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LILCO, April 5, 1984

UNITED STATES OF AMERICA '84 APR -9 A11:39
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 ANSWER TO
"SUFFOLK COUNTY MOTION TO STRIKE
PORTIONS OF LILCO'S GROUP II-B TESTIMONY"

This is LILCO's answer to the "Suffolk County Motion to Strike Portions of LILCO's Group II-B Testimony" (hereinafter simply "Motion"), filed March 28, 1984. LILCO opposes the County's motion for the reasons set out below.

I. The County's Generic Arguments

In Part I (pages 2-14) of its Motion the County gives its "grounds for motions to strike." LILCO's answers to these general arguments are as follows.

A.1 Relevance of Pre-1982 Suffolk County Planning Efforts

The County says that any testimony about Suffolk County's pre-1982 radiological emergency planning is irrelevant,

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apparently feeling that the pre-1982 planning has nothing to do with the present LILCO Transition Plan. As we have pointed out before, however, the LILCO Plan is based on the draft plan formulated by Suffolk County planners. Evidence about that pre-1982 planning is therefore relevant both as background information and as a foundation for testimony about the present plan. Moreover, testimony about planning that was done by the County in the past is relevant to assessing the County's present position about what measures are required to meet NRC regulations.

The County argues that the pre-1982 County planning efforts do not merit attention because they were rejected by the County as inadequate. But the fact is that the pre-1982 planning purported to be in accordance with NRC regulations; it was done under a contract agreeing to produce a plan that complied with NRC regulations. The County's rejection of that plan, beginning in March 1982 and culminating in the County Legislature's resolution in February 1983, on the other hand, did so on grounds entirely different from the NRC regulations. Accordingly, the pre-1982 County planning is the only work by County personnel that attempted to comply with NRC regulations, and thus shows what at least some County planners believe the NRC regulations require when the County is not litigating in an attempt to prevent the operation of a nuclear plant. Though one can argue about its weight, the relevance of this evidence cannot seriously be questioned.

As for the County's suggestion that it will have to submit additional testimony to address whether the pre-1982 County planning efforts were good (Motion 4), since the present LILCO Plan is based on the pre-1982 County planning efforts, in attacking the present Plan the County attacks its own pre-1982 efforts as well. Accordingly, there does not appear to be any reason to permit the County to submit additional testimony on that score.

A.2 Relevance of LILCO "Predictions"

On pages 5-7 of its Motion the County asks the Board to strike LILCO testimony about future activities. The County refers to such testimony as "speculation" or "predictions."

We believe the County has already lost this argument. On March 20, the Board ruled as follows:

> Turning next to page 42 and 43, the objection is to the answer to Question Number 110, for the reason that it amounts to allegedly improper speculation. This Motion is denied.
>
> LILCO can submit evidence concerning what it intends to do under certain circumstances.

Tr. 4003 (March 20, 1984). The County fails to recognize that when future actions are within the control of the party presenting the testimony, they are not "speculation" or "predictions"; they are commitments. In fact, testimony about future licensee actions is submitted all the time in NRC proceedings.

In the earlier phases of this very proceeding, testimony on various subjects was frequently submitted before final action had been taken or before NRC Staff review was complete.

All the more is it permissible to have predictive testimony and predictive findings in the case of emergency planning. In the Waterford case, the intervenors claimed error in the licensing board's reliance on "predictive" findings and "post-hearing verification." Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-08 (1983). The Appeal Board said this:

> We are in agreement with the basic principles upon which Joint Intervenors rely. The Commission, in fact, has long held that, "[a]s a general proposition, issues should be dealt with in the hearings and not left over for later (and possibly more informal) resolution." [Citations omitted.]
>
> With respect to emergency planning, however, the Commission takes a slightly different course. At one time, the agency's regulations required a finding that "the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 CFR § 50.47(a)(1)(1982) (emphasis added). In July 1982, the Commission amended this provision by clarifying that "the findings on emergency planning required prior to license issuance are predictive in nature" and by eliminating the reference to the "state" of emergency preparedness. 47 Fed. Reg. 30232, 30235 (July 13, 1982), petition for review pending sub nom. Union of Concerned Scientists v. Nuclear Regulatory Commission, No. 82-2053 (D.C. Cir., filed Sept. 10,

> 1982). . . . The Commission emphasized, however, that "there should be reasonable assurance prior to license issuance that there are no barriers to emergency planning implementation or to a satisfactory state of emergency preparedness that cannot feasibly be removed." 46 Fed. Reg. at 61135. Thus, while the plan need not be "final," it must be sufficiently developed to permit the board to make its "reasonable assurance" finding in a manner nonetheless consistent with the guidance of Indian Point [Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 (1974)] and its progeny. See Zimmer [Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760 (1983)], supra note 24, 17 NRC at 770, 773; Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 n.57 (1983).

17 NRC at 1103-04. In Waterford, the licensing board had left to post-hearing resolution such things as the installation and testing of the siren warning system; agreements with surrounding parishes for buses, ambulances, drivers, and vans; installation of communications systems between onsite and offsite authorities; and completion of the implementing procedures. See also Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-82-70, 16 NRC 756-66 (1982), noting that the state and county plans were incomplete but that there were no obstacles to completion.

In response to an argument that the Monroe County emergency plan was incomplete, the Appeal Board in Fermi 2 said this:

> Nor does the lack of completeness of the Monroe County plan, standing alone, preclude issuance of a full power operating license. We recently canvassed that issue in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346 (1983) and in Zimmer, supra. Those cases explained "that the Commission expects licensing decisions on emergency preparedness to be made on the basis of the best available current information." San Onofre, supra, 17 NRC at 380. But that general principle does not mandate either a final local government emergency plan or a final evaluation of offsite preparedness by FEMA, the agency that has the principal responsibility to conduct such an evaluation. The regulatory scheme set forth by the Commission, we ruled, contemplates that "hearings may properly be held [and a decision on a full power operating license reached] at such time as the plans are sufficiently developed to support a conclusion that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken . . . in the event of a radiological emergency." Zimmer, supra, 17 NRC at 775. While we could not draw a bright line respecting how much plan development would be enough for that purpose, it is plain from the Commission's regulatory requirements that offsite plans need not be complete, nor finally evaluated by FEMA prior to conclusion of the adjudicatory process. San Onofre, supra, 17 NRC at 380 & n.57; Zimmer, supra, 17 NRC at 775. See 47 Fed. Reg. 30232 (July 13, 1982), petition for review pending sub nom. Union of Concerned Scientists v. NRC, No. 82-2053 (D.C. Cir. filed September 10, 1982); 45 Fed. Reg. 82713 (Dec. 16, 1980). See also 10 CFR §50.47(c)(1).

Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983).

There is also a line of cases that point out the "dynamic" nature of emergency planning and the undesirability of freezing the licensing proceeding to earlier and likely outmoded information. In Diablo Canyon the board pointed out that the NRC licensing process is a "dynamic one." Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 790 (1983). In Indian Point the Commission said that emergency planning is a "fluid process." Consolidated Edison Co. of New York (Indian Point, Unit No. 2), CLI-83-16, 17 NRC 1006, 1011 (1983).1/ In San Onofre the Appeal Board said that there is no hint in the FEMA/NRC Memorandum of Understanding of "freezing" either FEMA or the licensing proceeding to earlier and likely outmoded information. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 (1983).

