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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,
Unit 1))

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

SUFFOLK COUNTY MOTION TO
STRIKE PORTIONS OF LILCO'S
GROUP II-B TESTIMONY

On March 21, 1984 LILCO filed eight separate pieces of Group II-B testimony.^{1/} Suffolk County hereby moves to strike portions of that testimony. For the convenience of the parties and the Board, the County has combined its motions to strike portions of the various pieces of LILCO's Group II-B testimony into one pleading. Each piece of LILCO testimony is discussed separately in Part II below.

The County moves to strike the portions of LILCO's Group II-B testimony identified in Part II of this pleading for one or more of the following reasons: the testimony is not relevant to the contentions at issue; the testimony is not

^{1/} The County uses the term "Group II-B" in the same sense as the Board used the term in its March 2, 1984 Order Confirming Schedule Changes.

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probative or reliable; the testimony is incompetent because it includes statements of legal conclusions or interpretations by unqualified witnesses. These grounds for the County's motions to strike are explained in Part I below, and are applied to particular passages from LILCO's Group II-B testimony in Part II.

I. Grounds for Motions to Strike

A. Irrelevancy

Section 2.743(c) of 10 CFR states:

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted.

In many instances LILCO witnesses offer evidence that is irrelevant, because it does not tend to prove or disprove facts that help resolve the issues raised in the admitted contentions purportedly being addressed by the witnesses. LILCO's irrelevant testimony tends to fall into several specific categories which are discussed below. One general comment on the irrelevant portions of LILCO's testimony is necessary, however.

The Board and the parties have spent large amounts of time and energy in this proceeding in an effort to obtain very detailed and specific contentions, limited and directly tied to

particular portions (and even pages or sentences) of Revision 3 of the LILCO Plan and to applicable regulatory requirements. LILCO has consistently made objections to proposed contentions that, in LILCO's view, go beyond the scope of the LILCO Plan, and the admitted contentions are, in every instance, limited to that Plan. In its testimony, however, LILCO attempts to discuss all sorts of extraneous matters that have no relation to LILCO's Plan or to the contentions at issue. The same rules that have been applied in ruling upon the County's contentions must be applied to LILCO. LILCO's efforts to expand this litigation to cover LILCO's political theories, predictions of the future, or its understanding of the contents of plans relating to other nuclear power plans should not be tolerated.

1. Pre-1982 Rejected Suffolk County Planning Efforts

Many passages of LILCO's Group II-B testimony address at length matters that allegedly occurred during preliminary Suffolk County planning efforts prior to March 1982. LILCO's Group II-A testimony contained similar passages, and the legal grounds for the County's motion to strike such testimony were set forth in its Motion to Strike Portions of LILCO's Group II-A Testimony, dated March 9, 1984, (hereinafter "Group II-A Motion") at 7-10. That discussion is incorporated herein by

reference and will not be repeated. The salient point is that the only issue before the Board in this proceeding is whether Revision 3 of the LILCO Transition Plan complies with applicable regulatory requirements (see Order Limiting Scope of Submissions, June 10, 1983.) Whether certain County employees several years ago sent letters or took other actions as asserted by LILCO witnesses at various places in their testimony is simply not relevant to the question of whether Revision 3 of the LILCO Plan provides reasonable assurance that adequate protective actions could and would be taken by LILCO in the event of a radiological emergency at Shoreham.

Moreover, as noted in the County's Group II-A Motion, LILCO's attempt to insert into this litigation matters pertaining to alleged County planning materials from prior to March 1982, if permitted by the Board, will necessitate the filing by the County of rebuttal testimony in order to demonstrate that these County materials, which were categorically rejected by the County as inadequate, do not in fact merit any attention. Clearly, this will delay the proceeding and widen the controversy so that the parties will be litigating not just LILCO's proposed Plan and the Contentions that have been admitted by the Board, but also the additional issue of whether the old County planning efforts were good. See discussion at 7-8,

including footnotes 3 and 4, of the County's Group II-A Motion. LILCO's testimony purportedly discussing County activities relating to emergency planning is not relevant and should be stricken.

2. Discussion of Future LILCO Plan Revisions
and Predicted Future Actions by LILCO Workers

In several portions of their testimony, the LILCO witnesses speculate about future events. The grounds for the County's objections to this speculation were discussed at pages 13, 14 of the County's Group II-A Motion, with respect to similar speculative statements in LILCO's Group II-A testimony. That discussion is incorporated herein by reference and will not be repeated. The question before the Board is whether or not Revision 3 to the LILCO Plan satisfies emergency planning regulations. What LILCO may or may not do at some unspecified time in the future is mere speculation that cannot provide "assurance" as required by the regulations.

Group II-B testimony is supposed to address Group II-B contentions. Each of those contentions explicitly refers to, and is based upon, provisions contained in Revision 3 of the LILCO Plan. LILCO's discussions of "future plan revisions" or "future planning activities" are outside the scope of the admitted contentions. If LILCO wishes to litigate a new revision

of its plan, or some activities it intends to conduct, it should do one of two things: 1) provide a revised plan to the Board and parties so that the existing contentions can be revised as necessary to deal with the new proposals; or, 2) submit new late-filed contentions of its own on whatever matters it desires to litigate. Clearly, its discussion of as yet non-existent plan revisions or future intentions is not relevant to the admitted contentions on Revision 3, and testimony on those subjects should be stricken.

This Board has stated that the topic of litigation in this proceeding is the "most current emergency plan of the applicant." (See Memorandum and Order Regarding Motion for Change in Schedule, Request for Conference Call, and Motion to Compel Discovery, dated November 14, 1983, at 3.) To the County's knowledge, Revision 3 is the most current version. LILCO's efforts to litigate non-existent future revisions, or predicted future actions that are nowhere mentioned in Revision 3 are improper, outside the scope of this litigation, and should be stricken.

Furthermore, ~~neither~~ the Intervenor nor the Board should be expected to litigate, in ignorance, the predictions by LILCO's witnesses of what LILCO may intend or plan to do in the

future. Most of these predictions, intentions, hopes and future plans were disclosed to Intervenor for the first time in LILCO's direct testimony. If these matters are permitted to remain in LILCO's testimony, Intervenor will be substantially prejudiced since they will be forced to litigate "blind" -- i.e., without any discovery concerning the anticipated Plan revisions or other future actions or proposals discussed by LILCO's witnesses. This Board has stated in the past its aversion to "trial by ambush." (See e.g. Tr. 3762.) The admission of LILCO's testimony on its future plan revisions or future actions will result in trial by ambush in the extreme, since not only were Intervenor ignorant of the facts relating to LILCO's future plans until those facts were stated in LILCO's filed testimony, but LILCO, clearly, can change those facts unilaterally even subsequent to the filing of testimony. Testimony concerning so-called "plans" that apparently exist only in the collective consciousness of LILCO has nothing to do with the admitted contentions, and violates this Board's prior rulings concerning the scope of this litigation. Accordingly, LILCO's speculation, predictions of the future, and discussion of future revisions or intended actions should be stricken.

3. Discussion of the "history" of planning

Large portions of LILCO's Group II-B testimony, particularly that relating to contentions 68-71 on schools and contention 72 on special facilities, consist of long dissertations concerning various meetings, discussions, or correspondence characterized by LILCO as part of its "planning activities." There are also over a hundred attachments to this testimony which consist of various pieces of correspondence, many merely form letters, between LILCO and various parties. By and large, these letters and discussions of visits appear to be offered by LILCO as some sort of explanation for the failure of its Plan to include various provisions or to deal with particular problems identified in the contentions. Thus, LILCO attempts to argue that it is attempting or has attempted to correct cited deficiencies in its Plan by various meetings or conversations, even though LILCO admits that the deficiencies remain.

Clearly, the so-called "historical" information and LILCO's discussion of its "planning activities" are irrelevant to the one issue before this Board for litigation -- that is, the adequacy and implementability of the Plan submitted by LILCO. Having hundreds of pages of correspondence admitted

into evidence contributes nothing to the record on the issue of whether the LILCO Plan is adequate and complies with the regulations. LILCO's past, present, or future efforts to revise or complete its Plan, or its efforts to blame defects in its Plan on people not meeting with LILCO or refusing its phone calls, are simply not relevant to the Contentions in this proceeding. The admitted contentions deal with a document submitted by LILCO as a "Plan" which, in LILCO's view, complies with regulations. The only point of this litigation is to review that document to determine if it in fact does comply with the regulations by assuring that adequate protective actions could and would be taken in the event of an emergency. Discussions of telephone calls, attempted visits, or conversations that took place before, during or after the preparation of the Plan may be interesting, and they may tend to show that LILCO has made efforts to produce an adequate and legally sufficient plan. But the fact that LILCO made such efforts is not probative of whether the results of the efforts meet regulatory requirements. That is, whether the LILCO Plan is adequate and capable of being implemented by LILCO in a manner that would provide adequate protection to the public is a separate question from the nature or extent of LILCO's efforts in creating the Plan. The latter question is irrelevant to this proceeding. LILCO's

Plan is at issue, not how LILCO went about writing it. The admission of testimony concerning the historical development of the existing Plan, or LILCO's predicted future plans, will result in nothing but extensive litigation of irrelevant and clearly collateral issues.

