LILCO, March 27, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
LONG ISLAND LIGHTING COMPANY	)	Docket No. 50-322-OL-3
	)	(Emergency Planning
(Shoreham Nuclear Power Station, Unit 1)	)	Proceeding)
	)	

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

On March 21, 1984, Suffolk County filed the following six pieces of written testimony on the "Group II-B" issues:

1. Direct Testimony of David Harris and Martin Mayer on Behalf of Suffolk County Regarding Contentions 24.J, 24.N, 60, 63, and 72;

2. Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on behalf of Suffolk County Regarding Contention 61;

3. Direct Testimony of Robert W. Petrilak on Behalf of Suffolk County Regarding Contentions 24.E, 24.N, 61.C, 69, 70 and 71;

4. Direct Testimony of Dr. George J. Jeffers and Anthony R. Rossi on Behalf of Suffolk County Regarding Contentions 24.E, 24.F, 61.C, 69, 70 and 71;

5. Direct Testimony of Nick J. Muto and J. Thomas Smith on Behalf of Suffolk County

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Regarding Contentions 24.E, 24.F, 24.N, 61.C, 69, 70, and 71; and

6. Testimony of Gregory C. Minor on Behalf of Suffolk County Regarding Contentions 85 and 88.

Under the NRC's rules of practice, testimony must be relevant to the issues in contention. 10 C.F.R. § 2.743(c) (1983).1/ Irrelevant testimony is the proper subject of a motion to strike. See 10 C.F.R. Part 2, Appendix A, V(d)(7) (1983). The Board has the power to implement these provisions, both through its general power to regulate the conduct of a hearing, 10 C.F.R. § 2.718, and through the specific authority under 10 C.F.R. § 2.757(b) to strike argumentative, repetitious, cumulative, or irrelevant evidence. As the Board said in its Amended Order Ruling on Motions to Strike of January 23, 1984:

> In ruling on these motions, we have applied the standard of 10 C.F.R. § 2.743(c): For evidence to be admissible in NRC proceedings, it must "relevant, material, and reliable evidence which is not unduly repetitious." Any

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1/ Title 10 C.F.R. § 2.743(c) provides:

> Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

> other type of proffered evidence is subject to motions to strike. 10 C.F.R. § 2.757(b). Such a motion, however, must state with particularity how the evidence deviates from that standard (10 C.F.R. § 2.730(b)).

The applicant, Long Island Lighting Company (LILCO), hereby moves to strike certain portions of the above-cited testimony, as follows.

I. Direct Testimony of David Harris and and Martin Mayer on Behalf of Suffolk County Regarding Contentions 24.J, 24.N, 60, 63, and 72

LILCO moves to strike the following portions of the "Direct Testimony of David Harris and Martin Mayer on behalf of Suffolk County regarding Contentions 24.J, 24.N, 60, 63, and 72": page 12, line 13 through the end of page 21; page 25, line 7 through page 26, line 15; all of page 29 through page 36, line 3; and page 40, line 13 through page 41, line 7.

A. Contentions 60 and 63

First, LILCO moves to strike page 12, line 13 through page 21 of the Harris and Mayer testimony on Contentions 60 and 63, because this testimony is outside the scope of the contentions. Contentions 60 and 63 state that the LILCO plan "fails to set forth guidelines to be used by command and control personnel: (a) in choosing to recommend the protective action of

selective [sheltering or evacuation]; or (b) in determining, identifying, and locating the individuals who should be subject to such a recommendation." The two contentions allege, in addition, that the LILCO Plan does not contain procedures "which indicate the means by which such a recommendation [of selective sheltering or selective evacuation] would or could be implemented." Clearly, Contentions 60 and 63 address the guidelines used by LERO to make the decision to recommend selective sheltering or selective evacuation, and the procedures by which the LERO organization would implement its recommendation under the LILCO Transition Plan. The Harris and Mayer testimony that LILCO seeks to strike, on the other hand, launches a discussion of the following issues, all outside the scope of Contentions 60 and 63:

(1) whether sheltering is a viable alternative for persons in special facilities (p. 12, lines 13-15);

(2) how special facilities would implement such a recommendation (in contrast to the contentions, which address how the LERO organization would implement its protective action recommendation) (p. 13, lines 1-19);

(3) the County's witnesses' understanding of what planning has been done by LILCO with special facilities, and the County's witnesses' representations regarding the doubts and

opinions of administrators of these special facilities about taking protective actions in an emergency (p. 13, line 20 through p. 15, line 12);

(4) the areas where LILCO employees allegedly have advised administrators of nursing and adult homes to shelter patients, and whether these places are appropriate (p. 15, lines 13-18);

(5) the difficulties in moving beds and other equipment out of rooms (p. 15, line 19 through p. 16, line 20);

(6) the ability to keep outside air out of buildings (p. 16, line 21 through p. 17, line 11);

(7) the results of turning off air conditioners in the summer during an emergency (p. 17, line 12 through p. 18, line 8);

(8) the need for adequate staff, and their inability to report to duty because of role conflict (p. 18, lines 9-22);

(9) the difficulty of reinforcing staff with workers who may become contaminated on their way to the special facility (p. 19, lines 1-11);

(10) the inability of administrators to decide between sheltering and evacuation (p. 19, line 12 through p. 20, line 3);

(11) selective sheltering of handicapped individuals at home (which is contemplated nowhere in the LILCO Plan or in Contentions 60 and 63) (p. 20, line 4 through p. 21).