The County complains (Motion 7) that LILCO can change the facts unilaterally, even subsequent to the filing of testimony. This is as it should be. LILCO is willing to make changes in its emergency plan if by doing so it will resolve County concerns or eliminate issues for litigation. Every responsible litigant in every legal proceeding should be willing

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1/ In Indian Point the Commission was addressing already operating plants, for which a "different regulatory structure" is provided. 17 NRC at 1008. But the principles of emergency planning recited in the decision apply to plants like Shoreham as well.

to do the same; ordinarily this is known as "settlement." To date, settlement of offsite emergency planning issues with Suffolk County has not worked, and the only thing LILCO can do is to make changes in its plan based on County contentions or County testimony. For example, LILCO made changes in its evacuation traffic plan in response to testimony by Suffolk County police, and it has made changes in its emergency planning brochure in response to Suffolk County contentions. This is exactly what LILCO ought to be doing.

A.3. Relevance of the History of Planning

On pages 8-10 of its Motion the County objects to a discussion in LILCO's testimony about the planning process that has gone on in the past.

The history of LILCO's emergency planning efforts is relevant for two reasons. First, it is relevant as background information. Second, it is relevant because the process of emergency planning is relevant. The NRC case law clearly establishes that, as noted above, emergency planning findings are predictive. Numerous cases have found emergency plans adequate despite unfinished business, if there was an emergency planning process that was dealing with the unresolved problems. Nowhere is this principle better illustrated than in the Commission's June 1983 Indian Point order declining to shut down the two Indian Point units:

> Based on this progress, and the commitments which have been received from the State and licensees to assure that momentum is maintained, we conclude that an order shutting down the two plants is no longer justified.

Consolidated Edison Co. of New York (Indian Point, Unit No. 2), CLI-83-16, 17 NRC 1006, 1014 (1983). Thus, to the extent that there are still things that need to be done, the Board can nevertheless make a finding of adequate emergency planning if it can find that the emergency planning process is adequate and moving forward. Testimony about the process is therefore relevant.

A.4. Relevance of the New York State Plan

On pages 10-11 of its Motion the County objects to LILCO testimony about the New York State radiological emergency plan. This argument cannot be usefully answered in general, because the relevance of the New York State Plan depends on the purpose for which it is being addressed in testimony. We will therefore answer the County's objections on this ground in the specific circumstances in which they arise, below.

A.5. Relevance of Other Nuclear Facilites

On pages 11-12 of its Motion the County argues that LILCO should be allowed to testify only about the Shoreham station and not about how other emergency planners have handled

similar issues at other nuclear plants. Thus, if every other emergency plan in the country, for example, handled recovery and reentry a certain way, and LILCO handled it the same way, the County would like the Board to be ignorant of this. This argument by the County has been rejected in the past, see, e.g., Tr. 5560-61 (March 30, 1984), and it should be rejected again now.

B. So-called "Nonprobative and Unreliable Testimony"

On pages 12-13 of its Motion the County argues that some of LILCO's testimony is "unsupported conjecture" and "speculation." This argument goes to the weight, not the admissibility, of the evidence. If the County wants to know more about the basis for the various parts of the LILCO testimony to which it objects, it can ask on cross-examination.

C. Legal Interpretations or Conclusions

The County next objects, on pages 13-14 of its Motion, to LILCO's witnesses testifying about their understanding of NRC regulations. The County has already made this argument and lost. The Board has ruled as follows:

> We find that witnesses can give their interpretation or their belief about what a regula ion requires. We will then have to decide if that is correct.

Tr. 4003 (March 20, 1984); see also, e.g., Tr. 5560, 5561-62 (March 30, 1984).

II. LILCO's Answer to the County's Arguments About Specific Portions of LILCO's Group II-A Testimony

Specific portions of LILCO's testimony that Suffolk County wishes to have struck are listed in Part II of its Motion. LILCO's responses are as follows.

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 (Motion 14)

The County first moves to strike two sentences (the second and third) in the "Purpose" section. The reason is the County's usual objection to predictive testimony. The "Purpose" section is not evidence and may not be relied on in findings, so there is little purpose in moving to strike it. The Board so ruled at Tr. 5562 (March 30, 1984).

2. Page 14, Answer 8, last paragraph (Motion 15)

The County moves to strike a sentence that says LILCO is willing to consider providing pagers to school superintendents. The County's basis is that it is "irrelevant, purely speculative, and without probative value" (Motion 15). The County relies on its customary objection to "speculation" -- that is, to predictive testimony and findings and to commitments by LILCO.

Whether the superintendents will ultimately want pagers and how many, if any, will be provided are among the details that need not be addressed in this proceeding. But the fact that providing pagers is one measure that LILCO is willing to consider is relevant.

3. Page 14, Answer 9, last sentence (Motion 15)

The County objects to a sentence that says the school district superintendents will notify the school principals about protective actions in an emergency. The County's argument is basically that the testimony is unreliable, an argument that goes to weight rather than admissibility. If the County wishes, it can ask the witnesses the basis for the sentence during cross-examination.

4. Attachments 6-10 (Motion 15-16)

The County moves to strike as irrelevant Attachments 6-10, which are tables containing data about the various school districts. In particular, Attachment 10, which lists school districts with schools outside the EPZ, is said to have no relevance.

In fact, Attachments 6-10 are relevant both because they list relevant data about the various schools being discussed in the testimony and because they show the level of detail and

thoroughness involved in the LILCO planning effort. Because, as we have noted above, emergency planning findings are "predictive" and because the commitment of planners is a factor to be weighed, the quality of the emergency planning process is relevant to emergency planning issues. As for Attachment 10, which addresses school districts outside the EPZ, it is relevant for a number of reasons: (1) some of the schools outside the EPZ have students who live inside the EPZ; (2) a listing of schools outside the EPZ shows the large number of available possibilities for reception centers for students from within the EPZ; and (3) the transportation resources of the school districts outside the EPZ may be called upon, on an emergency basis, to help evacuate students from inside the EPZ. The testimony addresses each of these three subjects.

5. Page 16, Question and Answer 11 (Motion 17-18)

The County moves to strike Question and Answer 11, which address the question whether Suffolk County or New York State could do a better job of planning for schools than LILCO has done, on the grounds of irrelevance and unreliability.

First, as to relevance: Suffolk County has argued throughout this proceeding that "unique local conditions" make LILCO's plan unworkable. As is rapidly becoming clear, the only "local condition" that amounts to anything is Suffolk

County's refusal to participate in emergency planning. Indeed, a large part of Suffolk County's case before this Board is founded on the basic claim that LILCO cannot do adequate emergency planning simply because it is not a governmental agency. This is the issue addressed by Question and Answer 11.

Second, as to reliability: this goes to weight, not admissibility. The LILCO witnesses are familiar with planning at other New York nuclear facilities, and if the County wants to probe their basis for Answer 11, it can do so on cross-examination.

6. Pages 16-18, Questions and Answers 12, 13, and 14, and Attachments 11 and 12 (Motion 18-20)

The County objects to LILCO's discussion of the background of the present plan, including its origins in Suffolk County planning efforts. The first objection is on the basis of relevance. As we have said above, the length of time and the number of people and organizations involved in developing an emergency plan are relevant to its quality. In particular, the fact that Suffolk County Planning Department personnel in the past, as well as LILCO personnel at present, believed the planning effort to be sound is relevant to whether the plan is a good one or not.