4. New York State Plan

Many passages of LILCO's Group II-B testimony purport to discuss or attach excerpts from the New York State Radiological Emergency Response Plan. As LILCO has itself acknowledged, (see Testimony of Matthew C. Cordaro and John A. Weismantle on Behalf of Long Island Lighting Company on Phase II Emergency Planning Contention 92 (State Emergency Plan), at 4), there is no New York State Plan for the Shoreham plant before this Board, or even in existence. Moreover, as stated in the Board's June 10, 1983 Order Limiting Scope of Submissions, this litigation is to focus on the LILCO Plan, and whether the LILCO Plan can be implemented by LILCO. Discussion of plans by New York State which involve (1) other plants, and (2) implementation by State personnel, local governmental officials, or personnel from utilities other than LILCO, is simply not relevant to the question whether the LILCO Plan can be implemented by LILCO, or to any of the admitted contentions in this

proceeding. Moreover, LILCO has not, and cannot through its witnesses, establish a proper evidentiary foundation for the admission of testimony concerning actions or documents of New York State. Such testimony should accordingly be stricken. (See also Motion of Governor Mario Cuomo, Representing the State of New York, to Strike Portions of the "Testimony of Matthew C. Cordaro and John A. Weismantle on Behalf of Long Island Lighting Company on Phase II Emergency Planning Contention 92 (State Emergency Plan)" and Statement of Governor Mario Cuomo, representing the State of New York, in Support of the "Suffolk County Motion to Strike Portions of LILCO's Group II-A Testimony," dated March 9, 1984; and NRC Staff Responses to Applicant, Suffolk County and New York State Motions to Strike Portions of Group II-A Testimony, dated March 16, 1984.)

5. Discussion of Other Nuclear Facilities

LILCO's Group II-B Testimony seeks to argue, in several places, that because LILCO believes something is done a particular way at other nuclear power plants, it is proper or adequate at the Shoreham plant. This testimony is, again, simply not relevant to the issues presented in the admitted contentions in this proceeding, nor in the County's view, is it at all probative or reliable. First, the LILCO witnesses provide

no data to demonstrate that they are competent to testify about other plants other than the assertion that "as emergency planners we . . . take into account emergency plans for other nuclear facilities." Hence, the discussion of other plants does not constitute reliable evidence and should be stricken. See 10 CFR § 2.743(c).

Second, LILCO makes no attempt to document or explain the facts or circumstances involved in drafting or implementing plans or procedures at other plants, much less how those facts (which are not disclosed) or the other plants' procedures provide data relevant to particular contentions concerning the LILCO Plan. If this testimony is not stricken, the County submits that it is without probative value but, out of caution, the County will need to probe the assertions made, resulting in litigation centered on emergency planning at other plants rather than at Shoreham.

B. Nonprobative and Unreliable Testimony

Portions of LILCO's Group II-B testimony are unreliable and of no probative value. In many instances the witnesses testify about matters concerning which they do not claim to have personal knowledge or expertise, and they cite no independent basis for their statements. For example, LILCO's

witnesses assert, without reference to any supporting facts, that school administrators in and near the EPZ have determined that the LILCO Plan fails to provide adequate protection for the children under their charge because of alleged political pressure. (See LILCO's Testimony on Contentions 24.E, 24.F.2, 24.F.3, 24.M, 61.C, and 68-71 (Schools), at 27-28.) Similarly, they purport to interpret statements allegedly made by witnesses in other NRC proceedings, without citation to any official record or other authoritative source for their assertions. (See, id., at 44.) In these instances the offered LILCO evidence is nothing but the unsupported conjecture and speculation of LILCO witnesses, and as such it is unreliable, not probative, and should be stricken.

C. Testimony Consisting Of Legal Interpretations
or Conclusions

In some portions of their Group II-B testimony, LILCO's witnesses discuss and interpret NRC case law, and in other passages they interpret the requirements of various regulations. As was discussed more fully at pages 2-6 of the County's Group II-A Motion, and as has been recognized by this Board (Tr. 2407, 2482-83), LILCO's expert witnesses in this proceeding are not qualified nor are they permitted, to submit such testimony. The discussion contained in the Group II-A

Motion is incorporated herein by reference and will not be repeated. Discussions of cases and legal interpretations of cases and regulations are for lawyers' briefs, not testimony by non-lawyer witnesses.

II. Motion to Strike Specific Portions of LILCO's Group II-A Testimony

A. LILCO's Testimony on Contentions 24.E, 24.F.2, 24.F.3, 24.M, 61.C and 68-71 (Schools)

1. Purpose section, second and third sentences

This passage discusses the rejected pre-1982 proposals of individuals in the Suffolk County Planning Department and alleged actions by New York State at other plants. This testimony is not relevant to any of the contentions purportedly addressed in the testimony (24.E, 24.F.2, 24.F.3, 24.M, 61.C and 68-71) each of which deal with LILCO's Plan for the Shoreham plant. The referenced passage is also unreliable and of no probative value, since the witnesses have no demonstrated competence for testifying about either Suffolk County planning activities or New York State actions relating to the Indian Point plants. It should be stricken for the reasons set forth in Parts I.A.1, I.A.4, and I.B above.

2. Answer 8, last paragraph

This passage is irrelevant, purely speculative, and without probative value. LILCO's present willingness to "consider" in the future, a desire that "might" be expressed by "enough" superintendents in the future, does nothing to prove or disprove the adequacy of Revision 3 of the LILCO Plan as it pertains to schools. It should be stricken for the reasons stated in Parts I.A.2 and I.A.3 above.

3. Answer 9, last sentence

This passage is unreliable, speculative, and not probative. The witnesses offer no basis for their assertion that school superintendents "will" act as suggested in this statement. None of the witnesses is a school superintendent, and they do not refer to the opinions of any superintendents. Moreover the only school administrator to testify on behalf of LILCO is not affiliated with any of the districts located outside the EPZ, which are the only districts discussed in this passage. The witnesses' belief is unsupported conjecture, and should be stricken for the reasons stated in Part I.B.

4. Attachments 6-10

LILCO's testimony does not in any way describe, discuss,

authenticate, explain, or establish the relevance, materiality, or accuracy of Attachments 6-10 or their contents, other than to state at page 12 "Attachments 4-10 to this testimony provide information about these schools [in seventeen districts.]" Contrary to LILCO's apparent belief, testimony is not merely something to which any documents, of any nature, can be attached, without any foundation, discussion or stated relation to the subject matter, with the expectation that they are automatically admissible as evidence. LILCO has not even attempted to meet a threshold standard of laying a proper foundation for the relevance and admissibility of Attachments 6-10, and they should be stricken.

Moreover, assuming arguendo a proper foundation for admission of the documents were established, a review of the Attachments 6-8 shows that their contents, that is "contact lists" showing the nature and purpose of unidentified "contacts" (the names of persons involved in the contacts apparently have been redacted), has no relevance to the contentions being addressed by the witnesses, and should be stricken for the reasons stated in Part I.A.3 above. In addition, with so much information redacted, the documents have been rendered meaningless. And, the information contained in Attachments 6-8 appears to be repeated, in large part, in Attachment 9. Furthermore, the

"Remarks" column in Attachment 9 has no relevance to any issue in the admitted contentions, and should also be stricken for the reasons stated in Part I.A.3 above. Finally, Attachment 10 appears to have no relevance to the contentions at issue since it involves schools outside the EPZ. The testimony contains no discussion about Attachment 10 or explanation of its relevance or purpose. There is no basis for admitting Attachments 6-10 into evidence.

5. Question and Answer 11.

This question and answer are irrelevant, speculative, unreliable and not probative. First, they are irrelevant because the question of what Suffolk County or New York State "would be likely to do" if they "were to do a radiological emergency plan for the schools in the Shoreham EPZ" has nothing to do with any issue raised in Contentions 24.E, 24.F, 24.M, 61.C or 68-71, which is the supposed subject of this testimony. The speculation called for and provided by the witnesses is not relevant at all to the ability of LILCO to implement the LILCO proposals for schools, which is the subject of the contentions being addressed. Moreover, admitting this testimony would be contrary to the Board's June 10, 1983 Order Limiting Scope of Submissions.

Second, the testimony is unreliable and of no probative value, because the witnesses have not established and do not possess the competence or basis for testifying about the capabilities or intentions of the State of New York or Suffolk County. The challenged passage is unfounded conjecture. Thus, the challenged passage is irrelevant, because the supposed capabilities of New York and Suffolk County have nothing to do with the question of LILCO's ability to protect school children in the event of a radiological emergency at Shoreham, and it is non-probative unreliable speculation. It should be stricken for the reasons stated in Parts I.A and I.B above.