None of the topics listed above is within the scope of Contentions 60 and 63, and therefore that testimony should be struck.

B. Contention 72.C

Page 25, line 7 through page 26, line 15 should be struck as outside the scope of Contention 72.C. Contention 72.C states that "the plan fails to identify any relocation or reception centers for persons evacuated from any hospitals, nursing homes, or other special health care facilities other than the United Cerebral Palsy of Greater Suffolk." No other part of Contention 72 discusses relocation or reception centers for special facilities. The Harris and Mayer testimony on pages 25-26 suggests the difficulty of finding an adequate number of facilities "regardless of whether or not LILCO has tried to make adequate arrangements and obtain agreements with reception facilities" (page 25, lines 7-9). This discussion of the impossibility of finding reception or relocation centers is clearly outside the scope of the contention, which merely identifies an alleged deficiency in the Plan, that is, that

such reception or relocation centers are not identified in the Plan. The remaining testimony on pages 25-26 regarding (1) estimates of the number of people who might require relocation or reception centers, (2) discussions between Messrs. Harris and Mayer and the staffs of facilities identified as possible reception centers in outdated versions of the LILCO Plan, and (3) approximations of how many persons a hospital might accommodate in an emergency also is outside the scope of Contention 72.C and therefore should be struck as irrelevant.

C. Contention 72.A

In addition, certain testimony in response to Contention 72.A is outside the scope of that contention and therefore should be struck. Contention 72.A alleges that, "assuming the necessary vehicles were available to LILCO and were mobilized, the time necessary following mobilization to accomplish the proposed evacuation of special facilities will be too long to provide adequate protection from health threatening radiation doses" because of (1) "the large number of trips necessary to transport persons individually to relocation centers" (2) "the other mobilization and evacuation traffic congestion which the evacuation vehicles will encounter" and (3) "the time necessary to load and unload passengers from ambulances." Beginning on page 29 of the Harris and Mayer testimony, Harris and Mayer

discuss (1) the process by which LILCO employees at the EOC would attempt to coordinate evacuation (p. 29, lines 1-9); (2) the ability of the LERO Health Facilities Coordinator to contact facilities for the handicapped, the ten nursing or adult homes, and the three hospitals listed in the LILCO Plan (p. 29, line 10 through p. 30, line 14); and (3) the garbled information that might cause delays (p. 30, lines 15-22). These items are not related to (1) the large number of trips necessary to transport persons to relocation centers, (2) mobilization or evacuation traffic congestion that will be encountered or (3) the time necessary to load and unload passengers from ambulances, which are the only three reasons discussed under Contention 72.A for a lengthy evacuation of special facilities. This testimony, therefore, is outside the scope of Contention 72.A and should be struck.

For the same reasons, the general discussion on page 31 of the ability of hospitals and nursing homes to implement existing "disaster" plans in an emergency is irrelevant and outside the scope of any part of Contention 72 and should be struck; the discussion on pages 32 and 33 regarding (1) the amount of time that would be necessary to prepare patients for an evacuation by moving patients' records and medications, (2) the time it would take to identify which patients should be moved and in what order, (3) and the time it would take to

identify the appropriate equipment to move with such patients, are all outside the scope of Contention 72.A and should be struck; the discussion on pages 34-35 regarding staffing, and whether personnel are available and during what time of day, how long it might take for off-duty personnel to report, whether those personnel would be involved in surgical operations that could not be interrupted once they had begun and therefore would be unavailable, and whether staff would stay behind to take care of patients, are all outside the scope of Contention 72.A and should be struck. The last four lines on page 35 and the first 3 lines on page 36, which summarize the previous several pages of testimony that is outside the scope of Contention 72.A, should also be struck. The portion of Contention 72.A which specifies that evacuation will take longer due in part to "the time necessary to load and unload ambulances" cannot be expanded to include the myriad issues discussed on pages 29-36 of the Harris and Mayer testimony.

D. Contention 72.E

LILCO moves to strike the paragraph of the Harris and Mayer testimony beginning on page 40 and ending after seven lines on page 41, which reads as follows:

> Second, because of the long delay at the start of evacuation, the degree of confusion involved in attempting to implement an evacuation would be even greater at hospitals than at the other facilities. Immediately after the evacuation recommendation, staff and patients would anxiously attempt to prepare. The urgency of the situation would be apparent to everyone. But people in the hospitals would know they were to be the last evacuated, and several hours would pass before the first vehicles arrived to begin to transport patients out of the danger zone. Under those circumstances people almost certainly would become even more anxious and frightened. In addition, the situation at Central Suffolk Hospital could be particularly bad, since it is expected to care for contaminated injured persons in the event of a Shoreham emergency. The arrival of a contaminated patient at the hospital, while the staff is attempting to evacuate its other patients to avoid being exposed to contamination, is likely to heighten anxiety levels even more.