The second ground of the County's objection is apparently that the LILCO witnesses lack personal knowledge both of

what motivates school officials and of what was in the minds of the County planners when they began what eventually became the LILCO Transition Plan. This argument goes to weight rather than admissibility. The fact is that the LILCO witnesses live on Long Island and have been working with school officials in the planning process; they can testify about the situation those officials face. Likewise, the LILCO witnesses are in a position to know a good deal about the pre-1982 County planning effort. As an affidavit of Charles A. Daverio in Phase I of this proceeding and LILCO's brief on the County's motion to terminate this proceeding in the spring of 1983 reveal, LILCO employees, particularly Mr. Daverio, worked closely with the County planners to develop a plan. It was, in fact, a joint effort. Mr. Daverio reports directly to Mr. Weismantle, who is one of the witnesses on LILCO's schools testimony. The County can probe the depth and basis of the LILCO witnesses' knowledge on cross-examination, if it wishes.

As for the County's objection to Attachment 11 on the basis that the letters are not properly authenticated, the LILCO testimony indicates that planners from the County Planning Department held discussions with school officials, as indicated by the letters in Attachment 11. As noted above, LILCO personnel worked with the County in happier days when the County was still doing radiological emergency planning. Thus there is sufficient basis and foundation. If the County thinks that

the letters are not authentic, it can either ask to present evidence that they are not or cross-examine LILCO's witnesses on the matter.

As for Attachment 12, which is a portion of the draft County plan, the County's objection based on irrelevance is once again misplaced. Attachment 12 is the County planners' discussion of the advantages and disadvantages of an early dismissal plan. It is referenced on page 17 and page 38 of the LILCO testimony, and it is relevant in two ways: first, on its own merits as a discussion of the trade-offs that must be made and the rationale for a basic feature of the plan (early dismissal) and, second, to show that such considerations were taken into account when the original planning was done -- again, this second point goes to the quality of the planning process that produced the present plan.

If the County is suggesting that Attachment 12 is not truly an excerpt from the draft County plan, then it can try to produce evidence that this is so, or cross-examine LILCO's witnesses on the matter. As we have said, Mr. Daverio, who reports directly to one of the LILCO witnesses, worked with the County planners and has direct personal knowledge of their work.

7. Page 20, Question and Answer 17 (Motion 21)

The County objects to a question and answer making the point that LILCO remains flexible and willing to change its plan for schools if, in the school officials' judgment, it needs to be changed. The County's objection is apparently that this subject is irrelevant. Once again, the County ignores the fact that the planning process is relevant to emergency planning issues. Evidence that the planning agency (in this case LILCO) is flexible and willing to accommodate the needs of the schools is relevant to whether the planning process is a good one.

Moreover, the County forgets that this proceeding is held under the "interim compensating actions" portion of the emergency planning regulation (10 C.F.R. § 50.47(c)(1)). The case law suggests two things about this provision. First, a variety of factors is to be taken into account in deciding whether interim compensating actions are adequate:

> In sum, the regulatory structure established by the emergency planning rule is intended to be flexible: the Commission is to look at the totality of the circumstances; to allow grace periods, where appropriate, for the correction of deficiencies; to balance a variety of factors even where grace periods have expired without the completion of every desirable corrective action; and to recognize that emergency planning is a fluid process, requiring regular updating, testing, and adjustment. It is the Commission's duty to determine when the

> gravity of outstanding deficiencies, their persistence, the limitations of interim compensatory measures, and other factors, taken together, counsel an end to grace periods, and the imposition instead of a shutdown.

Consolidated Edison Co. of New York (Indian Point, Unit No. 2), CLI-83-16, 17 NRC 1006, 1011 (1983). Second, there are indications in the cases that a willingness to plan -- a commitment, if you will -- is one factor to be taken into account. For example:

> I view the two emergency planning deficiencies at Indian Point, which prompted our May 5 order, to be deficiencies in commitments.

Consolidated Edison Co. of New York (Indian Point, Unit No. 2), CLI-83-16, 17 NRC 1006, 1022 (1983) (Additional Views of Chairman Palladino). It is also relevant that certain emergency planning problems are beyond the applicant's control. In light of the present difficult political situation, the fact that LILCO is willing to take certain emergency planning measures helps satisfy its burden of proof.

8. Pages 21-23, Question and Answers 18 and 19 and Attachment 13 (Motion 21-22)

Again, the County objects to a discussion of the planning process, asserting that it is only "the adequacy and implementability of one particular document" that is at issue in this proceeding.

Oddly enough, the County's approach appears to conflict with one of the County's recurring themes -- that is, that the LILCO plan is a mere "paper" plan and cannot really be implemented. The County apparently wishes to ensure that conclusion, insofar as this proceeding is concerned, by artificially limiting the evidence to the four corners of the plan. Of course, if the County were correct, then there would be no purpose in LILCO's filing testimony at all; LILCO would be limited to filing the emergency plan, while the County could file anything it wanted about how difficult it might be to implement the plan. And so we repeat: emergency planning is a process; evidence about that process is evidence about the quality of the plan.

9. Page 25, Answer 22, everything after the word "No" (Motion 22-23)

Again, the County moves to strike evidence about the "ongoing process" (LILCO schools testimony at 25) of emergency planning. The testimony is relevant, for the reasons already stated. Also, this particular answer provides some useful perspective to keep in mind when we are in danger of getting bogged down in details about the state of planning at any one particular time.

10. Page 26, Question and Answer 23 (Motion 23)

The County seeks to strike LILCO's representation that it is willing to provide resources for the schools' planning. Again, this is relevant to the quality of the planning process. It is also relevant to whether any shortcomings in planning are outside LILCO's control, which is a factor to be weighed under the "interim compensating actions" provision. It is also relevant to show that, in the words of the Waterford decision, there are no "barriers to emergency planning implementation . . . that cannot feasibly be removed," 17 NRC at 1104.

11. Pages 26-27, Question and Answer 24 and Attachments 37, 38, and 41 (Motion 24-25)

Again the County moves to strike evidence about LILCO's planning process. Testimony about the process is relevant for the reasons given above.

As for the sample school procedures and generic sheltering guidance, the fact that the applicant has prepared such documents, which can be used or adapted by individual schools, is clearly relevant both to the quality of the planning process and to the state of preparedness. Here, as elsewhere, the County's point seems to be that this particular piece of testimony is not the entire answer to the emergency planning issues; it is, however, a relevant part of the whole. As for the

County's claim of surprise (Motion 25), the documents in question were provided to school superintendents, including two of the County's own witnesses, who also were invited to the meeting where the materials were discussed. The County's claim of surprise is itself surprising.

12. Pages 27-29, Question and Answer 25 (Motion 25-28)

First, the County objects to all evidence about the planning process, and the objection is unfounded for the reasons we have recited several times above. Second, the County believes that LILCO's testimony about the present political situation, which presents special difficulties of emergency planning for schools, is irrelevant, and without basis as well. The "basis" argument is simply a quarrel with the evidence and goes to weight rather than admissibility; it can be explored on cross-examination if the County wishes. The "relevance" argument suggests that the LILCO witnesses may not discuss the planning problems they face and why they feel the problems can be overcome, a suggestion that cannot be supported.

The County's allegation of a "personal attack" is a mischaracterization of the LILCO testimony. The testimony discusses certain problems faced by emergency planners in Suffolk County, why they can be overcome, and how they are being overcome. That some of the problems are political in nature does not make them irrelevant.

The County's objection (full paragraph at Motion 27) about what "makes sense" and about LILCO's willingness to provide emergency planners for the schools appears to go to weight rather than admissibility and to argue once again that evidence about the planning process is impermissible.

Finally, the County objects to statements about New York State law as an improper legal conclusion and as lacking a proper evidentiary foundation. These arguments appear to go to weight rather than admissibility. If the County doubts the authenticity of the documents, it can first say so outright and then try to demonstrate that lack of authenticity by cross-examination or otherwise.