6. Questions and Answers 12, 13 and 14,
and Attachments 11 and 12

These passages on pages 16-18 of LILCO's testimony are irrelevant and should be stricken for the reasons stated in Part I.A.3 above. A historical discussion of how the LILCO Plan "originated" has no relevance to any issues raised in Contentions 24.E, 24.F, 24.M, 61.C or 68-71. The discussion in these portions of LILCO's testimony has nothing to do with the adequacy or implementability of the protective actions for schools that are in Revision 3 of the LILCO Plan, which are the only issues raised by the contentions supposedly being addressed in this testimony. The testimony is simply irrelevant and should be stricken.

Furthermore, the discussion of alleged "beliefs" of Suffolk County, alleged "considerations" by schools, and alleged "decisions" by school districts, all in 1980, is also irrelevant to the admitted contentions which concern Revision 3 of the LILCO Plan. And, the LILCO witnesses have no competence or basis upon which to speculate about the "beliefs," or "considerations" of Suffolk County or schools in 1980 or at any other time.

Moreover, the assertions by LILCO witnesses about alleged beliefs and considerations are unreliable and have no probative value. The assertion that some unidentified school administrators made alleged determinations is double hearsay, based solely on an out-of-court written statement of an unidentified County employee, which purports to repeat out-of-court expressions of the opinions of unidentified school administrators. There is no basis for a finding that the statements by LILCO's witnesses are reliable.

Attachment 11 consists of four unsigned letters, dated July 31, 1980, September 5, 1980, and January 15, 1981 (two). The LILCO testimony contains no information authenticating these documents, explaining their relevance to the contentions at issue, nor are any of the parties referenced in the letters

witnesses in the LILCO panel. There is no evidentiary foundation whatsoever for the inclusion of these letters in the LILCO testimony. The witnesses are not competent to provide such foundation or to sponsor their admission into evidence. There is no basis for admitting these unsigned and irrelevant documents into evidence.

Attachment 12 is an unlabelled set of 10 pages, identified by the LILCO witnesses as "pages from the draft plan prepared by the County planners." (LILCO Testimony at 17-18). Again, there is no information which in any way links the 10 pages of words comprising Attachment 12 to the admitted contentions in this proceeding, or establishes any evidentiary foundation for admitting them into evidence. The author of those words is not identified, the date they were written is not provided, and there is no indication that the LILCO witnesses have any basis upon which to discuss those pages or their contents, or to characterize them as "from a draft plan prepared by County planners." Moreover, there is no indication in the LILCO testimony or in Attachment 12 itself that the contents of Attachment 12 have any probative value to the contentions at issue, which deal with the adequacy and implementability of LILCO's proposals contained in Revision 3 of the LILCO Plan. There is simply no basis for admitting it into evidence.

7. Question and Answer 17

This question, "Is LILCO wedded to this particular plan?" is irrelevant as is the response, which consists of gratuitous comments about how LILCO might change its plan in the future. Testimony in this proceeding is supposed to address specific admitted contentions each of which deals only with Revision 3 of LILCO's Plan. Question and Answer 17 provide no information or data that is probative, material, or relevant to any matters raised in Contentions 24.E, 24.F, 24.M, 61.C, or 68-71. It should be stricken for the reasons set forth in Parts I.A.2 and I.A.3 above.

8. Question and Answers 18, 19 and Attachment 13

These questions and answers consist of a rambling dissertation about LILCO's intentions in drafting its Plan and correspondence and visits by LILCO to school officials. It has no relevance to the contentions purportedly being discussed in the testimony, nor does LILCO even attempt to link it to those contentions. It has no probative value whatsoever, and should be stricken for the reasons stated in Part I.A.3 above.

Attachment 13, characterized by LILCO as "a detailed history of LILCO's school emergency planning effort" is similarly

irrelevant. Contrary to LILCO's apparent belief, what is being litigated in this proceeding is not "a history" of emergency planning -- it is the adequacy and implementability of one particular document which LILCO has submitted to this Board. The admitted contentions are directed to specific portions of that document, and raise specific factual issues. Admissible testimony must address those contentions and the issues raised in them. If there were any admitted contentions concerning the history of LILCO's planning activities, how LILCO went about creating its Plan, or who LILCO has met with about emergency planning, LILCO's testimony and Attachment 13 could arguably be admissible with respect to such contentions. However, there are no such contentions in this proceeding. The referenced testimony and Attachment 13 have no probative value with respect to the contentions at issue, or to Revision 3 of the LILCO Plan, and they should, accordingly, be stricken for the reasons set forth in Part I.A.3 above.

9. Answer 22, everything after the word "No"

The fact that LILCO's Plan is not complete, as LILCO admits in its negative response to question 22, is arguably relevant to the contentions at issue since, for instance, Contention 70 alleges that the LILCO Plan fails to identify

reception centers for school children. However, the rest of Answer 22 is not probative, material, or relevant to any issues in the contentions supposedly being addressed. They are gratuitous and speculative comments (e.g., "the federal government can be expected to continue updating and amending the guidance it offers"), that fail to address any matters at issue in this litigation. They should be stricken for the reasons set forth in Part I.B above.

10. Question and Answer 23

This passage is not relevant to any admitted contentions. It also has no probative value, since it deals in purely speculative possibilities of unidentified future actions by LILCO that are dependent upon unidentified future actions by other people. The assertion that "LILCO has always been willing" to discuss "financial and other assistance" with school districts, although LILCO cannot say now what assistance it might provide, because no school districts have requested assistance or identified needs, no discussions have occurred, and no terms have been negotiated, is of no probative value, and should be stricken for the reasons stated in Part I.A.2 and I.B above.

11. Question and Answer 24, and Attachments
37, 38 and 41

This answer relates to LILCO's "planning activities" -- it has nothing to do with the contents of Revision 3 of LILCO's Plan, which is the subject of the admitted contentions which this testimony supposedly addresses. Answer 24 and the attachments referred to therein are not relevant or probative.

Specifically, the fact that LILCO's staff (not the staff of the emergency response organization LERO^{2/}) now includes a new individual has no bearing on Contentions 24.E, 24.F, 24.M, 61, or 68-71. Similarly, proposed "generic guidance on sheltering" (Attachment 37), "sample procedures" (Attachment 38) and a "preliminary sample plan" (Attachment 41), all documents apparently prepared by LILCO with the intention of giving them to schools, are irrelevant to the admitted contentions. The proposed and sample documents are not a part of Revision 3 of the LILCO Plan, which is the subject of the admitted contentions, and they have not been adopted by any school districts. There is no basis for bringing them into this litigation. They are simply irrelevant, and should be stricken.

^{2/} "LERIO" is another suborganization set up within LILCO. It is separate from LERO, and its purpose is to write and revise the LILCO Plan.

Moreover, these documents have not been provided to the County by LILCO in discovery, and the County first learned that LILCO intends to rely on them in this proceeding when it received the LILCO testimony. If LILCO now seeks to litigate these new proposals and procedures rather than Revision 3 of the Plan, the existing contentions must be revised to reflect such new materials. In any event, admitting this testimony and attachments would result not only in "trial by ambush" but also in wasteful and improper litigation of "proposed" plans, that have not been finalized or adopted by anyone, rather than litigation of admitted contentions relating to the Plan LILCO has submitted to this Board for review. The testimony and Attachments 37, 38 and 41 should be stricken for the reasons stated in Parts I.A.2 and I.A.3 above.

12. Question and Answer 25

A review of the question reveals the impropriety of this testimony. It is: "Do you think pre-emergency planning for schools can be successfully accomplished?" The speculation of LILCO's witnesses on whether schools may, or are capable, of doing something in the future is not relevant or probative to Contentions 24.E, 24.F, 24.M, 61.C or 68-71. Even though Contentions 61.C.1 and 70 refer to LILCO's erroneous assumption

that "pre-emergency planning" has been done by schools, the only issue raised in those Contentions relating to such preplanning is whether such preplanning has taken place, not whether LILCO "believes" or "thinks" schools may do such planning at some unspecified future time. If such testimony were a proper response to admitted contentions relating to specific inadequacies in a submitted plan, the entire NRC litigation process would be a farce. An applicant's testimony would always consist of a statement that -- "you're right, our plan doesn't deal with that problem but we think we might be able to change it in the future." Clearly, LILCO's opinion as to the likelihood or capability of schools to perform planning in the future, with or without LILCO's help is simply not relevant to the question whether an adequate implementable plan exists now. This LILCO testimony should be stricken for the reasons stated in Parts I.A.2 and I.A.3 above.

Moreover, the discussion by LILCO's witnesses about supposed "pressure," the "difficult position" of school authorities and the like, is not only irrelevant, immaterial and not probative, but is totally without basis, improper and out of place in expert testimony. In effect, the passages on pages 27-29 constitute a baseless personal attack on the character and verity of those school officials who have stated

that they do not believe the LILCO Plan provides adequate protection for the children in their charge. The LILCO testimony implies that at least some of those school officials do not really believe the LILCO Plan is inadequate, but have instead taken that position publicly for some improper political motives. Such personal attacks and baseless ascriptions of improper motives should not be tolerated by this Board. This testimony, from individuals who have no basis for opining as to the "feelings," "dilemmas," or "desires" of school authorities, is not appropriate, nor is it probative, reliable or relevant. It should be stricken for the reasons stated in Part I.B above.

