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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE

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 MEMORANDUM
IN OPPOSITION TO LILCO'S MOTION
TO STRIKE PORTIONS OF THE TESTIMONY
OF SUSAN SAEGERT ON CONTENTION 73.A

In its Motion to Strike Portions of the Testimony of Susan Saegert Concerning Emergency Planning Contention 73.A, dated March 9, 1984 (hereinafter, "Motion"), LILCO seeks to strike two portions of the Direct Testimony of Susan Saegert on Behalf of Suffolk County Concerning Emergency Planning Contention 73.A -- Evacuation of the Homebound, dated March 2, 1984 (hereinafter, "Saegert testimony"). For the reasons set forth below, LILCO's motion should be denied.

The first portion of the Saegert testimony which LILCO seeks to strike is on page 5 of the testimony. It consists of the underlined language in the following paragraph:

Moreover, as I will discuss in more detail in my testimony on Contentions 15 and 16, people are unlikely to read material they

receive in the mail, if they do not perceive it as being immediately important to them, or if they view the sender's credibility as being low. Both of these perceptions are likely with respect to information sent by LILCO. Therefore, it is likely that many handicapped residents of the EPZ would not return postcards because they would never read either the postcard or the accompanying letter or brochure.

LILCO moves to strike the three lines of testimony because "there is no mention of LILCO's alleged lack of credibility in Contention 73.A. Moreover, LILCO's credibility is already the subject of Contention 15." Motion at 2.

LILCO's observation that Contention 15 concerns LILCO's lack of credibility is true. Indeed, Professor Saegert noted that fact herself in the portion of the paragraph which LILCO does not seek to strike. However, the mere fact that the word "credibility" is used in a paragraph contained in testimony on Contention 73.A does not mean that the sentence containing that word is beyond the scope of Contention 73.A and should be stricken. LILCO's objection is totally without basis.

The referenced portion of Professor Saegert's testimony addresses subpart 1 of Contention 73.A, which alleges that "many people who will require assistance will not return the postcards to LILCO." Professor Saegert, in the paragraph at issue, discusses two reasons why people are unlikely to read the material they receive from LILCO in the mail, and one of them happens to be related to the public's view of the credibility of the sender of that information. The clause and sentence which LILCO seeks

to strike are clearly relevant to subpart 1 of Contention 73.A and neither the fact that they have the word "credibility" in them, or the fact that Professor Saegert will discuss the issue of credibility in more detail in her testimony on Contention 15 constitutes a basis for striking those portions of her testimony on Contention 73.A. The LILCO Motion should be denied.

LILCO also seeks to strike the paragraph beginning on page 5 and carrying over to page 6 of the Saegert testimony. The asserted basis for this motion is: "This testimony is outside the scope of Contention 73.A because it is clearly designed to support a contention that has been proposed but not yet admitted into the proceeding." Motion at 3. LILCO's assertion is inaccurate and, in any event, beside the point. The relevant inquiry with respect to the admissibility of testimony in an NRC proceeding, as LILCO itself notes in the beginning of its Motion, is whether the testimony is probative, material and relevant to an admitted contention. The paragraph which LILCO seeks to strike directly addresses Contention 73.A. Whether or not the comments contained in that paragraph may also be pertinent or relevant to other proposed, admitted, or not admitted contentions is completely beside the point. The fact that those comments are relevant to Contention 73.A is the only issue before this Board. A review of the contention and the portion of the Saegert testimony at issue reveals that there is no basis for striking that testimony.

The testimony which LILCO seeks to strike is the following:

Furthermore, even for those people who did read the brochure, the information in the brochure about what would be done for handicapped people may be too vague to lead those needing assistance to want to rely on the unidentified "LERO" for such assistance. Obviously such individuals are unlikely to return postcards.

(Saegert testimony at 5-6) This paragraph addresses the portion of Contention 73.A which states that "many people who will require assistance will not return the postcards to LILCO because they do not . . . (e) desire to rely on LILCO assistance in the event of an emergency."^{1/} Professor Saegert points out that the description of the assistance to be provided may be insufficient to lead many persons needing assistance to be willing to rely on LILCO to provide it.^{2/}

Clearly, Professor Saegert's observation is relevant to Contention 73.A.1. There is no basis upon which to strike that testimony.

^{1/} At the time Contention 73.A was drafted, LILCO's proposed information brochure did not refer to "LERO" in describing who would provide assistance to the handicapped, and therefore the word "LILCO" appears in the contention. Professor Saegert, obviously, was referring to Revision 3 of the brochure when she prepared her testimony on Contention 73.A, and therefore used the term "the unidentified 'LERO'" in describing the information that would be available, since that is the reference in the current version of the brochure.

^{2/} Contrary to LILCO's assertion in its Motion, the point made in the Saegert testimony is different from the proposed modified Contention 16.N. The Saegert testimony discusses the description of the assistance that would be provided to the handicapped; Contention 16.N discusses the references to LERO, the provider of the assistance. As noted above, however, any relationship between the Saegert testimony and any other contention is not material to the issue presented by the LILCO Motion to Strike because the Saegert testimony is relevant to Contention 73.A

Finally, LILCO's observation that, in its view, "the remedy" for the problem raised in this portion of Professor Saegert's testimony "would be to revise the brochure," and therefore this portion of Professor Saegert's testimony should be stricken from her testimony on Contention 73.A is without basis and also beside the point. First, there is no reason to believe that a revision in the brochure would necessarily change the decisions of handicapped persons concerning their willingness to rely on LILCO or LERO to provide assistance to them. Accordingly, Professor Saegert's opinion that some handicapped individuals will not return postcards could very well remain unchanged despite revisions in LILCO's brochure. Moreover, and to the point, the supposed "remedy" for an issue in a contention is not the standard by which a motion to strike is decided. Simply because a brochure revision may, in LILCO's view, be relevant to an issue raised in a particular contention, does not mean that testimony on that issue is beyond the scope of the contention in which it is raised.

LILCO's Motion to strike portions of the Saegert testimony should be denied in its entirety.

Respectfully submitted,

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Dated: March 16, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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LONG ISLAND LIGHTING COMPANY)

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CERTIFICATE OF SERVICE

I hereby certify that copies of:

1. Suffolk County's Response to LILCO's Motion to Strike Portions of the Direct Testimony of Philip B. Herr on Contention 22.D -- Inadequacy of LILCO's EPZ;
2. Suffolk County's Response to LILCO's Motion to Strike the Direct Testimony of Deputy Chief Inspector Richard C. Roberts, et al. on Contentions 24.T and 59;
3. Suffolk County Memorandum in Opposition to LILCO's Motion to Strike Portions of the Testimony of David Harris and Martin Mayer on Contentions 24.G and 75;
4. Suffolk County's Response to LILCO's Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contention 26;
5. 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;
6. Suffolk County's Response to LILCO's Motion to Strike Portions of Direct Testimony on Behalf of Suffolk County Regarding Emergency Planning Contentions 55-58;
7. Suffolk County's Response to LILCO's Motion to Strike Portions of The Suffolk County Police Department Witnesses Testimony on Emergency Planning Contention 66;
8. Suffolk County Response to LILCO's Motion to Strike Portions of State of New York Testimony on Contentions 66.D, 67, 73 and 97.B; and

9. Suffolk County Memorandum in Opposition to LILCO's
Motion to Strike Portions of the Testimony of Susan
Saegert on Contention 73.A.

were served this 16th day of March, 1984 by U.S. mail, first
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