13. Page 30, Answer 27, last two sentences (Motion 28)

The County objects to LILCO's testimony about what may be motivating some school officials. The County ignores the fact that LILCO witnesses have been discussing emergency planning with school officials and that the LILCO witnesses live on Long Island. The question of whether their estimations of the political problems of emergency planning are accurate is something to be explored on cross-examination, if the County wishes.

14. Page 31, Answer 30, first sentence (Motion 29)

The County argues that the LILCO witnesses are not entitled to give their understanding of NRC regulations, an argument that has already been rejected by the Board. The County's continuing efforts to make this argument are contrary to the law of the case.

15. Pages 35-38, 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 (Motion 29-32)

The County moves to strike the first sentence of Answer 38, on page 35 of the testimony, because of its theory about the inadmissibility of evidence about the background of emergency planning and about the emergency planning process. This theory has already been addressed above.

Second, the County (Motion 29-30) says that quoting from Dr. Erikson's past statements is irrelevant and without foundation. The foundation argument is wrong; testimony in NRC proceedings is a matter of public record, and the LILCO witnesses can read that record and testify about it as well as anybody. Dr. Erikson's statements are not presented for the truth of what they assert, but merely to show that Suffolk County's own consultant has criticized emergency plans that keep children separated from their parents.

As for relevance, the fact is that Dr. Erikson has frequently stated that emergency plans should take into account the fact that people will try to reunite with their families before evacuating; that Dr. Erikson was a member of Suffolk County's emergency planning task force on which the County bases its present position in this proceeding; and that the LILCO Plan is designed to accomplish precisely what Dr. Erikson advocates. Having elsewhere argued that its pre-1982 planning efforts are inadmissible, Suffolk County now argues that statements by its post-1982 consultants are also inadmissible. The argument appears to be that when a County planner, either pre-1982 or post-1982, says anything that supports the adequacy of LILCO's present plan, it is irrelevant.

Finally, the County argues (Motion 30-31) that FEMA's opinion about the desirability of an early dismissal plan is irrelevant, notwithstanding the fact that LILCO's Plan includes an early dismissal option. The County says that the sworn testimony of the FEMA witness in this proceeding is a "gratuitous and meaningless comment." The County's rationale seems to be that FEMA testified merely that an early dismissal option should be adopted, not that the early dismissal option used by LILCO is adequate. This argument is frivolous.

Finally, the County moves to strike testimony about evidence in the Indian Point proceeding, apparently taking the position that the State of New York's position in this proceeding

makes irrelevant and inadmissible any prior inconsistent statements by State personnel. There is no legal basis for this objection, so far as we can tell. The rest of the County's argument appears to be that the evidence is unreliable, which goes to weight, not admissibility.

16. Page 39, Answer 40, last two sentences (Motion 32)

Again the County moves to strike evidence about future planning, in particular about a questionnaire that will be sent out in order to get additional information required for more detailed planning. This is simply another attempt to freeze the emergency planning effort in place, and as such it is contrary to the case law cited above.

17. Attachment 43 (Motion 33)

The County moves to strike Attachment 43, which consists of planning materials sent to the Director of Administrative Services for BOCES II. Again, the County argues that the planning process is irrelevant and that the existence of model plans is also irrelevant. For the reasons that have already been stated, the County's argument is wrong.

18. Page 44, Answer 46, first sentence (Motion 34)

The County argues that testimony about what state witnesses have said in other proceedings is hearsay. Hearsay, of course, is admissible in these proceedings. The County is simply quarreling with the reliability of the evidence, something that it is entitled to go into on cross-examination if it wishes. The County's arguments go to weight, not admissibility.

19. Page 49, Answer 51 (Motion 34-35)

The County argues that the generic sheltering guidelines prepared by LILCO are irrelevant to such issues as whether the schools can implement the sheltering option. The fact is, however, that Question and Answer 54 point out that the generic guidelines could be conveyed to the schools during an emergency even without preplanning. Even without that question and answer, the information about the generic guidelines would be relevant to the quality of and commitment to the planning process.

20. Page 50, Answer 52 (Motion 35)

The County again moves to strike testimony about future planning and the planning process. The answer to this has been stated above.

21. Page 51, Answer 55 (Motion 36)

The County suggests that testimony about the likelihood of having to implement a particular protective action is irrelevant. The County says that "[t]he promise behind the NRC requirement that there be an emergency plan is an assumption that an accident happens" (Motion 36). We appear to have the classic situation in which the intervenor wants to testify about consequences (in the County's Finlayson testimony, for example) and the applicant wants to testify about probabilities.

In truth, Answer 55 is only a small part of the LILCO testimony, and it is offered only for perspective and context. It is not used, for example, to justify the absence of a plan, since a plan exists. It is, however, a useful corrective for the County's assumption that the hearings should ignore all but the most serious, least likely accident or accidents. It is relevant for this purpose.

However, based on the hearing of April 3, 1984, it appears that the County will use any reference to the low likelihood of an accident as a springboard from which to explore LILCO's probabilistic risk analysis (PRA), on which LILCO has not relied in this proceeding. In order to avoid the delay that further questioning about the PRA would doubtless entail, LILCO is perfectly willing to withdraw Question and Answer 55 on page 51 of the testimony. In short, we do not contest this

part of the County's motion to strike, though we rely on different grounds from those the County asserts.

22. Page 52, Answer 56, last sentence (Motion 37)

The County moves to strike a statement that a general emergency with projected offsite doses of five rem or more is the most severe and the least likely of the several emergency classes. For the same reason set out immediately above having to do with the PRA, LILCO does not contest the County's motion to strike this single sentence.

23. Pages 53-54, Answers 58 and 59 (Motion 37-39)

Again, the County moves to strike testimony that says what LILCO will do in the future. Again, it refers to commitments as "speculative." Again, the County ignores the principle that emergency planning findings are predictive. The County suggests, in fact, that because of the way it has drafted its contentions, the only evidence that is admissible is about what emergency preparedness actions can be taken today. This is contrary to the basic principles of how emergency planning issues are handled in these cases, discussed above.

24. Pages 56-57, Answer 62 (Motion 39-40)

Again, the County objects to testimony about the ongoing planning process. Again, the County attempts to freeze the facts in time. Again, it is putting forward arguments contrary to NRC case law.

The County's theory seems to be that the parties are bound to present evidence on the state of affairs that existed several weeks or months ago, to litigate those facts to a conclusion, and, if there is any shortcoming in the state of planning as of several months ago, to begin an entirely new proceeding presumably focusing on the situation at a slightly more advanced state of time. This approach, a formula for delay and futility, has nothing to recommend it.

25. Pages 58-59, Answer 63, all of the second paragraph except the first sentence (Motion 40)

Again, the County moves to strike testimony about the ongoing planning process and what will be done in the future. Again, the County is ignoring the predictive nature of emergency planning findings.

In addition, the County ignores the fact that in the health-and-safety portion of this proceeding the testimony focused many times on actions yet to be taken, commitments yet to be fulfilled, and safety systems for which the NRC Staff had

not yet completed its review. Indeed, in one case, LILCO committed to store the activating key to the standby liquid control system (SLCS) in a prominent place based upon views expressed by the Board during the hearing. LILCO considered the Board's views over the lunch break and came back in the afternoon to commit to doing what it believed the Board was suggesting ought to be done. In our experience this sort of testimony and this sort of speedy response to changing circumstances is normal in NRC licensing proceedings and, for that matter, productive of good emergency planning.