This paragraph is outside the scope of Contention 72.E, which it apparently is intended to address. There is no indication in 72.E that the issue of confusion, anxiety, and fright is encompassed by the contention.

II. Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on Behalf of Suffolk County Regarding Contention 61

The Finlayson-Minor-Radford testimony on Contention 61 (referred to hereinafter as "the Finlayson testimony") marks

the fifth time Suffolk County has attempted to make an issue of the probabilistic risk assessment of the Shoreham Station.2/ LILCO hereby moves to strike the entire Finlayson written testimony as irrelevant and a challenge to the NRC regulations and the law of the case.3/

Contention 61 alleges that the protective action of sheltering cannot be implemented for Shoreham. The essence of the contention is that at any given time some people will have better access to shelter, or access to better shelter, than others. Moreover, the contention says that sheltering is not

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2/ The first time was when the County attempted to get admitted a probabilistic risk assessment (PRA) contention in "Phase I" of the emergency planning litigation. The previous board did not admit the contention. The second time was when the County submitted testimony by Dr. Finlayson on the issue of accident assessment and dose assessment models in Phase I. LILCO moved to strike the testimony, but the County's default on the Phase I issues prevented the motion from being ruled on. The third time was when the County submitted a Phase II contention (Contention 22) on the size of the emergency planning zone. The parts of the contention relying on probabilistic risk assessment were not admitted. The fourth time was when the County submitted testimony from Drs. Finlayson and Radford and Mr. Minor on the Phase II Group I issues (Contentions 65, 23.D, and 23.H). This testimony was struck by Order Granting Motions to Strike Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford (Jan. 11, 1984).

3/ The reasons are essentially the same as stated in LILCO's Motion to Strike the Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on Behalf of Suffolk County Regarding Contention 65, 23.D, and 23.H, dated November 28, 1983. That motion has a fuller treatment of the NRC case law than the instant motion.

perfect protection: assuming an average shielding factor of 0.7 (which the LILCO Transition Plan uses), people who sheltered would still receive 70 percent of the dose they would receive if they did not shelter. Finally, the contention says that there are some circumstances in which people could receive "health-threatening" radiation doses if they sheltered. The Finlayson testimony explicitly addresses subparts B, G, H, and I of Contention 61, which are, in summary, the following:

61.B - People in cars get essentially no protection

61.G - Many homes will reduce doses about 50 percent, and a 50 percent reduction is still a "health-threatening" dose under some circumstances

61.H - The LILCO Transition Plan uses an average shielding factor of 0.7, which means that people taking shelter will receive, on average, 70 percent of the dose they would receive if they stayed outside

61.I - Even with a 30 percent reduction, doses that would cause adverse health effects could be received

Also, on page 6 the testimony apparently addresses 61.A, which says that people in wood frame houses with no basements have little shelter available.

The Finlayson testimony on Contention 61 consists essentially of the data given in Table 1 (copy attached), plus

certain numbers in the text that we have summarized as "Table 2," attached to this motion. These data consist of the percentages of "severe" accidents that would produce radiation doses of certain specified levels at certain distances from the plant. In short, the County testifies that, if Shoreham operates, if a "severe" accident occurs, and if people shelter, there are certain specified probabilities of receiving certain specified doses at certain specified distances from the plant.

A. The Finlayson testimony is irrelevant to the resolution of Contention 61

The first reason for striking the Finlayson testimony is that it is irrelevant to anything at issue in this litigation because it is irrelevant to NRC regulations. It cannot be denied that what is at issue in an NRC proceeding is whether a nuclear plant complies with NRC regulations. All contentions must be read in that context. Testimony that does not tend to prove compliance or noncompliance with NRC regulations is irrelevant. Such is the case with the Finlayson testimony.

Judging from the "Further Preamble to Contentions 60-62," Contention 61 alleges that, for the reasons stated therein, the LILCO Transition Plan does not comply with 10 C.F.R. § 50.47(a)(1). This is the general emergency planning provision that says a finding must be made that "there is

reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." The County's legal theory as to why the Finlayson testimony is relevant rests on the word "adequate" in 10 C.F.R. § 50.47(a)(1). Indeed, the County articulated this theory in its earlier response to LILCO's motion to strike earlier testimony by Dr. Finlayson et al.:

> Prior to permitting Shoreham to operate, this Board must find that there is reasonable assurance that "adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R. § 50.47(a)(1) (emphasis supplied). The Finlayson testimony is directly pertinent to this issue. Suffolk County contends and proves (through the Finlayson testimony as well as other testimony which has been submitted) that as presently envisioned under the LILCO Plan, evacuation is not an adequate protective measure because persons attempting to evacuate will be stuck in queues and exposed to health threatening doses of radiation. Thus, the Finlayson testimony is relevant to whether the LILCO Plan in fact satisfies the NRC regulations.

Suffolk County Response to LILCO and NRC Staff Motions to Strike the Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on Behalf of Suffolk County Regarding Contentions 65, 23.D and 23.H at 11-12 (December 20, 1983).

Contention 61 also cites the more specific standard in § 50.47(b)(10), which requires that:

> (10) A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

10 C.F.R. § 50.47(b)(10) (1983). The County's theory here, apparently, is that if sheltering is not an "adequate" protective action, then it must be struck from the Plan, in which event the Plan will not have a "range" of protective actions.