Furthermore, LILCO's witnesses' speculation as to what, in their view "makes sense" to school authorities, (bottom of page 28), and what they "expect the school officials to recognize" and "to be influenced" by (top of page 29), as well as the fact that LILCO "has made it clear" that it would "shoulder" the planning burden for schools, is also irrelevant and has no probative value with respect to the admitted contentions. All of answer 25 should be stricken.

Finally, the assertion that the State of New York requires radiological emergency plans of schools, contained in lines 17 through 22 of page 28 and referring to Attachments 15, 16 and

17 is an improper legal conclusion. The LILCO witnesses are not lawyers; they are neither qualified nor capable of presenting or interpreting New York law. In addition, there is no evidentiary foundation laid in the testimony for the admission of the documents which constitute Attachments 15, 16, and 17. The LILCO witnesses are not the authors or recipients of the documents, and there is no indication in the testimony or the Attachments of their relevance to the schools in the Shoreham EPZ, or to any matter addressed in the contentions at issue. Standing alone as they do, the Attachments have no probative value. This portion of the testimony, and Attachments 15, 16 and 17, should be stricken for the reasons stated in Parts I.B and I.C above.

13. Answer 27, last two sentences

This portion of LILCO's testimony constitutes incompetent speculation, without any stated basis, as to the "feelings" of school officials. The LILCO witnesses have no qualifications which enable them to provide such opinions, and their unexpert speculation has no probative value. Moreover, the abstract "feelings" of school authorities have no relevance to the issues in Contentions 24.E, 24.F, 24.M, 61.C or 68-71. This passage should be stricken for the reasons stated in Part I.B above.

14. Answer 30, first sentence

In this sentence the LILCO witnesses interpret NRC regulations. As discussed in Part I.C above, such testimony is improper for non-lawyer expert witnesses in the proceeding, and this passage should be stricken.

15. Answer 38, first sentence, all of page 36 except lines 1-7, all of page 37, and all of answer 38 on page 38 except lines 12-19

The first sentence of Answer 38 should be stricken for the reasons set forth in Parts I.A.1, I.A.3, and I.A.5 above. The discussion on pages 36 (beginning "Moreover, we felt . . .") and 37, consisting of what LILCO's witnesses "felt that Suffolk County should reasonably be expected to support" and a series of quotations from testimony in other proceedings is not relevant, material or probative and should be stricken for the reasons set forth in Part I.B above.

First, the "feelings" or "expectations" of LILCO's witnesses about what the County "supports" are not relevant or probative, particularly since the County has itself expressly stated its position on the record, and it is that the LILCO early dismissal proposal stated in the LILCO Plan does not provide adequate protection for school children. These expectations and feelings of the LILCO witnesses are simply not probative of anything.

Second, a string of isolated quotations, without citations, allegedly from testimony in other proceedings, which apparently concern some unidentified plans, for other power plants, in other locations, to be implemented by persons other than LILCO, under unidentified conditions and circumstances, has no relevance to this proceeding and no probative value whatsoever. The mere fact that the statements are allegedly by a gentleman who was a witness for Suffolk County on Role Conflict (not on schools), and the fact that the quotations talk about families, does not establish the necessary foundation to make the string of quotations relevant or probative to Contentions 24.E, 24.F, 24.M, 61.C.1 or 68-71, or to this proceeding. Without any explanation or discussion of their context, why or how the matters or facts pertaining to the other testimony from which the quotations are taken are pertinent to the LILCO Plan or the admitted contentions, there is no basis for admitting this string of quotations. They should be stricken for the reasons stated in Parts I.A.5 and I.B above.

Third, LILCO's citation of a FEMA "hope" (bottom of page 37 and top of page 38) is not probative or relevant either. The quoted testimony by a FEMA witness in no way discusses the adequacy or implementability of the LILCO Plan. It is a gratuitous and meaningless comment that has nothing to do with

the admitted contentions in this proceeding. Indeed, the mere fact that the FEMA witness stated his "hope" that an early release option would be "considered" at Shoreham, in light of the fact that when the FEMA testimony was written, the LILCO Plan already contained an early dismissal option, is evidence of the fact that the FEMA witness could not have been addressing the LILCO Plan. See also, Tr. 3604, 3605, in which Mr. McIntyre, the author of the quoted testimony, stated that he had not reviewed the LILCO Plan.

Finally, LILCO's statement on page 38 that "the Indian Point licensing board found that the State of New York appeared to be enthusiastic" about something involved in the Indian Point proceeding, is not relevant or probative either. It should be stricken for the reasons stated in Parts I.A.5 and I.B above. First, this is a bald assertion, without citation or reference to any document. It appears to be unattributed double or triple hearsay with no reliability. More importantly, the "appearance" of the State of New York's "enthusiasm" with respect to an unidentified aspect of a plan for a different power plant, has no relevance to the admitted contentions in this proceeding, which deal with specific aspects of a particular Plan -- Revision 3 of the LILCO Plan. Moreover, the State of New York has itself made its position clear with

respect to the LILCO Plan at issue here: it believes the Plan is inadequate and unworkable. The referenced portions of Answer 38 should be stricken.

16. Answer 40, last two sentences

This portion of LILCO's testimony reads:

We have developed a questionnaire, Attachment 43, that will be distributed by BOCES. The information from the completed questionnaires will provide the material needed for more detailed planning.

This passage should be stricken for the reasons stated in Part I.A.2 above. It is not relevant to the admitted contentions which deal with the Plan now before the Board. If, in the future, LILCO revises its Plan as a result of "more detailed planning," at that point the contentions can be modified to deal with such revisions and those revisions and the results of the questionnaire then can properly be litigated. LILCO's apparent intention to have a questionnaire distributed at some time in the future, and its intention to use the non-existent results of the undistributed questionnaire to change its Plan in the future are not relevant to any issue in Contentions 24.E, 24.F, 24.M. 61.C or 68-71, and are of no probative value.

17. Attachment 43

This attachment consists of a cover letter and several enclosures which describe or are part of LILCO's past and future planning activities. Included is a memorialization of a meeting at which, according to LILCO, the provisions of the LILCO Plan concerning schools were described and new LILCO proposals for evacuation were discussed, a proposed sample evacuation plan, and a questionnaire that LILCO hopes schools will complete and return. The fact that LILCO met with school representatives and the information that was communicated at that meeting are not probative of whether Revision 3 of the LILCO Plan is adequate or can be implemented. Similarly, a proposed evacuation plan that LILCO describes as a "sample" plan that is not in Revision 3 and has not been adopted by any school districts, and a questionnaire that might be distributed in the future in order to obtain information that might be used to develop plans in the future, are irrelevant to this proceeding. Moreover, pages 13 through 16 of Attachment 43 are identical to Attachment 41. For the reasons stated in Parts I.A.2 and I.A.3 above, Attachment 43 should be stricken.

18. Answer 46, first sentence

This portion of the LILCO testimony reads:

According to New York State witnesses in the Indian Point proceeding, New York State Education Law requires that the school be furnished with the identities of other adults who will take care of school children if a parent is not home during an early dismissal.

This testimony constitutes gross and unreliable hearsay and should be stricken because it has no probative value. The referenced LILCO passage does not identify the alleged "New York State witnesses," provides no citation to the alleged testimony, does not indicate the context in which the alleged testimony was given, and the alleged testimony is not quoted. This vague paraphrase of an out-of-court statement by unidentified individuals has no probative value, cannot be cross-examined, and should be stricken for the reasons stated in Part I.B above.

19. Answer 51

This testimony should be stricken because it is not relevant to the contentions purportedly being addressed by these witnesses (i.e., Contentions 24.E, 24.F, 24.M, 61.C, and 68-71). Contention 61.C is the only contention that deals with

sheltering in schools. However, a review of that contention reveals that the referenced LILCO testimony fails to address any of the issues raised in that Contention, which are limited to the following: a) whether the LILCO Plan indicates how a sheltering order could or would be implemented by school authorities; b) whether schools have performed "preplanning" that makes them capable of implementing a sheltering recommendation; c) whether schools have basements or suitable sheltering areas for large numbers of children; d) whether the LILCO Plan contains information concerning sheltering capacities or shielding factors; and e) whether children would have access to shelter if a sheltering order were made after the beginning of an early dismissal. Clearly, LILCO's discussion of "generic guidelines" allegedly established by LILCO, but which are not in the Plan or in any school-adopted plan, has no relevance to the admitted Contentions, and should be stricken.

20. Answer 52

The testimony should be stricken for the reasons set forth in Parts I.A.2 and II.A.10 above. There is no connection between this testimony and the admitted Contentions.