26. Page 60, Answer 66 (Motion 41)

The County moves to strike testimony that says that LILCO will offer training and equipment to school bus drivers and teachers. Its basis is that the testimony is speculative. The County also says that it is not relevant, because it "does not relate to any of the contentions that this testimony supposedly addresses."

Again, the County mistakes a commitment for "speculation." It is true that LILCO has no power to force people to accept training; but that does not make testimony about what LILCO will offer in the planning process inadmissible. Moreover, we do not understand the County's relevance argument. It is not clear why the offering of training and dosimeters to school bus drivers and of training to teachers is not relevant

to whether protective actions that require the use of school buses or the supervision of school students can be accomplished.

27. Page 51, Answer 67, last three sentences (Motion 41)

Again, the County moves to strike evidence about future activities. The same answer applies that has applied every other time the County has made this argument.

28. Page 62, Answer 70, all but the first sentence (Motion 41-42)

Again, the County moves to strike evidence about the planning process and future activities, based on the acknowledged fact that reception centers have not yet been identified. The answer to this sort of objection has already been given several times above.

29. Pages 68-69, Answer 79 (Motion 42-43)

The County moves to strike LILCO's testimony, in Answer 79, about the possible use of Suffolk County Community College as a relocation center, including the witnesses' assessment of the present political situation. The County's rationale is that this amounts to "speculation," but it appears that what this means is that the County disagrees with the LILCO witnesses' opinion. The County wishes to have the president of

the College testify that he will not allow his facility to be used, but not the LILCO witnesses' testimony that he probably would, in a real emergency. This is an issue going to weight, not admissibility.

Since the County has chosen to argue the evidence in its motion to strike Answer 79, we will make the following observation in kind. The County says that the idea that the president of the College would open his doors to people evacuating from a radiological emergency is "preposterous." The County feels that it is self-evident that Suffolk County officials, policemen, and others, if faced with real people with real needs, would hold up a copy of County Resolution 111-1983 and refuse to help people. But as LILCO has pointed out before, the Governor has stated that both State and County resources would be used in a real emergency. There is testimony in the record, chiefly by Dr. Mileti, that people tend to cooperate for the public good in communitywide emergencies. Moreover, in answers to LILCO's discovery requests, Suffolk County refused to say unequivocally whether County officials would respond in a real emergency. See Suffolk County response to LILCO informal discovery request no. 103, August 3, 1983. We will leave it to any fair observer to say which view is "preposterous."

The rest of the County's argument about Answer 79 is simply its oft-repeated position that any testimony about future planning is inadmissible. This argument has been addressed many times above.

30. Pages 70-71, Answer 80, last sentence in second paragraph, last sentence in third paragraph, entire fourth paragraph (Motion 44-45)

Again, the County argues that testimony about planning, which by its nature goes to the future, is inadmissible. To suggest, as the County does, that testimony that "we plan to send a health physicist to the school to confirm this" is inadmissible in a proceeding about emergency planning, is absurd.

31. Page 73, Answer 81, last paragraph (Motion 45)

The County again moves to strike LILCO's commitment to make available a health physicist to advise schools about the best sheltering locations. The County's theory is apparently that unless the health physicist has actually done the survey at the time testimony is filed, LILCO is barred from testifying about it. The answer to this has already been set out above.

32. Page 76, Answer 83, portions on page 76 (Motion 46)

Again, the County moves to strike testimony about future actions. The answer is the same as before.

33. Page 78, Answer 85, last two sentences (Motion 46)

Again, the County moves to strike testimony about commitments LILCO is willing to make, actions that will have to be taken once reception centers are identified, and the resources LILCO will make available to the planning process. And again, this testimony about resources that will be available in the future is admissible.

34. Pages 81-83, Answer 89, all except the first sentence (Motion 47)

Once again, the County moves to strike testimony about the planning process, this time for nursery schools. This testimony, like other testimony about the thoroughness and quality of the planning process, is relevant and should not be struck.

35. Pages 84-85, Answer 90, all of page 84 except the first sentence, and the last three sentences of Answer 90 on page 85 (Motion 47-48)

Again, the County objects to testimony about the planning process and future actions. Again, the County refers to, as "speculation," testimony about what LILCO intends to do in the future. The answer is as given above.

36. Page 86, Answer 91, last sentence (Motion 48-49)

Again, the County moves to strike testimony about the planning process and the resources LILCO will commit to it. The testimony is admissible and the County's argument is not well-taken, for the reasons set out above.

37. Page 88, Answer 92, last two sentences (Motion 49-50)

Again, the County moves to strike testimony about future actions. Again, its argument is unpersuasive, for the reasons set out above.

38. Page 89, Answer 93, last two sentences of middle paragraph on page 89, and last paragraph on page 89 (Motion 50)

The County says that the fact that a school district already has a plan for a nuclear attack is not relevant. To the contrary, plans already made for different types of emergencies are relevant to plans for an emergency at Shoreham if they contain the same elements (e.g., sheltering) that might be needed for a Shoreham emergency or if they show that the willingness and ability to plan for emergencies exists.

Also, the County again wishes to strike testimony about future actions and commitments of LILCO resources. The answer to this is the same as it has been above.

39. Page 91, Answer 95, last paragraph beginning with "the obvious choice would be . . ." through the end of that paragraph (Motion 51)

Again, the County deals with future actions and what it calls "speculation." The answer is the same as before.

40. Page 93, Answer 99, last sentence (Motion 51)

Again, the County wishes to strike testimony about LILCO's making health physicists available to assess apropriate sheltering locations. The answer is the same that it has been above.

B. Testimony of Dr. 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)

Pages 3-4, Questions and Answers 9 and 10 (Motion 51-52)

The County moves to strike part of Dr. Doremus' testimony, arguing that (1) his opinion that it is possible to do emergency planning and (2) his district's willingness to participate in the planning process are irrelevant. The fact is, however, that Suffolk County's position in this case is founded on its assertions that adequate radiological emergency planning for Long Island is "impossible." The Doremus testimony directly refutes that County position. As for the school district's

willingness to plan, this is relevant to the emergency planning process that enables the Board to make the necessary predictive findings.

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 (Motion 53)

For the reasons stated above, the "Purpose" section of LILCO's testimony should not be struck.

2. Answer 8, last 2 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 (Motion 53-54)

The County objects to this testimony on the grounds that "[e]vidence that proves that LILCO has or intends to engage in so-called 'planning activities' is irrelevant." Motion 54. For the reasons stated in part I.A.2 and part I.A.3 of this response, this testimony should not be struck. The testimony the County seeks to strike responds to contentions in which the County alleges LILCO must have letters of agreement with certain facilities in order to have properly planned for them, and

that reception or relocation centers have not been and should be identified for these facilities. The information in the testimony the County seeks to strike explains why, in LILCO's view, the agreements the County alleges are required are not necessary, and describes LILCO's continued planning efforts with these facilities, including efforts to identify relocation centers. The information is relevant to the questions raised in the County's contentions regarding the adequacy of planning for special facilities. For reasons previously stated above, the County's assertion that LILCO's testimony must address only "specific aspects of the results of [planning]: Revision 3 of the LILCO Plan" (Motion 54) should be rejected.