The County's testimony attempts to show that, given the assumptions of the probabilistic risk analysis, there are circumstances, of unstated but admittedly very low probability, in which people could receive doses in excess of certain levels. But this is relevant only if the County's implicit legal theory is correct -- that an emergency plan is inadequate unless it can guarantee that no one will receive a health-threatening dose of radiation (however "health-threatening dose" is defined).

The County's theory is at odds with NRC regulations:

> The underlying assumption of the NRC's emergency planning regulations in 10 CFR §50.47 is that, despite application of stringent safety measures, a serious nuclear accident may occur. This presumes that offsite individuals may become contaminated with radioactive material or may be exposed to dangerous levels of radiation or perhaps both.

> Planning for emergencies is required as a prudent risk reduction measure for these individuals. Since a range of accidents with widely differing offsite consequences can be postulated, the regulation does not depend on the assumption that a particular type of accident may or will occur. In fact, no specific accident sequences should be specified because each accident could have different consequences both in nature and degree. Although the emergency planning basis is independent of specific accident sequences, a number of accident descriptions were considered in development of the Commission's regulations, including the core melt accident release categories of the Reactor Safety Study (WASH 1400).

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-83-10, 17 NRC 528, 533 (1983) (footnote omitted); see also id. 534-35. Thus the County is seeking to show that the possibility of radiation exposure, which is assumed by the regulations, shows that the regulations are not met.

A good way to test the relevance of the Finlayson testimony is to ask what the legal conclusion would be if every word of the testimony were found to be correct. The answer is that there would be no light shed on the legal issues at all. The County is asking the Board to find that the offsite emergency plan is inadequate if the conditional probabilities are as stated in the Finlayson testimony,4/ but the Board simply is

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4/ To put it another way, the County asks the Board to find that although (1) the plant was sited in compliance with NRC

(footnote continued)

not in a position to make such a finding. It would be possible for the Commission, by rulemaking, to translate the word "adequate" in 10 C.F.R. § 50.47(a)(1) into probabilistic dose guidelines such as those in Finlayson Table 1, but there is absolutely no guidance by which the Board can do so by adjudication. The emergency planning rules are "essentially deterministic." 48 Fed. Reg. at 10,775 col. 2 (Mar. 14, 1983).

In response to this motion to strike, we believe Suffolk County will argue, as it did in the Suffolk County Response to LILCO and NRC Staff Motions to Strike the Testimony of Fred C. Finlayson, Gregory C. Minor and Edward P. Radford on Behalf of Suffolk County Regarding Contentions 65, 23.D and 23.H (December 20, 1983), that once Contention 61 was admitted, the Board had obligated itself to hear the Finlayson testimony. A motion to strike the testimony on the ground that it is not probative of anything that needs to be proved to satisfy NRC regulations, the County's argument goes, is tantamount to a

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(footnote continued)

siting regulations and although (2) all its safety systems meet NRC regulations, nevertheless (3) "adequate" protective actions cannot be taken because, assuming a "severe" accident at the plant, the probabilities of receiving certain doses at certain distances are certain specified numbers. The Board will thus be asked to rule as a matter of law that conditional probabilities the size of those in the County's Table 1 show that sheltering, and thus the emergency plan, is "inadequate."

motion not to admit the contention, a form of relief LILCO has already been denied.

LILCO believes this argument is wrong. While it is admittedly hard to imagine testimony that would be relevant to Contentions 61.A, B, G, H, and I and also relevant to NRC regulations, it is not impossible. The Board was entitled to give the intervenors the benefit of the doubt at the contention-admitting stage, since it may not then have been possible to categorically determine that nothing the County could say about 61.A, B, G, H, and I would be relevant to meeting NRC regulations. But now that the testimony is submitted, the Board is in a position to see that it has no relevance to the regulations whatsoever.

The County's testimony, and the County's legal theory, also ignore the fact that, if sheltering produced unacceptable doses, LERO would order evacuation instead, unless the projected dose for evacuation would be greater than the dose for sheltering. It is irrelevant to testify about what doses would be received with sheltering, if the appropriate protective action would be evacuation. Neither the contention nor the testimony alleges that LILCO would recommend sheltering when evacuation would be preferable (that would be a Phase I issue in any event), and so the testimony simply addresses sheltering in a purely hypothetical, and irrelevant, way.

In its December 20, 1983, response to LILCO's motion to strike other Finlayson testimony, Suffolk County cited the Fermi case. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-82-96, 16 NRC 1408, 1422-29 aff'd, ALAB-730, 17 NRC 1057, 1071-72 (1983). The Fermi board did indeed consider the probability of a severe release of radiation. Faced with a contention that a stretch of road was inadequate as an evacuation route because it ran toward the reactor for a short distance, the Board made an assessment of the likelihood that people using the road would experience a significant increase in dose. The Board concluded:

> [W]e find that the use of Pointe Aux Peaux Road as an evacuation route creates only a negligible increase in the total risk to residents of Stony Point. The increase does not justify building a road leading away from Stony Point toward the west.