21. Answer 55

This portion of LILCO's testimony, which responds to the question "how likely is it that immediate evacuation of school students would be required?" is not relevant to any issues raised in the contentions purportedly addressed in this testimony. Contentions 70 and 71 deal with evacuation of schools, and raise several specific issues concerning the implementability of LILCO's proposal for school evacuations. That contention does not raise the question of the probability that immediate evacuation would be required, nor is the discussion of such an issue appropriate in an emergency planning proceeding. The premise behind the NRC requirement that there be an emergency plan is an assumption that an accident happens. Moreover, it is required by the regulations that the plan contain provisions to deal with evacuation of mobility impaired populations including schools. Accordingly, the discussion by LILCO's witnesses of the likelihood that evacuation of school students would be necessary is both irrelevant to the admitted contentions, and irrelevant in this proceeding. Answer 55 should be stricken.

22. Answer 56, last sentence

This sentence states, "A general emergency with projected offsite doses of 5 rem or more is the most severe and the least likely of the several emergency classes." For the reasons discussed in Part II.A.21 above with respect to Answer 55, this statement has no relevance to the admitted contentions in this proceeding. Moreover, it has no apparent relevance to the preceding portion of Answer 56. It has no probative value and should be stricken.

23. Answers 58 and 59

These portions of LILCO's testimony should be stricken for the reasons stated in Part I.A.2 above. They are not relevant to admitted Contentions 70 or 71, which deal with school evacuation. First, Question 58 itself is absurd on its face. The question states, "How will you be sure that bus drivers can find the reception centers, assuming the schools fail to plan for evacuation?" The fact is, as LILCO itself admits, there are no reception centers identified in the Plan. Therefore, testimony concerning how bus drivers could find nonexistent reception centers, and the preparation and distribution by LILCO of maps to nonexistent reception centers is ridiculous. Moreover, this LILCO testimony deals solely with proposed LILCO

actions in the future. The discussion by the LILCO witnesses, concerning various actions that it "will" take in the future, are speculative, not probative, and not material or relevant to Revision 3 of the LILCO Plan. Revision 3 of the Plan identifies no reception centers for school children, says nothing about LILCO "incorporating" things into school authorities' procedures, and says nothing about LILCO preparing or distributing maps of bus routes. This testimony bears no relation to the reality which is the subject of this proceeding -- i.e., Revision 3 of the LILCO Plan. If LILCO wishes to litigate some new proposals such as those suggested in Answer 58, it should inform the parties and the Board by revising under the Plan. Then contentions can be appropriately modified and litigation can proceed on those new proposals. Given the existing contentions, however, Answer 58 is irrelevant and should be stricken.

The same arguments apply with respect to Answer 59, which purports to respond to the question "How will the parents know to which reception center their children will be bussed?" As noted, there are no reception centers in LILCO's current Plan. LILCO's testimony concerning some future designation of reception centers, information concerning such designated centers, and some future distribution of such information is

speculative, without any basis in Revision 3 of the LILCO Plan, and therefore not relevant to any admitted contention in this proceeding. It should also be stricken.

24. Answer 62

The first sentence of this response reveals that the testimony is not relevant to any admitted contention, and that it is not probative or material evidence. That sentence states, "Since the process of planning for an evacuation of schools is still ongoing, our response must focus on the planning steps currently under consideration." The answer then goes on to discuss various information which has not yet been obtained by LILCO, and two planning "options" which are "under consideration," but neither of which have been adopted either by LILCO or by any schools. Clearly, this testimony is not based on anything in Revision 3 of the LILCO Plan nor is it relevant to any issues raised in Contentions 70 or 71 which deal with evacuation of schools. Should LILCO at some point obtain the information which as yet it has not obtained, complete its planning process which it admits is not yet completed, and/or choose one of the two options which it presently may be considering, it should at that point revise its plan so that the contentions can be modified and litigation can proceed. At this

point, however, unless LILCO chooses to submit late filed contentions of its own, the matters discussed in Answer 62 are simply irrelevant and that testimony should be stricken for the reasons stated in Part I.A.2 above.

25. Answer 63, all of the second paragraph,
except the first sentence

This testimony discusses (1) a questionnaire which LILCO hopes will be distributed at some time in the future to school districts, and (2) a statement that in an emergency LILCO "would seek from school superintendents the release" of certain buses, and that LILCO "is confident" that officials would agree to LILCO's request. The testimony is not relevant to any issue in Contentions 24.E, 24.F, 24.M, 61.C or 68-71. Once again, it refers to future actions which LILCO may decide to take, and speculation by LILCO witnesses concerning future actions by schools, that are neither referenced nor included in Revision 3 of the LILCO Plan which is the subject of this litigation. The referenced testimony is not relevant or probative and therefore should be stricken for the reasons stated in Parts I.A.2, II.A.16 and II.A.17 above.

26. Answer 66

This testimony asserts that LILCO intends to "offer" training and equipment to school bus drivers and teachers. It should be stricken for the reasons stated in Part I.A.2 above. It does not relate to any of the Contentions that this testimony supposedly addresses, and it discusses only future actions by LILCO that are not contained in Revision 3 of the Plan.

27. Answer 67, last three sentences

This testimony discusses future training of LERO bus drivers, and future "cooperation" by LILCO with actions by superintendents of school districts, that may or may not take place, at some point in the future. For the reasons stated in Part I.A.2 above, this testimony is irrelevant and should be stricken.

28. Answer 70, all but first sentence

This testimony must be stricken for the reasons stated in Part I.A.2 above. The speculative and irrelevant nature of the testimony is revealed by the first sentence which the County seeks to strike: "The locations to which the children will be taken will ultimately be the decision of school officials." As LILCO admits, there are no reception centers identified in the

LILCO Plan. LILCO's discussion of different alternative proposed provisions for schools plans, depending upon what decisions may be made in the future by school officials as to reception centers, is pure speculation, not based on anything contained in Revision 3 of the Plan, and therefore of no relevance to the admitted Contentions in this proceeding. The testimony has no probative value and should be stricken.

29. Answer 79

This entire answer should be stricken for the reasons stated in Parts I.A.2 and I.B above. The discussion is pure speculation, and has no probative value. The "judgment" of the LILCO witnesses that the Suffolk County Community College would be available as a relocation center "without a doubt" defies belief. Under the law of Suffolk County, which the President of Suffolk County Community College has stated in testimony he intends to obey, the College cannot be used to implement the LILCO Plan. The position of Suffolk County and the Suffolk County Community College with respect to the availability of that facility as a reception center has been stated and documented in this record. The "judgment" of these LILCO witnesses that the President of the College would disregard or violate the law is preposterous, not probative, irrelevant and should be stricken.

Similarly, the discussion concerning LILCO's need "to find an alternate relocation center," and its discussion of "one possibility" is not relevant to the contentions in this proceeding, and should be stricken for the reasons stated in Part I.A.2 above. There are no "possible," or for that matter "definite," relocation centers for school children identified in Revision 3 of the Plan. The discussion in the testimony concerning the "possible" use of SUNY-Westbury is a totally new LILCO proposal offered for the first time in this testimony. If LILCO desires to revise its plan to designate SUNY-Westbury as a reception center for Shoreham-Wading River school children, it should do so. The contentions can then be revised and that matter can then properly be litigated. In the absence of such an action by LILCO, however, its testimony concerning the use of SUNY-Westbury is speculative and not probative of any issue material to this proceeding, and should be stricken.

30. Answer 80, last sentence in second paragraph, last sentence in third paragraph, entire fourth paragraph

These portions of LILCO's discussion of the existing go home plan for the Little Flower Elementary School must be stricken for the reasons stated in Section I.A.2 above. The first portion states "We plan to send a health physicist to the school to confirm this." This is a discussion of something LILCO intends to do in the future; it is not included in Revision 3 of the Plan, and therefore is not relevant to the admitted contentions or to the subject matter of this litigation.

The second portion which states, "If upon further investigation it appears that additional vehicles are needed, LILCO will buy the school a vehicle or vehicles that require no special drivers' license, so that any teacher can drive them," is similarly speculative, without basis in Revision 3 of the LILCO Plan, and not related to admitted contentions or to any existing plans for the Little Flower Elementary School.

Finally, the last paragraph of Answer 80 discusses what LILCO describes as "our current plan, which is, of course, subject to approval by the school," to send students to a LILCO operations center in Greenlawn. First, this clearly is not an existing plan since, as admitted by LILCO, it has not been

approved by the Little Flower School. It is nowhere contained or referenced or mentioned in Revision 3 of the Plan, and the County did not learn of the existence of this proposed use of the operations center until it received the LILCO testimony. This proposal is an improper subject of testimony in this proceeding. Furthermore, the entire discussion of what "would" or "could" happen at the LILCO operations center if the school were to approve this new proposal by LILCO at some point in the future, is speculative, without basis in the record, and not probative with respect to contentions 24.E, 24.F, 24.M, 61.C.1, or 68-71, which all deal with proposals in Revision 3. It should be stricken.

31. Answer 81, last paragraph

This testimony states that LILCO "will make available" someone to survey nursery schools and to advise them how to shelter. This testimony should be stricken for the reasons stated in Parts I.A.2 and I.A.3 above. The testimony concerns proposed future actions by LILCO and assumptions and presumptions by LILCO witnesses concerning locations of children in the event of an accident. It is speculative and has no probative value. Moreover, this testimony is not relevant to the specific issues set forth in Contention 61.C.1 which deals with sheltering. See Part II.A.19. It should be stricken.