3. Attachments 3-4, 6-7, 9-36, 38-41, 44-46, and 69-98 (Motion 55-56)

The County moves to strike virtually all the attachments to LILCO's testimony on special facilities on the grounds that (1) LILCO has failed to establish an evidentiary foundation to support their relevance, authenticity, or materiality and (2) these documents are irrelevant because they discuss planning activities. The documents attached reflect LERIO's extensive planning effort with special facilities within the 10-mile EPZ. They were prepared under the direction and supervision of LILCO witnesses John A. Weismantle and Elaine D. Robinson. As stated on pages 3-4 of the LILCO testimony, Mrs. Robinson

manages the LERIO team that is responsible for incorporating outside organizations including special facilities, in emergency planning for Shoreham, and Mr. Weismantle has overall responsibility for developing and implementing the LILCO Plan. Mr. Weismantle reports directly to Dr. Cordaro, who supervises the development and implementation of the emergency plan for Shoreham, and who is also a witness on the special facilities testimony. Should the County have questions regarding the authenticity of the documents attached to the testimony, it can explore that issue with the witnesses on cross-examination.

In addition, the documents are directly relevant to the contentions addressed by these witnesses in the special facilities testimony. The contentions allege that LILCO is required to obtain letters of agreement with certain facilities, and that it has not identified relocation or reception centers for certain facilities; in LILCO's view, letters of agreement are not necessary, and relocation and reception centers will be identified. The documents the County seeks to strike directly support LILCO's assertion in the testimony that LILCO does not "rely" upon these facilities and its employees in the way suggested by the County's contentions. The documents are also relevant in the context of "interim compensating actions" because they provide a basis for a finding that LILCO's planning efforts provide adequate protection even without formal letters of agreement signed by these facilities. They are therefore relevant to the contentions.

That the witnesses do not discuss every document in detail is not a reason to strike the attachments, contrary to the County's suggestion on page 55 of its Motion. The witnesses have noted in the testimony what the documents show. It is unnecessary for the witnesses to summarize in the testimony every attachment.

The County's second argument, that these attachments are irrelevant to the extent that they reflect planning activities, should be rejected for the reasons previously stated above in parts I.A.2, I.A.3, and many other portions of this response.

The County points out that it has not moved to strike LILCO's attachments' 5, 37, and 42 because these attachments "contain statements from persons affiliated with health facilities in the EPZ to the affect that they do not agree to implement LILCO's proposals and thus they are arguably relevant to Contentions 24.J and 24.N." Motion 56. The County seeks to argue that testimony and attachments that allegedly support its case are relevant, and testimony and attachments that support LILCO's (opposite) view are not. If Attachment 5 regarding the Suffolk Infirmary is relevant, then certainly Attachment 7, which shows LILCO's continued attempts to plan with the facility despite the facility's refusal to cooperate because the facility is owned by Suffolk County, is also relevant; and Attachment 6, an earlier letter from LILCO to the Suffolk Infirmary, is relevant to put Attachment 5 in context.

Similarly, Attachment 37 from the Woodhaven Nursing Home, if relevant, should be followed by Attachments 38, 39, and 40, which show that continued planning contacts were maintained with the nursing home following the letter that the County characterizes as establishing that the facility does "not agree to implement LILCO's proposals" (a characterization that is in LILCO's view inaccurate as to all three letters the County has not moved to strike). And if Attachment 42 is relevant, as the County concedes, then so is Attachment 41, again to provide context. Attachment 11, a letter to a special facility located near Indian Point in which LILCO requests copies of that facility's emergency plans, is relevant to show that LILCO is pursuing plans with respect to reception and relocation centers for special facilities in the Shoreham EPZ. All of these attachments rebut the County's contentions that special facilities are not adequately considered in the LILCO Plan. They should not be struck.2/

4. Answer 8, first sentence; Answer 19, first sentence on page 17 (Motion 57)

The County challenges LILCO's testimony on the ground

2/ The County notes on page 55 of its motion that the copies it received of LILCO's testimony did not contain copies of Attachments 26 and 30. This copying error could have been cleared up quickly by a simple phone call from the County to LILCO. LILCO is forwarding copies of the attachments that were inadvertently omitted from the copies received by the County.

that it contains improper legal conclusions. As stated in Part I.C above, the County has already lost this argument and therefore this testimony should not be struck. In addition, the witnesses' statement regarding the Joint Commission on the Accreditation of Hospitals is not a legal conclusion, but a description of requirements. If the County disagrees with the statement, it can explore it on cross-examination with LILCO's witnesses Yedvab and Glaser, who are health care professionals familiar with the Joint Commission.

The County refers in this portion of its motion to an attachment, but does not identify which attachment it thinks should be struck. It does not appear to LILCO that any of the attachments to the special facilities testimony bear on the portions of the testimony the County seeks to strike in this section of its motion.

D. LILCO's Testimony on Contentions 60, 61, 63, and 64 (Motion 57-58)

1. Purpose section, second sentence of first paragraph; Answer 9, except first sentence (Motion 57-58)

The County seeks to strike the portions of LILCO's testimony on Contention 60 which describe the reasons why selective sheltering has been included in the LILCO Plan. For the reasons previously stated, the "Purpose" section of the testimony should not be struck. As to Answer 9, the County claims

that it is not relevant to Contention 60 and that, because it mentions the New York State Plan, it is outside the scope of this proceeding. Contention 60 challenges the LILCO Plan as lacking "guidelines to be used by command and control personnel: (a) in choosing to recommend a protective action or selective sheltering; or (b) in determining individuals who should or would be subject to such a recommendation." Contention 60 also suggests that "there are no procedures which indicate the means by which such a recommendation would or could be implemented." As indicated in the LILCO testimony partly in Answer 9, selective sheltering is included in the LILCO Plan "to provide the flexibility to adapt to a state recommendation for selective sheltering." The LILCO testimony the County seeks to strike responds to Contention 60 by explaining that LILCO would not choose to recommend selective sheltering and that the State has determined the individuals who would be subject to such a recommendation were the State to recommend it. This testimony, although not within the County's notion of the evidence that should be given, is clearly relevant to the County's contentions, and should not be struck merely because "New York State" or the "New York State Plan" is mentioned in the answer. LILCO is entitled to explain, using other documents including the New York State Plan, why a particular portion of the LILCO Plan reads as it does. The Plan was not created in a vacuum and should not be litigated in one.

2. Question and Answer 10, and Attachment 2 (Motion 58-59)

Similarly, the County seeks to strike the quotation from the New York State Plan referring to selective sheltering, which was the basis for the LILCO Plan's section on selective sheltering, and Attachment 2 (there is no Attachment 2a), which is the actual page III-41 of the New York State Plan. For the reasons discussed in the preceding paragraph of this response, the County's motion should be denied. As the basis for the section in the LILCO Plan, which the County has repeatedly asserted is relevant to this proceeding, the paragraph quoted from the New York State Plan is relevant.

3. Question and Answer 12 (Motion 59)

The County seeks to strike certain testimony by Dr. Mileti that addresses selective sheltering, explains how it is applied in the LILCO Plan, and describes the consequences of identifying only certain persons within a given geographic area in recommending the protective action of selective sheltering. This testimony responds to Contention 60 by explaining why LILCO independently would not implement selective sheltering and therefore why there are not extensive procedures regarding selective sheltering in the LILCO Plan. Dr. Mileti's testimony is relevant to the issues in contention regarding selective sheltering and should not be struck. The County's

characterization of his testimony as "some kind of follow-up to certain portions of his testimony relating to the evacuation shadow phenomenon concerning risk messages" (Motion 59) is inaccurate.

4. Answer 14 (Motion 60)

Contention 60 states "there are not procedures which indicate the means by which such a recommendation [of selective sheltering] would or could be implemented." The answer the County seeks to strike is in response to the question "[h]ow would the option of selective sheltering be implemented?" The answer describes how selective sheltering would be implemented under the LILCO Plan. It is relevant to Contention 60 and should not be struck.