16 NRC at 1428. But Fermi does not detract from the argument in this motion. In the first place, there is no indication that any party to the Fermi proceeding objected to the use of consequence evidence or raised the issue addressed in this motion to strike. Moreover, even assuming the Fermi decision stands for the proposition that PRA evidence may be relevant to some emergency planning issues, it is distinguishable. The Fermi board assessed possible radiation doses in order to evaluate alternative protective actions, one of which was

apparently alleged to increase, not decrease, radiation exposure. (The alternatives were apparently to use Pointe Aux Peaux Road or to build another road.) It may have been that no party suggested any way to choose between the alternatives except to calculate some doses for the one alternative and see if the results could be bettered by the other alternative and whether the probabilities made the other alternative worth the while. In Suffolk County's Contention 61, on the other hand, the County alleges simply that the protective action of sheltering is categorically inadequate because, assuming it is the only alternative available, it will not guarantee protection against doses above certain levels.

B. The testimony is a challenge to NRC regulations and to the "law of the case"

The County's effort once again to introduce the probabilistic risk assessment into this proceeding is a challenge both to the NRC regulations and to the law of the case. First, it is a challenge to NRC regulations because the Commission has expressly declined to use probabilistic risk criteria to license nuclear power plants:

> The qualitative safety goals and quantitative design objectives contained in the Commission's Policy Statement will not be used in the licensing process or be interpreted as requiring the performance of probabilistic risk assessments by

> applicants or licensees during the evaluation period. The goals and objectives are also not to be litigated in the Commission's hearings. The Staff should continue to use conformance of regulatory requirements as the exclusive licensing basis for plants.

48 Fed. Reg. at 10,775 col. 2 (March 14, 1983). If the Commission does not want its own probabilistic risk goals and objectives to be litigated in ASLB hearings, all the more does it not want the County's probabilistic criteria (whatever they are) to be litigated in the context of emergency planning.

Moreover, the law of the case in this proceeding is that LILCO's probabilistic risk assessment is not to be litigated unless LILCO tries to rely on it, which LILCO has not done. In Phase I the intervenors tried several times to get admitted an emergency planning contention based on the Shoreham probabilistic risk assessment. The Board consistently rejected these efforts, most decisively in its July 27, 1982, Prehearing Conference Order, slip op. at 20:

> It also appears clear that LILCO does not plan to rely on its PRA as evidence that its accident assessment and dose assessment models meet NRC requirements. We therefore do not see the need to litigate LILCO's PRA in these circumstances, unless LILCO attempts to rely upon its PRA in either its direct or rebuttal testimony on this contention.
>
> We do not believe that this conclusion prejudices intervenors' rights in any way. As was noted above, Suffolk County has conceded that a PRA per se is

> not required by NRC regulations. Furthermore, the intervenors' July 12, 1982 revision of EP27 asserts not only that the "results of the PRA/consequence analysis are not reflected in the LILCO plan," but also that "there is no evidence of other means, if any, used by LILCO to ensure the accuracy of the assessment models." Therefore, if LILCO can make its case using only evidence of "other means" used to ensure the accuracy of its assessment models, we see no reason to litigate LILCO's PRA in this context, unless LILCO atempts to rely on it.

This is part of the law of the case in this proceeding.

The probabilistic risk assessment for the Shoreham plant on which the County has been relying, and on which it presumably relies in the Finlayson testimony,5/ was a draft. The draft was revised and submitted to the NRC by LILCO and is now under NRC Staff review. It is altogether separate from this licensing proceeding, and not properly litigable in it.

C. Health Effects

In addition to the above reasons for striking all the Finlayson-Minor-Radford testimony, the Board should strike the following part of the testimony, on page 4, sponsored by Dr. Radford:

5/ The Finlayson testimony is silent about the basis for the numbers it recites.

> A. (Radford) A 30 rem dose is considered the threshold of early injuries. People who receive 30 rem doses will probably not experience any acute effects (i.e., deaths or injuries occurring within 60 days after exposure), but their lifetime chances of developing cancer will increase by about 21 percent over the normal rate. Doses above 30 rem are more likely to cause early acute effects and result in even greater increases in the chances of developing cancer.

Finlayson testimony at 4. The purpose of emergency planning is to achieve dose savings. The means for doing so can and should be litigated without becoming enmeshed in the generic issue of the health effects of particular doses.

For the above reasons, the entire written testimony of Drs. Finlayson and Radford and Mr. Minor should be struck as irrelevant.

III. Direct Testimony of Robert W. Petrilak on Behalf of Suffolk County Regarding Contentions 24.E, 24.N, 61.C, 69, 70 and 71

LILCO moves to strike the following portions of the "Direct Testimony of Robert W. Petrilak on Behalf of Suffolk County Regarding Contetions 24.E, 24.N, 61.C, 69, 70, and 71": page 14, the third sentence from the top of the page; and page 14, the last four lines at the bottom of the page, through page 15, the end of the first paragraph.

First, LILCO moves to strike the following sentence from the Petrilak testimony:

> Indeed, as I noted in my testimony concerning Contention 25, we would have fewer personnel than normal available due to role conflict.

(Page 14, third sentence.) This testimony is cumulative to testimony previously filed in this proceeding on Contention 25 and therefore should be struck.