32. Answer 83, portions on page 76

This section of LILCO's testimony should be stricken for the reasons stated in Parts I.A.2 and I.A.3 above. First, it discusses future actions which LILCO would be "willing" to take if the Rocky Point School District, in the future, were to request LILCO's assistance. Second, it states that LILCO "would be prepared" to provide advice and maps relating to reception centers after LILCO, sometime in the future, "makes arrangements" for the existence of reception centers. These vague, generalized, and essentially meaningless speculative statements about possible undefined actions in the future have no probative value, no connection to Revision 3 of the LILCO Plan, and no relevance to the admitted contentions in this case. This testimony should be stricken.

33. Answer 85, last two sentences

This section of LILCO's testimony must also be stricken for the reasons stated in Part I.A.2 above. It states that in the future LILCO "will make available" various personnel if in the future the school district so requests, and if in the future the school district "feels" it needs such personnel. This is purely speculative, not based on anything contained in Revision 3 of the Plan, and not related to any admitted contentions in this proceeding. It should be stricken.

34. Answer 89, all except the first sentence

This testimony, contained on pages 82 and 83, consists of nothing but a historical discussion of various correspondence, thank you notes, telephone calls and visits made by LILCO personnel to nursery schools. The discussion says nothing about the contents of the LILCO Plan, the implementability of the Plan, or even the contents of any of the nursery schools' plans. Thus, this testimony has no probative value because it contains no information that is relevant to the specific issues raised in Contentions 24.E, 24.F, 24.M, 61.C.1, or 68-71. It should be stricken for the reasons stated in Parts I.A.2, I.A.3, and II.A.4 above.

35. Answer 90, all of page 84 except the first sentence, and last three sentences of Answer 90 on page 85

This section of LILCO's testimony must be stricken for the reasons stated in Parts I.A.2 and I.A.3 above. The first portion (the first paragraph of Answer 84 beginning with the sentence "Moreover, all of them . . ."), discusses attempted contacts between LILCO and nursery schools, and what LILCO calls "the planning process." It does not discuss the LILCO Plan or existing school plans which are the subject of this litigation. It is not relevant or probative and should be

stricken. The second portion (the paragraph on page 84 beginning "In an emergency, . . .") is speculation (i.e., schools "could be" advised to do certain things which "should present" no "special" problems). It also deals with future actions by LILCO (i.e., providing people to survey and provide advice to schools). These matters are not relevant to the admitted contentions which deal solely with the existing Revision 3 of the LILCO Plan, not proposals, predictions or intentions that LILCO may have for the future. Finally, the last portion of the last paragraph of Answer 84 (on page 85 beginning "Our plan in the event that Kids-R-Us continues . . .") is again speculation concerning what LILCO intends to do in the future. The proposal contained in this portion of the testimony is not contained in Revision 3 of the LILCO Plan and therefore is not relevant to this litigation. It should be stricken.

36. Answer 91, last sentence

This section of the LILCO testimony states:

"The school officials do seem willing to do further planning, however, and LILCO will set up meeting to work with the school to develop the plan, provide a health physicist to survey the school building for sheltering locations."

This testimony, on its face, it is not relevant to the admitted

contentions which deal only with the existing LILCO Plan and specific alleged inadequacies in that Plan. This testimony discusses some future plans of LILCO intended "to develop a plan" in the future. The purpose of this litigation is not to litigate a proposal to develop in the future a plan with unidentified provisions. The purpose is to litigate the plan that LILCO has submitted. If LILCO wishes to withdraw that Plan, and submit a different one in the future after one has been developed it should do so, and then submit this testimony. Given the existing contentions concerning Revision 3 of the LILCO Plan, however, this testimony is purely speculative, not related to the existing plan, and therefore not relevant to this litigation. It should be stricken for the reasons stated in Part I.A.2 above.

37. Answer 92, last two sentences

This portion of the LILCO testimony again discusses future actions by LILCO, and should be stricken for the reasons stated in Parts I.A.2 and I.A.3 of the testimony. As noted in the testimony itself, it concerns LILCO's prediction that "LILCO will be available to work with the school district to further refine the plan," at some point in the future, and that LILCO will make individuals available and provide advice concerning

various matters in the future. This speculation about future actions has no relevance to the existing plan upon which this litigation is based.

38. Answer 93, last two sentences of middle paragraph on page 89, and last paragraph on page 89.

These sections of LILCO's testimony are not relevant. The first portion discusses procedures for a nuclear attack, which have no relation to anything involved in this proceeding. The discussion is irrelevant and should be stricken. The last paragraph of Answer 93, which is contained on page 89, is another statement of what LILCO will do in the future if school officials wish to avail themselves of LILCO's services. Such intentions of LILCO concerning future actions which are contingent upon some other future actions are not relevant or probative of any issue in the admitted Contentions which deal with Revision 3 of the LILCO Plan. The testimony should be stricken for the reasons stated in Part I.A.2 above.

39. Answer 95, last paragraph beginning with "the obvious choice would be . . ." through the end of that paragraph.

This section of the LILCO testimony once again deals with future actions by LILCO contingent upon other actions taking place in the future. It also contains speculation concerning what the LILCO witnesses believe would be "the obvious choice" for a reception center which, as admitted by LILCO, has not been designated. The discussion is not relevant for the reasons stated in Part I.A.2 above. It should be stricken.

40. Answer 99, last sentence

For the reason stated in Parts I.A.2 and II.A.31 above, this sentence concerning LILCO's willingness to make personnel available in the future is not relevant and should be stricken.

- B. Testimony of Richard R. Doremus on Behalf of the Long Island Lighting Company on Contentions 24.E, 24.F.2, 24.F.3, 24.M, 61.C and 69-71 (Schools)

Questions and Answers 9 and 10

Questions 9 and 10 ask:

Do you believe it is possible to plan for a radiological emergency at Shoreham where school children are involved?

and

Is your school district willing to work with LILCO to make plans for the schools in the event of a radiological emergency at the Shoreham Station?

These questions have nothing to do with the Contentions purportedly addressed in this testimony (i.e., Contentions 24.E, 24.F, 24.M, 61.C, and 69-71). Those contentions allege that various specific provisions in Revision 3 of the LILCO Plan are inadequate and that LILCO has not obtained agreements from schools to implement that plan. The witness' belief that "it is possible to plan" and his willingness to work with LILCO to make such plans in the future, are simply not relevant to the issues raised by the contentions in this proceeding. If the witness and LILCO do develop plans for schools at some time in the future, LILCO should at that time submit those plans to the Board so contentions could be modified to address those new proposals. Such plans do not exist at this time, and clearly cannot be litigated. The referenced testimony is irrelevant and should be stricken for the reasons stated in Part I.A.2 above.

C. LILCO's Testimony on Contentions 24.J, N,
72.C, D and 96.B (Planning for Special
Facilities)

1. Purpose section, second and fourth
sentence.

These portions of LILCO's testimony discuss so-called "planning activities," and proposed future activities intended to result in plans in the future. They should be stricken for the reasons in Parts I.A.2 and I.A.3 above. They are not relevant.

2. Answer 8, last two sentences; Answer 9, first two sentences, and last sentence; Answer 11, last sentence; Answer 12, all but first sentence; Answer 19, first paragraph and last paragraph; Answer 21, second paragraph; Answer 22, all but first sentence; Answer 25, second, third, fifth and sixth sentences; Answer 28, last sentence; Answer 34, first paragraph except last sentence

These passages describe LILCO's so-called "planning activities" and various actions and efforts LILCO intends or hopes to accomplish in the future. They are all irrelevant for the reasons stated in Parts I.A.2 and I.A.3 above. Meetings LILCO has had, correspondence between LILCO and others, arrangements LILCO or others may attempt or hope to make in the future, and the revisions LILCO might make to its Plan in the future are not material to the matters at issue in this

proceeding. The contentions supposedly addressed by this piece of LILCO testimony do not address the methods used by LILCO in developing the LILCO Plan; they address specific aspects of the results of those methods: Revision 3 of the LILCO Plan. Evidence that proves that LILCO has or intends to engage in so-called "planning activities" is irrelevant. Relevant testimony must address the existing Plan, and the specific deficiencies identified in that document. Discussion of proposals LILCO may make, after further planning results in developed plans simply contributes nothing of any probative value with respect to the admitted contentions, and it should be stricken.

If at some time in the future LILCO's future efforts produce results that are incorporated into the LILCO Plan and submitted to the Board, the contentions can be modified accordingly and the adequacy and implementability of the resulting plans can be litigated. At this time, the referenced testimony and attachments should be stricken.

