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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

LONG ISLAND LIGHTING COMPANY

(Jamesport Nuclear Power Station,  
Units 1 and 2)

Docket Nos. 50-516  
50-517

ORAL ARGUMENT

Place - Riverhead, Long Island, New York

Date - Thursday, 19 October 1978

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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 : 50-517  
 (Jamesport Nuclear Power Station, :  
 Units 1 and 2) :  
 : ORAL ARGUMENT  
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Legislative Meeting Room  
 Suffolk County Center  
 Riverhead, Long Island  
 New York 11901

Thursday, 19 October 1978

Hearing in the above-entitled matter was convened,  
 pursuant to notice, at 10:00 a.m.

BEFORE:

JEROME SHARFMAN, Chairman

RICHARD SALZMAN, Member

W. REED JOHNSON, Member

APPEARANCES:

WILLIAM J. OLMSTEAD, Esq., and BERNARD BORDENICK, Esq.,  
 Nuclear Regulatory Commission, Office of the Executive  
 Legal Director, Washington, D. C.; on behalf of the  
 Nuclear Regulatory Staff.

JEAN H. TIEDKE and SHIRLEY L. BACHRACH, Box 1103,  
 Southold, New York; on behalf of the League of  
 Women Voters of Suffolk County.

W. TAYLOR REVELEY, III, Esq., Hunton & Williams,  
 707 East Main Street, Richmond, Virginia 23219;  
 on behalf of the Applicant.

1 APPEARANCES (Continued):

2 IRVING LIKE, Esq., 200 West Main Street, Babylon,  
3 New York 11702; on behalf of Suffolk County.

4 JONATHAN H. SINNREICH, Esq., Paul, Weiss, Rifkind,  
5 Wharton & Garrison, 345 Park Avenue, New York,  
6 New York 10022; on behalf of the Town of Riverhead.

7 ALAN M. SMITH, Town Supervisor, Town of Riverhead.

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## P R O C E E D I N G S

1  
2 CHAIRMAN SHARFMAN: Ladies and gentlemen, we are  
3 here this morning to hear the oral argument of the appeal  
4 of the County of Suffolk and League of Women Voters of  
5 Suffolk Country from the Atomic Safety Licensing Board's  
6 partial initial decision of May 9, 1978, which decided many  
7 of the -- most of the safety and environmental issues in  
8 connection with Long Island Lighting Company and New York  
9 State Electric and Gas Corporation's application for a  
10 construction permit for the Jamesport Nuclear Power Station.

11 I would like counsel for the parties to please note  
12 their appearances for the record.

13 MR. LIKE: For the County of Suffolk, Irving  
14 Like, special counsel.

15 CHAIRMAN SHARFMAN: Thank you. Staff?

16 MR. OLMSTEAD: For the NRC Staff, I am William  
17 Olmstead and with me is Mr. Bernard Bordenick.

18 CHAIRMAN SHARFMAN: The League of Women Voters?

19 MS. TIEDKE: Jean Tiedke and Shirley Bachrach.

20 CHAIRMAN SHARFMAN: And?

21 MR. REVELEY: For the Applicants, Taylor Reveley  
22 from Hunton, Williams. I have with me Case Whittemore, also  
23 your guide for yesterday's site tour.

24 CHAIRMAN SHARFMAN: In our order setting up the  
25 argument, we indicated we would allot two hours to each side

bw 1 to be divided, as you agree. I am wondering whether you  
2 could tell us how you have agreed to divide your time.

3 MR. LIKE: Your Honor, I will have to use my  
4 entire hour. I believe I informed the Board I would need  
5 less time, but on reflection and review of the record, I will  
6 need the full hour. It is possible at the close of my  
7 argument, if you will allow me a few moments to confer with  
8 Mrs. Tiedke, she may be willing to yield a portion of her  
9 hour to me, but she will speak for herself on that.

10 MS. TIEDKE: We did plan to use our whole hour.  
11 We would like to reserve the right to redistribute that  
12 if it appears absolutely necessary, but we had planned to  
13 use our hour.

14 CHAIRMAN SHARFMAN: You are entitled to it.

15 MS. TIEDKE: Is there a right of reply in this  
16 proceeding?

17 CHAIRMAN SHARFMAN: You could reserve some of your  
18 hour. If we see you are very hard-pressed, we might be  
19 willing to allow a very short reply time anyway. Let's see  
20 how it goes.