Second, LILCO moves to strike the following paragraph from the Petrilak testimony:

> Finally, as Contention 71.A asserts, it is unlikely that LILCO's proposal to use its own personnel to evacuate nursery schools could be implemented. For example, the Mt. Sinai School District is not authorized to, nor would it, permit anyone to drive a bus containing our students unless that person was licensed and certified to drive a school bus. My understanding is that LILCO's employees are not properly certified. Consequently, it is unlikely that any nursery schools or parents of nursery school children would permit their children to be evacuated by LILCO bus drivers.

(Petrilak testimony at 14-15.) Mr. Petrilak, as Vice President of the Mt. Sinai Board of Education and as a witness put forward as a factual rather than expert witness, is not qualified to testify regarding nursery schools. He has not shown any familiarity with or connection to any of the nursery schools within the EPZ, and he does not claim to represent the nursery

schools in his or any other school district. His speculation on whether nursery schools would allow their children to be driven by LILCO personnel to a safe place during an evacuation is unreliable and therefore not admissible evidence in this proceeding. Consequently, his testimony regarding nursery schools on pages 14-15 should be struck.

IV. Direct Testimony of Dr. George J. Jeffers and Anthony R. Rossi on Behalf of Suffolk County Regarding Contentions 24.E, 24.F, 61.C, 69, 70 and 71

LILCO moves to strike page 5, footnote 2, and the first paragraph of page 9 of the "Direct Testimony of Dr. George J. Jeffers and Anthony R. Rossi on Behalf of Suffolk County Regarding Contentions 24.E, 24.F, 61.C, 69, 70 and 71."

First, LILCO moves to strike the following paragraph:

> In addition, although none of the schools in our district are within the EPZ, some are very close to the EPZ boundary. When one looks at the irregular path followed by the EPZ boundary through the Middle Country Central School District, it looks as if the boundary were drawn intentionally to keep some of our school buildings outside the EPZ. Accordingly, it is not clear to us that a sheltering order for persons "in the EPZ" should not also apply to the children in our schools that are very close to the EPZ boundary.

Jeffers and Rossi testimony p. 5, n.2.

This testimony is offered in support of Contention 61.C.1, which, by the County's own witnesses' description, "asserts that LILCO's proposals to protect school children by keeping them in their schools would not work." The speculation in the above-quoted footnote 2 regarding the way the EPZ boundary was chosen, the proper EPZ boundary from the witnesses' viewpoint, and the appropriateness of protective actions for persons outside the EPZ boundary is not within the scope of Contention 61.C.1 or any of the other contentions upon which Dr. Jeffers and Mr. Rossi are testifying. Therefore, it is irrelevant and should be struck.

Second, LILCO moves to strike the first paragraph of page 9 of the Jeffers and Rossi testimony, which states as follows:

> The take home process would likely be slowed still more by both the heavy evacuation traffic expected by other witnesses for the County and New York State, and the staffing shortages which would probably result from role conflict among school personnel. [Citation omitted.]

These references to evacuation time estimates and role conflict are outside the scope of Contention 69.C and are cumulative to the testimony on traffic and role conflict already filed in this proceeding. Therefore, this paragraph should be struck.

V. Direct Testimony of
Nick J. Muto and J. Thomas Smith
on Behalf of Suffolk County Regarding
Contentions 24.E, 24.F, 24.N, 61.C, 69, 70, and 71

LILCO moves to strike the second full paragraph on page 12 of the "Direct Testimony of Nick J. Muto and J. Thomas Smith on Behalf of Suffolk County Regarding Contentions 24.E, 24.F, 24.N, 61.C, 60, 70 and 71," which provides:

> Fourth, Contention 71.A is correct when it asserts that LILCO's proposed evacuation of nursery schools using its own personnel could not work. There are established criteria that individual bus drivers must meet before they can be certified as school bus drivers. And then the employment of the drivers must be approved by individual school districts. It is our understanding that LILCO's employees are licensed to drive buses but not certified to drive school buses. Therefore, school administrators including, to our knowledge, the administrators of nursery schools, would not be authorized to permit their school children to be transported in buses driven by such persons.

Dr. Muto and Mr. Smith are not qualified to testify regarding the private nursery schools and whether they would or would not permit their school children to be transported in buses driven by LILCO personnel. These gentlemen are not being put forward as expert witnesses but rather as fact witnesses. There has been no showing that they are connected in any way with the

private nursery schools in the 10-mile EPZ. Therefore their testimony regarding what nursery schools would or would not do is not reliable and is not admissible evidence in this proceeding.

VI. Direct Testimony of Gregory C. Minor on Behalf of Suffolk County Regarding Contentions 85 and 88

LILCO moves the Board to strike portions of the "Testimony of Gregory C. Minor on Behalf of Suffolk County Regarding Contentions 85 and 88" (the Minor testimony), because they are beyond the scope of Contentions 85 and 88 and, therefore, not relevant to issues being litigated under these contentions.

A. Contention 85

LILCO moves to strike the following portions of the Minor testimony on Contention 85 at pages 3-6:

> Q. Why is the provision of the LILCO Plan referenced in Contention 85 contrary to the requirements of NUREG-0654 Section II.M as stated in that Contention?
>
> A. First, Criterion 1 of Section II.M states that the responsible organization (in this case, LILCO), "shall develop general plans and procedures for reentry and recovery and describe the means by which decisions to relax protective measures . . . are reached" considering both existing and potential conditions. The LILCO Plan does not include even a general plan for recovery or reentry.