3. Attachments 3-4, 6-7, 9-36, 38-41,
44-45 and 69-98 3/

These attachments purport to reflect LILCO's past and intended future "planning activities." They should be stricken. First, as with its testimony concerning schools, LILCO apparently expects this Board to approve the wholesale admission of almost one hundred documents despite LILCO's failure to establish any evidentiary foundation to support their relevance, authenticity, or materiality. Many of those documents were neither signed by, addressed to, or, apparently, even copied to any of the witnesses who offer them as evidence. LILCO has not even attempted to establish an evidentiary foundation for most of these documents. Indeed, LILCO's witnesses do not even bother to discuss most of these documents. They merely note the attachment numbers in parenthetical references. The submission of testimony is not a vehicle for the admission into evidence of any document LILCO would like to see in the record. Because LILCO has not established a foundation for admitting those attachments, they should be stricken.

3/ None of the copies of this testimony received by Suffolk County contained Attachments 26 and 30. However, judging from their titles, which are listed in the index of attachments, they are simply more of the type of irrelevant letters that constitute almost all LILCO's attachments.

Further, even if a proper foundation had been laid, these attachments, which purport to reflect LILCO's past and intended future "planning activities," still would not be admissible, because they are irrelevant.^{4/} As discussed in Parts I.A.2 and I.A.3, LILCO's so-called "planning activities" are not relevant to the issues raised by the contentions supposedly addressed by this testimony. How LILCO worked to develop its Plan and what it might do in the future simply do not tend to prove whether Revision 3 of the LILCO Plan is adequate or could be implemented in a manner that would adequately protect the public. Similarly, many of these attachments consist of multiple copies of identical cover letters and "thank you" notes which have no probative value. These attachments should be stricken because they are irrelevant and because no proper foundation has been laid for their admission as evidence. The County notes that it has not moved to strike LILCO's Attachments, 5, 37 and 42. These attachments contain statements from persons affiliated with health facilities in the EPZ to the effect that they do not agree to implement LILCO's proposals, and thus they are arguably relevant to Contentions 24.J and 24.N.

^{4/} For example, Attachment 11 is a letter to a special facility located in the vicinity of the Indian Point power plant, asking for copies of that facility's plans and letters of agreement with respect to a possible accident at Indian Point.

4. Answer 8, first sentence; Answer 19, first sentence on page 17

In these passages and this attachment, LILCO witnesses interpret regulations of the NRC and the Joint Commission on Accreditation of Hospitals. As discussed above in Part I.C, such legal conclusions are improper testimony from those witnesses. Therefore the challenged passages and attachment should be stricken.

D. LILCO's Testimony on Contentions 60, 61, 63 and 64.

1. Purpose section, second sentence of first paragraph; Answer 9, except first sentence

These portions of LILCO's testimony purport to state "why" LILCO included selective sheltering as a protective action in the LILCO Plan. Such a discussion is not relevant to the specific and limited issues raised by Contention 60, which this portion of the LILCO testimony purports to address. Contention 60 states that the LILCO Plan "fails to set forth guidelines to be used by command to control personnel: (a) in choosing to recommend the protective action of selective sheltering; or (b) in determining the individuals who should or would be subject to such a recommendation." Contention 60 also alleges that "there are no procedures [in the LILCO Plan] which indicate the means by which such a recommendation would or could be

implemented." The matters discussed in the referenced portions of LILCO's testimony -- that is, that selective sheltering is included in the LILCO Plan "to provide the flexibility to adapt to a State recommendation for selective sheltering, should the State choose to respond to an emergency at Shoreham," is simply not relevant to the three specific issues raised in Contention 60.

Moreover, as this Board has already ruled, the subject of this proceeding is the LILCO Plan, not any plan or proposal by LILCO that assumes the participation of New York State or any other governmental entity. See June 10, 1983 Order at 3. The LILCO testimony is not relevant, probative or material and should be stricken.

2. Question and Answer 10, and Attachment 2a

Question 10 asks: "What does the New York State radiological emergency plan provide regarding selective sheltering?" The answer consists of a purported quotation from what is described as the New York State Plan and references to an attachment which appears to be a portion of some radiological emergency response plan.^{5/} This testimony and the Attachment are

^{5/} Despite repeated requests from the County LILCO has not yet provided the County with a copy of the New York State Plan which it has provided the Board. Accordingly, the County is unable to verify the origin of the Attachment.

clearly irrelevant for the reasons set forth in Parts I.A.4 and II.D.1 above and is covered by this Board's ruling of June 10, 1983. The testimony and Attachment do not address any issue raised in Contention 60 nor do they address any issue relevant to this proceeding. Therefore, they should be stricken.

3. Question and Answer 12

This testimony, by Dr. Mileti, appears to be some kind of follow-up to certain portions of his testimony relating to the evacuation shadow phenomenon concerning risk messages. It has no relevance whatsoever to the issues raised in Contention 60, which are set forth in Part II.D.1 above. Although he does discuss "selective sheltering" in his answer, he does not address the Plan's failure to set forth guidelines to be used by command and control personnel in recommending the protective action of selective sheltering, or the Plan's failure to include procedures for implementing such a recommendation. Thus, the testimony is not relevant or material to Contention 60 and should be stricken.

4. Answer 14

This answer once again is based upon an assumed New York State participation in an emergency response. The response is premised upon the issuance by New York State of a protective action recommendation. It is thus not relevant to Contention 60, and it violates the Board's June 10, 1983 Order. The Answer should be stricken for the reasons stated in Part I.A.4.

5. Answer 18, text on page 20 following table, and Attachment 5

This discussion of shielding values which according to LILCO's witnesses "will be incorporated into the LILCO Transitional Plan's protective action procedure OPIP 3.6.1," presumably, in some future plan revision, should be stricken for the reasons stated in Part I.A.2 above. Contention 61 is based upon the current version of the LILCO Plan -- that is Revision 3. The assertion by LILCO that the Plan will be revised has no relevance to the existing contention. Should Plan revisions be made and submitted to the Board and parties, the contentions then could be modified. At that point whatever new values LILCO then proposes to use with respect to sheltering could be litigated. Given the existing contention and the existing Plan, however, the referenced testimony is irrelevant and should be stricken.

6. Question and Answer 26

This question calls for, and the answer consists of testimony concerning "every other emergency plan for power plants operating in New York State." Such testimony is not relevant to Contention 61, which is purportedly being addressed in this portion of LILCO's testimony. Contention 61 deals only with the Shoreham plant and, specifically, the adequacy of the protective action of sheltering under the LILCO Plan. Protective actions proposed for any other power plant in New York State, or in the country, have no relevance to Contention 61 or this proceeding. The testimony should be stricken for the reasons stated in Part I.A.5 and because it is not relevant, material or probative.

7. Question and Answer 32

This testimony by Dr. Mileti is essentially the same as that contained in Question and Answer 12 above and should be stricken for the same reasons. See Part II.D.3. It has no relevance to Contention 63, which is purportedly being addressed. Contention 63 deals with three specific allegations concerning the protective action of selective evacuation under the LILCO Plan. The Contention alleges that the Plan fails to set forth guidelines to be used by command and control

personnel in choosing to recommend selective evacuation or in determining, identifying and locating the individuals who should be subject to such a recommendation. It also alleges that the Plan does not include procedures indicating the means by which such a recommendation could be implemented. Dr. Mileti's testimony concerning public responses to a selective evacuation advisory has no relevance to Contention 63 and should be stricken.

8. Answer 33, second and third sentences

This portion of LILCO's testimony is essentially identical to the testimony in Answer 9 and should be stricken for the reasons stated in Part II.D.1 above. Discussion of the reason selective evacuation is included in LILCO's Plan and the assumption that New York State might participate in the emergency response at Shoreham is outside the scope of Contention 63, in violation of prior rulings of the Board, and should be stricken.

9. Answer 34 and Attachment 10

This answer and Attachment are essentially the same as the Answer 14 and Attachment 2, and should be stricken for reasons stated in Parts II.D.2 and II.D.4 above. The answer assumes participation by New York State in the offsite emergency response; and therefore, it is not relevant to Contention 63 and it violates the Board's June 10, 1983 Order. In addition, the referenced Attachment 10, which purportedly consists of some pages from the New York State Radiological Emergency Response Plan has no relevance to this proceeding. See Part I.A.4 above.

10. Question and Answer 38 and Attachments 11 and 12

This testimony is irrelevant. It responds to the question "Do guidelines provided by New York State to nuclear plants require such evacuation out to seven miles?" The testimony purports to address Contention 64; however, there is no reference in Contention 64 to any New York State guidelines with respect to nuclear plants. Therefore, the discussion by LILCO's witnesses concerning alleged guidelines provided by New York State has no relevance to the issue presented in Contention 64. Moreover, Attachments 11 and 12, which are excerpts from depositions, are not relevant or probative with respect to

Contention 64. The context of the witnesses' statements is not provided, and taken in isolation, individual statements are meaningless. LILCO has also failed to establish the necessary, or for that matter any, evidentiary foundation for the admission of the excerpted bits of testimony. The deponents have submitted no testimony in this proceeding, so the depositions cannot be used for purposes of impeachment. There is no evidentiary basis for admitting either the referenced testimony or Attachments 11 or 12, and they should accordingly, be stricken.