5. Answer 18, text on page 20 following table, and Attachment 5 (Motion 60)

The County objects to LILCO's discussion of how the LILCO Plan will be revised to conform to a revised draft of portions of EPA's Manual of Protective Action Guides. For the reasons stated in part I.A.2 of this response, the motion should be denied. In addition, the County moves to strike Attachment 5 to LILCO's testimony, which is the present LILCO Plan OPIP 3.6.1. This OPIP reflects Revision 3 of the LILCO Plan, not future revisions, and addresses plume exposure

pathway protective action recommendations. It clearly is relevant to Contention 61 and should not be struck, even if the discussion in Answer 18 of future revisions to the Plan is struck.

6. Question and Answer 26 (Motion 61)

The County seeks to strike the statement that "no power plant in New York State, or in the country, can use protective actions to achieve zero dose in the event of an accident." This statement addresses Contention 61.G, H, and I, in which the County alleges that sheltering will not totally protect people from radiation exposure and therefore that the LILCO Plan is inadequate. The fact that no plan in the country can totally protect people from radiation exposure is relevant to the County's assertion that the LILCO Plan should. For this reason, and for the reasons stated in part I.A.5 of this response, the testimony should not be struck.

7. Question and Answer 32 (Motion 61-62)

The County seeks to strike an answer by Dr. Mileti similar to his testimony in Question and Answer 12, but related specifically to selective evacuation rather than selective sheltering. As discussed in part II.C.3 above regarding Dr. Mileti's testimony on selective sheltering, his testimony on selective evacuation is relevant to Contention 63 because it

explains how selective evacuation has been treated in the LILCO Plan and provides a basis for LILCO's choices regarding selective sheltering. The testimony should not be struck.

8. Answer 33, second and third sentences (Motion 62)

The County seeks to strike the statement in LILCO's testimony that "LILCO placed this provision [regarding selective evacuation] in the plan in order to maintain consistency with the New York State Plan and assure that LERO personnel familiar with the terminology that might be used if New York State participated in the emergency response. LILCO would recommend selective evacuation only if instructed to do so by New York State." As discussed in part II.D.1 of this response regarding selective sheltering, this explanation of how selective evacuation would be implemented is relevant to Contention 63. It should not be struck.

9. Answer 34 and Attachment 10 (Motion 63)

As with the section on selective sheltering addressed in parts II.D.2 and 4 above, the County seeks to strike LILCO's explanation in response to the question "what procedures would be used to implement a recommendation of selective evacuation?" and seeks to strike Attachment 10, which is page III-43 of the State Plan. As previously stated, the State Plan forms the

basis for the LILCO Plan on selective evacuation and therefore is relevant. Answer 34 and Attachment 10 of the LILCO testimony should not be struck.

10. Question and Answer 38 and Attachments 11 and 12 (Motion 63-64)

The County seeks to strike portions of LILCO's testimony in response to Contention 64. Contention 64 states in part that "LILCO must evacuate at least a radius of 5-7 miles around the plant." The testimony the County seeks to strike explains that New York State does not require or even suggest evacuation out to 7 miles routinely for any nuclear plant, and that New York State's experts on protective actions and windshifts disagree with the County's contentions, as shown by Attachments 11 and 12 (portions of their depositions) which the County also seeks to strike. The County notes in support of its motion that the State's "deponents have submitted no testimony in this proceeding, so the depositions cannot be used for purposes of impeachment." LILCO does not wish to use these depositions for purposes of impeachment. They are used to establish that in the State in which Shoreham is sited, and where other nuclear power plants are operating, the State does not require nuclear power plants to evacuate out to 7 miles when any evacuation is to occur. The State has withdrawn the witnesses whose depositions are excerpted as attachments to LILCO's testimony, but

the County was present during those depositions, was afforded the opportunity to ask questions, and even objected to LILCO's questions on behalf of the State witnesses. LILCO submits that it is relevant, in a proceeding where the State is supporting County contentions and where the County's contentions allege that evacuation out to 7 miles must be planned for, that the State's experts on the subject of protective actions disagree with the County's contention, and that the LILCO Plan conforms to the State's experts' views. This testimony should not be struck.

11. Answer 46, second sentence, and the 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," (Motion 64)

For the reasons previously stated in parts II.D.1 and II.D.6 of this response, this testimony should not be struck.

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 (Motion 65)

The County moves to strike two portions of Answer 6 which concern provisions of the New York State Plan governing milk contamination, arguing that they are irrelevant. Quite to

the contrary, these references to the New York State Plan are directly relevant to the issues raised in Contention 81. Accordingly, the County's motion to strike portions of Answer 6 should be denied.

As the County itself acknowledges, Contention 81 challenges the "adequacy" of LILCO's planning and procedures with respect to the ingestion exposure pathway. The New York State Plan, which provides a basis for acceptable emergency planning at other nuclear plants in New York, serves equally as a basis for evaluating the adequacy of the specific procedures in the LILCO Plan which the County has challenged. For example, the testimony at issue here demonstrates that LILCO's protective actions and procedures governing milk and lactating dairy animals are wholly consistent with similar provisions of the New York State Plan.

LILCO thus has demonstrated the adequacy of its ingestion pathway procedures in part by comparing them with similar provisions of the New York State Plan. The County rather would urge that the Board attempt to evaluate LILCO's Plan in a void, without reference to procedures that have been developed and evaluated in other emergency planning contexts.

LILCO has not said in its testimony on Contention 81 that the State of New York would come to LILCO's aid in the event of a radiological emergency. On the contrary, LILCO has predicated its testimony on the assumption that "New York State

officials will not act affirmatively and implement protective actions upon notification of the radiological emergency." Answer 7 at page 8. LILCO has not used the New York State Plan to supplement or supplant LILCO's emergency planning in any respect, as the County contends. Rather, LILCO has testified as to the contents of the New York State Plan only to aid in demonstrating the adequacy of its own Plan. In short, the testimony that the County moves to strike is directly relevant to and probative of the issue of the adequacy of LILCO's ingestion pathway planning, and thus should be admitted.

2. Answer 13, last sentence on page 21 (Motion 65)

This reference to the New York State Plan underscores the fact that LILCO's procedures for decontaminating fruits and vegetables are wholly adequate. This testimony thus is directly relevant to the issue of the adequacy of the challenged LILCO procedures. Accordingly, for the reasons stated in part II.E.1 above, the County's motion to strike this testimony should be denied.

3. Answer 17, last paragraph on page 25 (Motion 66)

Here the County seeks to strike testimony which contrasts LILCO's detailed information and procedures concerning farmstands with the complete absence of any such information

and procedures in the New York State Plan. This testimony underscores the adequacy of LILCO's emergency planning with respect to farmstands, and thus is probative and directly relevant to Contention 81.C.3. In short, for the reasons stated in part II.E.1 above, the County's motion to strike this testimony should be denied.

4. Answer 20, second sentence (Motion 66)

This reference to the New York State Plan illustrates the relative importance of well monitoring in the overall scheme of emergency planning for the ingestion pathway. As such, it is directly relevant to the issues raised in Contention 81.D.2. Thus, for the reasons stated in part II.E.1 above, the County's motion to strike this testimony should be denied.