First, the Plan at 3.10-1 states that "a Recovery Action Committee will be appointed . . . " and that the Committee "will . . . plan and implement actions for the restoration of the affected areas to their pre-emergency conditions." This does not constitute a plan for recovery; it is merely a plan for the creation of a committee whose charter will presumably include planning for and implementing recovery actions.

Second, Criterion 1 states that the plan shall describe the means for making a decision to reenter. On this subject, however, LILCO's OPIP 3.10.1 (at p. 3) only states that the Radiation Health Coordinator will "compare the results of the surveys with the guidance contained in Attachment 1 (for reentry)." Attachment 1 lists four categories of nuclides, each containing numerous isotopes, and 3 criteria levels for each category. The Plan contains no description of the means by which one would or could use these data, individually or collectively, to make a decision concerning reentry. OPIP 3.10.1 goes on to state that the Radiation Health Coordinator will "advise the Manager of Local Response as to the results of the surveys and the indicated actions" (OPIP 3.10.1 at section 5.3.1.d), and that "the Director of Local Response will authorize the initiation of the re-entry operation." This does not constitute a description of "the means by which decisions . . . are reached"; it is merely an assertion that a decision will be made by a particular person.

Similarly, OPIP 3.10-1 at pages 4-4a states that the Manager of Local Response, who is to be the chairman of the Recovery Action Committee, "ensures" that surveys of contaminated areas are conducted "to determine the means of decontamination or other disposition." It again fails to describe any of the

means of decontamination or disposition which will be considered, or any criterion to be used in deciding between or among them.

Third, Criterion 4 of NUREG 0654 Section II.M states that "Each plan shall establish a method for periodically estimating total population exposure." However, the recovery and reentry sections of the LILCO Plan do not establish such a method. The Plan at page 3.10-2 states that the Recovery Action Committee "ensures establishment of an organization to estimate total population exposure on a continuing basis." The procedure states that "Either the Radiation Health Coordinator of the U.S. Environmental Protection Agency Office of Radiation Programs in accordance with their FRMAP assessment function estimates total population exposure." (OPIP 3.10.1, section 5.3.8 at page 3a). However, neither the Plan nor the procedure describes how the estimates will be accomplished, what areas will be covered, or what data will be used to make the estimate. In other words, although the procedure says who LILCO expects will do it, it fails to establish the method for estimating the total population exposure as required by NUREG 0654 Section II.M.4.

Q. Please summarize your conclusion with regard to Contention 85.

A. I conclude that Contention 85 is valid. The LILCO Plan and implementing procedures fail to include the components of a general plan for recovery and reentry as identified in NUREG 0654.

Testimony of Gregory C. Minor at 3-6.

The testimony cited above is beyond the scope of Contention 85. Contention 85 raises the issue of the existence of

any recovery and reentry plans in LILCO's Emergency Plan. Specifically, Contention 85 maintains that the LILCO Plan "provides merely that planning for recovery and reentry will commence after the appointment of the Recovery Action Committee; at this time, no such plan exists." Mr. Minor's testimony, however, does not question the existence of recovery and reentry plans in LILCO's Emergency Plan, but rather "the adequacy of the LILCO Plan with respect to recovery and reentry . . . ." Testimony of Gregory C. Minor at 1.

Contrary to the allegations of Contention 85, Mr. Minor expressly acknowledges that LILCO has developed recovery and reentry plans. Specifically, he states:

> Recovery and reentry are discussed in Section 3.10 of the LILCO Plan, pages 3.10-1 and 3.10-2. The implementing procedures for recovery and reentry are contained in OPIP 3.10.1 "Recovery/Reentry," which refers to Attachment 1 of OPIP 3.6.6 "Ingestion Pathway Protective Actions."

Testimony of Gregory C. Minor at 3. Mr. Minor's testimony, however, seeks to broaden the scope of Contention 85 in asserting that LILCO's recovery and reentry plans and procedures require additional elaboration. As such, his testimony is not responsive to Contention 85 and therefore should be struck.

B. Contention 88

LILCO also moves to strike the underlined portion of the following testimony on Contention 88, because it is outside the scope of the contention and therefore irrelevant.

> In addition, LILCO's Plan and implementing procedures provide no guidance as to how to conduct a cost-benefit analysis for temporary reentry of an area, and thus do not include a description of the means by which a decision regarding temporary reentry could or would be made as required by NUREG 0654 Section II.M.1.

Testimony of Gregory C. Minor at 7-8.

The only reference in Contention 88 to temporary reentry is the statement that "[t]he Plan calls for cost benefit analysis based on a $1,000/person-rem during temporary reentry (OPIP 3.10.1 at 5), but provides no guidance on how to analyze a situation in order to be able to apply this criterion." The essence of the contention is that the Plan does not provide guidance about how to apply the $1,000/person-rem criterion. The testimony cited above, however, goes beyond the issue whether the Plan provides guidance as to the application of the $1,000/person-rem criterion. It shifts the focus improperly from cost-benefit analysis, the subject of Contention 88, to the broader issue whether the Plan describes, generally, the basis for a decision regarding temporary reentry. The testimony, therefore, is beyond the scope of Contention 88 and should be struck.