11. Answer 46, second sentence, and the first clause in the last sentence on page 44 (i.e. "No protective action will result in zero dose at any nuclear power plant in New York State or in the country,"

These portions of the conclusion of the LILCO testimony should be stricken for the reasons discussed in Parts II.D.1 and II.D.6 above.

E. LILCO's Testimony on Contention 81
(Ingestion Pathway)

1. Answer 6, last sentence on page 11,
and last sentence in first paragraph
on page 12.

These two portions of Answer 6 in the LILCO testimony concern the State of New York Radiological Emergency Preparedness Plan. For the reasons stated in Part I.A.4 above, this testimony is not relevant. Contention 81, which the LILCO testimony purports to address, deals only with the LILCO Plan, its adequacy and LILCO's ability to implement it. Discussion of the contents of a New York State Plan has no probative value with respect to the specific issues raised in Contention 81. Accordingly, these portions of LILCO's testimony should be stricken.

2. Answer 13, last sentence on page 21

This portion of the Answer to question 13 also refers to the New York State Radiological Emergency Preparedness Plan, and some recommendations purportedly contained in that Plan. This testimony should be stricken for the reasons stated in Part II.E.1 above concerning Answer 6.

3. Answer 17, last paragraph on page 25

This portion of LILCO's testimony again deals with the New York State Radiological Emergency Preparedness Plan, and purports to compare that Plan with LILCO's Plan. For the reasons stated above in Parts I.A.4 and II.E.1 this testimony is not relevant to the specific issues concerning the LILCO Plan that are raised in Contention 81. It should be stricken.

4. Answer 20, second sentence

This portion of LILCO's testimony, like the portions discussed above, deals only with the New York State Radiological Emergency Preparedness Plan. It is irrelevant to Contention 81 for the reasons stated in Parts I.A.4 and II.E.1 above and should be stricken.

5. Answer 24, fifth and sixth paragraphs
(last paragraph beginning on page 35
carrying over to page 36, and the
paragraph on 36 headed [Miele])

This section of LILCO's testimony should be stricken for the reasons stated in Part I.A.2 above. It is a discussion of various resources which LILCO purportedly "could draw upon" in the event of a radiological emergency. None of these resources are mentioned in Revision 3 of the LILCO Plan or relied upon therein. They are therefore not discussed in Contention 81, and their discussion in LILCO's testimony is not probative of any issues raised in Contention 81. If LILCO determines to revise its Plan to include reliance upon such additional resources, it should do so by giving the Board and parties notice of such Plan revision so that the pertinent contentions can be revised. As such point, testimony concerning those matters would be relevant to this litigation. At this point, it is not and should be stricken.

6. Answer 25 and Attachment 7

This portion of LILCO's testimony once again deals with speculation concerning various "probable" activities by various agencies in the event of an accident at Shoreham. It is purely speculative. It is not set forth in Revision 3 of the LILCO

Plan, and therefore is not relevant to the issues raised in Contention 81, which are based solely upon the LILCO Plan and its implementation by LILCO. It should be stricken for the reasons stated in Part I.A.2 above.

Similarly, LILCO's discussion of various activities in response to the Three Mile Island accident in 1979 is simply not relevant to the proposals contained in the LILCO Plan for LILCO's response to an accident at Shoreham. The cited testimony is not probative and should be stricken for the reasons stated in Part I.A.5 above. If it is admitted, it will necessitate cross-examination concerning activities during the Three Mile Island accident which will delay the proceeding and involve substantial discussion of completely irrelevant matters.

Finally, LILCO's discussion of a recent draft of the Federal Radiological Emergency Response Plan has no relevance to this case either. That Plan is not before this Board for litigation; only Revision 3 of the LILCO Plan is. LILCO's assertions concerning the "intent of the Federal Government" as allegedly "evidenced" in such Federal Plan is speculative, unreliable and of no probative value. Accordingly, this testimony and Attachment 7 (which is identified by LILCO as the most recent draft of such plan) should be stricken for the reasons

stated in Parts I.A.5 and I.B, because they are not relevant or probative.

F. LILCO's Testimony on Contention 85
(Recovery and Reentry)

Question and Answer 8

This testimony discusses "how LILCO's Plan purportedly compares with the New York State Radiological Emergency Preparedness Plan." It is irrelevant and immaterial. Contention 85 addresses only the LILCO Plan and its contents. The purported contents of a New York State Plan, which does not deal with the Shoreham Plant, is of no consequence and of no relevance to the issues raised in Contention 85. Moreover, the inclusion of such testimony in this proceeding would violate this Board's Order of June 10, 1983. For the reasons stated in Part I.A.4 above, this testimony should be stricken.

Moreover, Contention 85 alleges that the LILCO Plan fails to comply with NRC regulations. Whether or not the LILCO Plan is similar or even identical to some other plan does not address the question whether LILCO's Plan, to be implemented by LILCO, complies with NRC regulations. Admitting this testimony would result in the litigation of the adequacy and compliance with NRC regulations of a New York State plan which has nothing to do with the Shoreham plant. Clearly, the LILCO testimony is irrelevant and should be stricken.

G. LILCO's Testimony on Contention 88

1. Answer 7, the paragraph beginning at the bottom of page 7 and carrying over to page 8, and Attachments 3-7

This testimony discusses acceptable surface contamination levels that purportedly are used in emergency plans from other plants. Attachments 3-7 are identified by the LILCO witnesses as pages from emergency plans relating to the Zimmer, Salem, Calvert Cliffs, and Oyster Creek power plants. For the reasons discussed above in Part I.A.5 this testimony is not relevant and should be stricken. Contention 88 deals only with the LILCO Plan, and its adequacy and implementability. Whether or not portions of the LILCO Plan are similar or even identical to portions of plans relating to other plants, in other locations, to be implemented by people other than LILCO, is of no relevance, significance, or probative value in this proceeding. Moreover, the isolated individual pages from emergency plans of other plants, provided without any context, or explanation, have no probative value standing alone. The admission of this evidence, although the County believes it is of no probative value, would nonetheless result in the litigation of emergency plans relating to several facilities not at issue before this board. Finally, the testimony provides no evidentiary foundation for admitting Attachments 3-7 into evidence. The referenced testimony should be stricken.

2. Answer 12, all except the next to the last sentence (i.e. the County does not seek to strike the statement "Moreover, we note again that the provisions in OPIP 3.10.1 relating to cost-benefit analysis do not apply to reentry by the general public of a previously evacuated area.")
-

This testimony constitutes an improper opinion concerning legal interpretation by non-expert witnesses, which should be stricken for the reasons discussed in Part I.C. above. In this portion of the LILCO testimony, the witnesses, none of whom are lawyers, purport to interpret and apply NRC caselaw. There is no basis for this kind of opinion testimony from these witnesses. It is clearly improper as they are not qualified to provide legal opinions. The introductory statement that the witnesses "take into account emergency plans for other nuclear facilities and guidance from NRC Licensing Board," does nothing to remedy the witnesses' lack of competence to testify on legal matters. The referenced testimony should be stricken; its subject matter is proper for lawyers' briefs, not expert testimony.

H. LILCO's Testimony on Contentions 72.A
and E

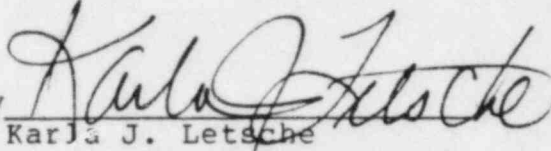
The County does not at this time seek to strike any portion of this LILCO testimony, but the County does nonetheless object strenuously to its contents. This testimony contains, and is based primarily upon, completely new evacuation time estimates for special facilities, that differ substantially, both in underlying assumptions and in results, from those contained in Revision 3 of the LILCO Plan. See Testimony at 6 and Attachment 2. The County was not aware of LILCO's intention to revise the estimates in Revision 3, and the new estimates in LILCO's testimony, as well as many of their underlying assumptions came as a complete surprise. Clearly, the County was unable to address these new estimates in its Group II-B testimony since the County's testimony was based upon Revision 3 of the Plan, which, until receipt of this LILCO testimony the County understood to be the current version relied upon by LILCO.

The County objects to LILCO's attempt to sandbag the Intervenor by changing its Plan without even notifying the other parties. The County will need to conduct discovery concerning these new estimates and, clearly, must be given the opportunity to address this revision of LILCO's Plan in supplemental

testimony. The County will pursue its need for discovery with LILCO, and will file the appropriate papers with the Board concerning its supplemental testimony.

Respectfully submitted,

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Dated: March 28, 1984

Attorneys for Suffolk County

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
)

LONG ISLAND LIGHTING COMPANY)

(Shoreham Nuclear Power Station,)
Unit 1))
)

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF LILCO'S GROUP II-B TESTIMONY dated March 28, 1984, have been served to the following this 28th day of March 1984 by U.S. mail, first class, except as otherwise noted.

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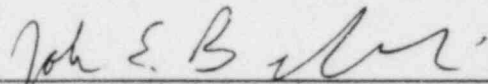
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By Federal Express