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]) (Motion 67)

This testimony addresses manpower and equipment resources available to LERO by virtue of LILCO's Radiological Environmental Monitoring Program (REMP) and its affiliation with the Institute of Nuclear Power Operations (INPO). The County moves to strike this testimony on the grounds that it is predictive, speculative, and not relevant to issues raised in Contention

81. For reasons stated in part I.A.2 above, the County's motion to strike this testimony is devoid of any merit, and thus should be denied.

The availability of additional personnel and equipment through the REMP and INPO organizations is anything but "speculative." REMP personnel are employed by LILCO, and hence are within the control of the party presenting this testimony. Likewise, by virtue of its membership in INPO, LILCO is entitled to call upon approximately 60 member-utilities to provide survey teams and equipment in the event of a radiological emergency. Thus, in both cases, the testimony that the County moves to strike relates to committed, rather than speculative, manpower and equipment resources.

Moreover, the REMP and INPO testimony is directly relevant to the issues raised in Contention 81. Specifically, Contention 81.F questions whether LERO has sufficient "personnel, facilities [and] equipment" to implement protective actions for the ingestion pathway. The challenged testimony illustrates two sources of such manpower and equipment -- REMP and INPO -- that could be tapped if the emergency so warranted. In short, this testimony is highly relevant and probative, and thus should be admitted.

6. Answer 25 and Attachment 7 (Motion 67-69)

The County contends that evidence concerning the anticipated response of the federal government to a radiological emergency is "purely speculative" and therefore should be struck. The County thus urges that the Board not take into account the substantial federal resources that would be available to supplement LERO's ingestion pathway monitoring and environmental surveillance activities. Again, the County seeks to divorce these proceedings from reality.

That the federal government would respond to LERO's request for radiological assistance is clearly not "speculation." Section I.D.3 of the Federal Radiological Emergency Response Plan (FRERP), which is appended to the testimony as Attachment 7, provides that the "Federal government will respond when: [1] A State or other governmental or regulated entity requests Federal support . . . . " 49 Fed. Reg. 3580 (emphasis supplied). FRERP thus embodies a commitment by the federal government to respond quickly and effectively to requests for radiological assistance from licensees.

LILCO's testimony regarding the Three Mile Island accident, moreover, illustrates that this federal commitment exists not only in theory but in fact. To disregard prior relevant experience in evaluating the adequacy of LILCO's emergency planning for the ingestion pathway would be nonsensical. Nor

does recognition of the fact of federal participation at TMI logically open up a Pandora's Box inquiry into the history and details of that event. In view of FRERP and the TMI experience, it is clear that the availability of federal resources cannot be characterized as a matter of "speculation."

Finally, the County argues that LILCO's witnesses lack "expertise" to testify as to the provisions of FRERP. This argument, too, is without merit. No special expertise is necessary to recite the contents of FRERP, as is done in Answer 25. The witnesses are competent to testify that Attachment 7 is, in fact, what it purports to be. In summary, for reasons stated herein and in parts I.A.2, I.A.5 and I.B above, the County's motion to strike this testimony should be denied.

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

1. Question and Answer 8 (Motion 69)

The County moves to strike Question and Answer 8, which compares the recovery and reentry provisions of the New York State Plan with those of the LILCO Plan. Such a comparison, the County argues, is "irrelevant and immaterial." Again, the County's position lacks merit.

Contention 85 questions whether the LILCO Plan includes "[g]eneral plans for recovery and reentry." Thus, the fundamental issue raised in Contention 85 is what constitutes

general plans for recovery and reentry. LILCO has testified that its Emergency Plan contains detailed plans and procedures for recovery and reentry, principally at OPIP 3.10.1. As a frame of reference, LILCO has demonstrated, in Answer 8, that its general plans for recovery and reentry are quite comparable to those of the New York State Plan. Accordingly, LILCO's Question and Answer 8 relates directly to the issue of the existence of "general plans for recovery and reentry," as raised in Contention 85.

The County also maintains that the inclusion of Answer 8 "would violate this Board's Order of June 10, 1983." This Order is wholly inapplicable to the immediate controversy. The Order of June 10, 1983 addressed whether intervenors were required to submit contentions relating to governmental entities designated in various alternative LILCO Emergency Plans; the Order has absolutely nothing to do with the appropriateness of comparing the provisions of the LILCO Plan with those of another emergency plan, as is done in Answer 8. In short, the County's motion to strike is without merit and should be denied.

G. LILCO's Testimony on Contention 88 (Motion 70-71)

Suffolk County seeks to have this Board strike three portions of LILCO's testimony on Contention 88:

(1) the last paragraph of answer 7, pages 7-8 (Motion 70);

(2) Attachments 3-7 (Motion 70); and

(3) all of answer 12, except for the second to last sentence, page 11 (Motion 71).

First, Suffolk County argues that the last paragraph of Answer 7 and Attachments 3-7, which discuss and show the acceptable surface levels used in emergency plans from other plants, should be struck because discussion of other plants is not relevant to or probative of the issues being litigated in this proceeding. This argument, which previously was raised by the County and rejected by this Board, is without merit. For the reasons set forth in part I.A.5 above, the Board should again reject the County's arguments that discussion of emergency plans from other nuclear facilities should be struck.

Moreover, discussion of emergency plans from the other nuclear facilities mentioned in Answer 7 is offered not only to demonstrate how the regulations and guidelines have been applied elsewhere, but also as direct support for the witnesses' statement that "the NRC guidelines [Table 1 of Regulatory Guide 1.86] set forth in disintegrations per minute are representative of the ones used throughout the nuclear industry." See LILCO's testimony, first paragraph of Answer 7, page 7. If the County does not agree with this assertion, it can try to show, during cross-examination, that the contamination levels set forth in Table 1 of Regulatory Guide 1.86 are not representative of the acceptable surface contamination levels used throughout the nuclear industry.

Second, Suffolk County argues that Attachments 3-7, which are pages from other emergency plans showing that the acceptable surface contamination levels in those plans have been derived from Regulatory Guide 1.86, should be struck because "the testimony provides no evidentiary foundation for admitting Attachments 3-7 into evidence." This argument is without merit. The witnesses, as emergency planners, have looked to other plans in devising and evaluating the LILCO Transition Plan. The witnesses are competent to testify that Attachments 3-7 are, in fact, what they purport to be. The County's argument that there is no evidentiary foundation for admitting Attachments 3-7 is just another way of arguing that evidence about provisions in emergency plans for other nuclear facilities should not be allowed into evidence in this proceeding, and should be rejected for the reasons set forth above in part I.A.5.

Third, Suffolk County argues that all of Answer 12, except the next to last sentence, should be struck because it constitutes "an improper opinion concerning legal interpretation by non-expert witnesses." For the reasons set forth in part I.C. above, the County's motion to strike Answer 12 should be denied.

H. LILCO's Testimony on Contention 72.A and E (Motion 72-73)

Suffolk County has not moved to strike any portion of LILCO's testimony on Contentions 72.A and E. However, the County has used its motion to strike as a vehicle to assail LILCO's testimony as an "attempt to sandbag the Intervenors" with allegedly new and surprising assumptions used to calculate evacuation time estimates for special facilities. LILCO will not address the merits of the County's claims, since those claims have not been raised in a fashion that requires Board action. Instead, LILCO states here only that it believes the County's protestations are meritless.

Respectfully submitted,

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DATED: April 5, 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 ANSWER TO "SUFFOLK COUNTY MOTION TO STRIKE PORTIONS OF LILCO'S GROUP II-B TESTIMONY" were served this date upon the following by first-class mail, postage prepaid or, as indicated by an asterisk, by hand, or, as indicated by two asterisks, by Federal Express.

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