CONCLUSION

For the above stated reasons, each of the cited portions of the County's testimony, including the entire written testimony of Dr. Finlayson et al., should be struck.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

BY James N. Christman
James N. Christman
Kathy E. B. McCleskey
Renee R. Falzone

Hunton & Williams
P.O. Box 1535
707 East Main Street
Richmond, VA 23219

DATED: March 27, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3

I hereby certify that copies of LILCO'S MOTION TO STRIKE PORTIONS OF THE "GROUP II-B" TESTIMONY OF SUFFOLK COUNTY were served this date upon the following by first-class mail, postage prepaid or, as indicated by an asterisk, by Federal Express:

James A. Laurenson,*
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Tower, Rm. 402A
4350 East-West Hwy.
Bethesda, MD 20814

Dr. Jerry R. Kline*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Tower, Rm. 427
4350 East-West Hwy.
Bethesda, MD 20814

Mr. Frederick J. Shon*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
East-West Tower, Rm. 430
4350 East-West Hwy.
Bethesda, MD 20814

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Bernard M. Bordenick, Esq.*
David A. Repka, Esq.
Edwin J. Reis, Esq.
U. S. Nuclear Regulatory Commission
7735 Old Georgetown Road
(to mailroom)
Bethesda, MD 20814

Eleanor L. Frucci, Esq.*
Attorney
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
East-West Tower, North Tower
4350 East-West Highway
Bethesda, MD 20814

Fabian G. Palomino, Esq.*
Special Counsel to the
Governor
Executive Chamber
Room 229
State Capitol
Albany, New York 12224

Herbert H. Brown, Esq.*
Lawrence Coe Lanpher, Esq.
Christopher McMurray, Esq.
Kirkpatrick, Lockhart, Hill
Christopher & Phillips
8th Floor
1900 M Street, N.W.
Washington, D.C. 20036

Mr. Marc W. Goldsmith
Energy Research Group
4001 Totten Pond Road
Waltham, Massachusetts 02154

MHB Technical Associates
1723 Hamilton Avenue
Suite K
San Jose, California 95125

Mr. Jay Dunkleberger
New York State Energy Office
Agency Building 2
Empire State Plaza
Albany, New York 12223

Stewart M. Glass, Esq.*
Regional Counsel
Federal Emergency Management
Agency
26 Federal Plaza, Room 1349
New York, New York 10278

Stephen B. Latham, Esq.*
Twomey, Latham & Shea
33 West Second Street
P.O. Box 398
Riverhead, New York 11901

Ralph Shapiro, Esq.*
Cammer & Shapiro, P.C.
9 East 40th Street
New York, New York 10016

James Dougherty, Esq.*
3045 Porter Street
Washington, D.C. 20008

Howard L. Blau
217 Newbridge Road
Hicksville, New York 11801

Jonathan D. Feinberg, Esq.
New York State
Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management
Agency
500 C Street, S.W.
Room 840
Washington, D.C. 20472

Ms. Nora Bredes
Executive Coordinator
Shoreham Opponents' Coalition
195 East Main Street
Smithtown, New York 11787

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Martin Bradley Ashare, Esq.
Suffolk County Attorney
H. Lee Dennison Building
Veterans Memorial Highway
Hauppauge, New York 11788

James N. Christman

Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, Virginia 23212

DATED: March 27, 1984

Attachment 1

TABLE 1

TYPE OF SHELTER (Shielding Factors)	CHANCES OF RECEIVING HEALTH THREATENING DOSES* AT GIVEN DISTANCES FROM THE PLANT				
	≥ 30 Rem		≥ 100 Rem		≥ 200 Rem
	1-2 mi.	10 mi.	1-2 mi.	10 mi.	1-2 mi.
LILCO Average for Long Island Housing (0.7 cloud, 0.2 ground)	30%	12%	9%	~ 1%	2%
Wood Frame without Basement (0.9 cloud, 0.4 ground)	30%	15%	20%	1%	2%
Masonry or Brick 1/2 with Basement (0.5 cloud, 0.1 ground)	30%	8%	5%	< 1%**	1%
Vehicles (1.0 cloud, 0.7 ground)	35%	15%			< 1%

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* Calculated for a 12 hour exposure except for vehicles where 2 hrs. exposure was used

** 1% chance of doses exceeding 100 rems at 5 miles

TABLE 2

Contention		30 rems	100 rems
G.	Masonry houses with and without basements (0.5 shielding factor)		
	8 mi	8%	
	5 mi		1%
	2 mi		5%
I.	0.7 avg. cloud shielding factor, 0.2 ground dose shielding factor		
	10 mi	12%	
	9 mi		1%
	2 mi		9%
A.	Wood frame house without basement (0.9 shielding factor), 0.4 ground dose shielding factor		
	10 mi	15%	1%
	2 mi		5%
	Range		
	10 mi	8-15%	
	2 mi		5-20%
	Vehicle, 2 hours		
	10 mi	15-35%	