issues are integrally

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Page 17, lines 9-12: LILCO seeks to strike these two sentences based on the assertion that they lack basis. There is no requirement that a separate "basis" for every sentence contained in testimony be expressly stated in the testimony. Moreover, notwithstanding LILCO's assertion, whether the bases for conclusions in witnesses' proffered testimony are adequate or correct is irrelevant to the issue of admissibility of that testimony. Rather, the adequacy or correctness of the bases of an expert's opinion goes to the merits of proffered evidence, which is a matter to be determined at the hearing. However, even if testimony is required to have a basis in the record to be admissible, it exists here since the SCPD witnesses are qualified to render an opinion regarding whether members of the public will stop route alert drivers to ask questions, based upon their broad experience as police officers.^{7/} That

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connected with Contention 56, which discusses LILCO's plan to dispatch route alert drivers to notify the public of an emergency in the event of failure of LILCO's sirens. Further, the SCPD witnesses were careful to limit their discussion of Contention 27 to the issue of LILCO's route alert drivers. There was no attempt to address the mobilization of other emergency response personnel, or even the details regarding mobilization of the route alert drivers. Thus, the testimony sought to be stricken by LILCO is narrow and directly related to Contention 56.

^{7/} LILCO also claims that the SCPD testimony presumes, without any basis, that route alert drivers would stop and

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experience provides support for the fact that emergency personnel, as a general matter, are typically asked questions by the public. An analogy can be found with police officers who, in rerouting traffic (for example, because of a fire or an accident blocking the road) are asked questions by motorists as to where they are being directed and how they can get back to a route familiar to them.

Page 20, lines 16-19: LILCO asserts that this testimony "constitutes mere speculation and conjecture." In addition, LILCO asserts that there is no requirement in the regulations or guidelines that 100 percent of the population receive notification. Thus, it seeks to bar the testimony on grounds of relevancy. LILCO Motion, at 6-7.

LILCO's objections are without merit and should be denied. Contention 56 has always alleged that "some persons will not hear the broadcast message" by LILCO's route alert drivers. LILCO never objected to this language (see LILCO's August 2 Objections) and it should not now be permitted to object to examples which merely support the language specifically set forth in the Contention.

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answer all questions asked by members of the public. LILCO simply misreads the testimony in this regard. Contrary to LILCO's assertions, the testimony makes no reference one way or the other to whether route alert drivers will answer questions by members of the public.

LILCO's assertions about the testimony assuming a requirement for 100 percent notification is a gratuitous and baseless comment that has no relevance. The testimony addresses the subject raised in the Contention and is proper.

V. Contention 57

LILCO seeks to strike page 22, lines 15-23, of the SCPD testimony on the ground that there is no regulatory requirement for advance warning to special facilities. Therefore, in LILCO's view, testimony alleging that special facilities and other organizations would be provided no additional alerting or preparation time by means of tone alert radios is irrelevant. LILCO Motion, at 7.

LILCO's objection merely attempts to reargue an issue already decided by the Board and should be rejected. In its August 2 Objections, LILCO argued that whether tone alert radios provide special facilities with additional time (for evacuation, sheltering, or implementation of other protective actions) "is outside the legal requirements." LILCO's August 2 Objections, at 53. In its response to LILCO's argument, the County asserted that LILCO's "lack of legal requirement" objection is an issue to be decided by the Board after the parties present their evidence and proposed findings of fact

and conclusions of law, not in deciding the admissibility of a contention. See Suffolk County's Response to LILCO's Objections to Intervenors' Revised Emergency Planning Contentions and to NRC Staff Response to Revised Emergency Planning Contentions, dated August 8, 1983 (hereinafter, "County's August 8 Response"), at 9-12. The Board admitted Contention 57 for litigation. August 19 Order, at 21.

LILCO now raises again its "lack of legal requirement" objection. The only difference is that this time, LILCO makes its objection in the guise of a motion to strike. That, of course, makes no difference to the issue of admissibility previously decided by the Board, and LILCO's motion should be denied. Clearly, the testimony addresses the Contention admitted by the Board. Thus, LILCO must await the appropriate time to make its legal arguments about whether it has complied with regulatory requirements. The testimony is relevant to issues raised in Contention 57, and LILCO's motion should therefore be denied.

VI. Contention 58

LILCO seeks to strike the following portions of the SCPD testimony on Contention 58: -

1. Page 24, line 21, thru page 25, line 5; and
2. Page 25, lines 9-12.

For the reasons discussed below, the County urges that LILCO's objections to these portions of the SCPD testimony be denied.

Page 24, line 21, thru page 25, line 5: Once again, LILCO asserts that the County is seeking to resurrect Contention 26.B. LILCO Motion, at 7-8. Once again, LILCO's objection is without merit and should be denied. We have previously addressed LILCO's objections to testimony which discusses problems created by LILCO's reliance upon commercial telephones and we will not repeat those arguments here. See discussion above and County's Contention 26 Response. It is sufficient to note that the testimony challenged by LILCO does not involve potential overload of the commercial telephone system, which was the only issue raised in Contention 26.B.

Further, Contention 58 has always alleged that LILCO's reliance on commercial telephones to contact special facilities and the handicapped at home will create problems in providing notification to those facilities and persons. The Board admitted Contention 58 -- including its references to commercial telephones not providing an adequate, workable or dependable means of timely notification of or communication with special facilities and handicapped persons at home. August 19 Order,

at 21. And, LILCO did not object to Contention 58 when it was originally filed (see LILCO's August 2 Objections, at 54). The testimony is clearly relevant to the Contention admitted by the Board, and LILCO should not now be permitted to raise an objection to the admissibility of the Contention in the guise of a motion to strike. Thus, LILCO's objection to this portion of the SCPD testimony should be rejected.

Page 25, lines 9-12: LILCO asserts that this testimony is "nothing more than a cumulative cross reference to the County's testimony on Contentions 72 and 73." Thus, it argues that the testimony should be stricken as repetitious and cumulative. LILCO Motion, at 8.

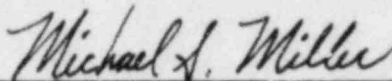
LILCO's objection ignores prior rulings of this Board and should be rejected. As previously noted, witnesses may draw conclusions from the testimony of other witnesses and may re-cite the testimony of others to show the factual predicate of their own testimony. January 16 Order, at 6. This is the context of the SCPD testimony challenged by LILCO. Thus, the testimony is neither repetitious or cumulative. As previously recognized by the Board, "[t]estimony is not made 'cumulative' or 'unduly repetitious' by a mere reference to the testimony of another." January 16 Order, at 6. Because LILCO has not made the explicit showing required to strike testimony on this ground, its objection should be denied.

VII. 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 Contentions 55-58."

Respectfully submitted,

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Dated: March 16, 1984