21 MS. TIEDKE: Thank you. May be both participate?  
22 We have divided it up.

23 CHAIRMAN SHARFMAN: If you have divided it, you may  
24 do that, yes. Not both at the same time, however.

25 Mr. Olmstead?

bw

1 MR. OLMSTEAD: The Staff plans to reserve its  
2 right for an hour. We may not use the entire hour.

3 CHAIRMAN SHARFMAN: All right. Now we had a letter  
4 from counsel for the Town of Riverhead indicating that the  
5 Honorable Alan M. Smith, Supervisor of the Town of Riverhead,  
6 would like to make a statement on behalf of the Town, and it  
7 here states that the Applicants have agreed to yield 10 minutes  
8 of their time to that purpose; is that correct?

9 MR. REVELEY: Yes, sir.

10 CHAIRMAN SHARFMAN: Is there any objection by  
11 anyone to allowing Mr. Smith to make that statement?

12 MR. LIKE: No objection.

13 CHAIRMAN SHARFMAN: All right. We will do so.  
14 Will that be at the beginning of your time, Mr. Reveley?

15 MR. REVELEY: That would be appropriate as far  
16 as we are concerned. Mr. Smith is not here at the moment,  
17 I don't believe.

18 CHAIRMAN SHARFMAN: Fine. We start with the  
19 Intervenors, in any event.

20 All right. I think we can begin. Let me say  
21 first -- I don't want to charge this to your time, Mr. Like --  
22 I think that with respect to Mr. Reveley's motion, if it is  
23 a motion, or his argument at the beginning of his brief, that  
24 your appeal should be dismissed because of your failure to  
25 observe Section 2.762(a) of our regulations, in that you

1 didn't specify the portions of the record relied on in  
2 support of the assertions of error, we have considered that,  
3 and we think there is a lot to be said for Mr. Reveley's  
4 point.

5           We think in large part you didn't cite the portions  
6 of the record you were relying on very often. You attempted  
7 to incorporate your very extensive proposed findings by  
8 reference, which is a practice we don't favor. And we would  
9 have hoped that you would have made a bonafide attempt  
10 to comply with our rules of procedure, because they do have  
11 a purpose and they help us to do a better job and a more  
12 expeditious job.

13           In view of the fact that there are very substantial  
14 matters at stake here, I don't think we should base a  
15 decision on failure to observe a procedural rule. I don't  
16 think the County of Suffolk should be penalized because its  
17 counsel failed to completely observe that rule, but we would  
18 hope in the future that you attempt to comply with all of our  
19 procedural requirements.

20           I don't think it will be necessary for you to get  
21 into that or rebut that at this point.

22           I would like you to start.

23

24

25

bw

1 ORAL ARGUMENT OF IRVING LIKE, ESQ., ON  
2 BEHALF OF THE COUNTY OF SUFFOLK

3 MR. LIKE: Thank you.

4 May it please the Board, I would like to hand up as  
5 a visual aid to follow the argument a group of figures,  
6 1-A, 1-B, 3 and 4. I would distribute copies to counsel  
7 also, as the appeal progresses.

8 CHAIRMAN SHARFMAN: Are these matters in the  
9 record?

10 MR. LIKE: Yes.

11 MR. JOHNSON: Could you identify, unless they are  
12 identified on the documents themselves, where in the record  
13 these exhibits may be found?

14 MR. LIKE: Yes. Figure 1-A contains data which  
15 depicts the Board's table at page 74 of its decision.  
16 Figure 1-B is taken from the 1977 forecast data which appears  
17 in the record. That covers the summer projection. Figure 3  
18 contains the 1978 data which is based on the projections  
19 for that year which have been filed by the Applicant.

20 MR. JOHNSON: Amendment 7 to the ER?

21 MR. LIKE: Yes, I believe it is.

22 Similarly, Figure 4 is the 1978 projection of  
23 peak demand for winter from the same source.

24 MR. SHARFMAN: Do counsel have any objection to  
25 the use of these charts at this time?

bw 1 MR. REVELEY: We won't object to the use of the  
2 charts at this time. We may conclude they are not based  
3 on the record. I am not confident I can conclude that on  
4 the hoof today. If Mr. Like wants to spend his time risking  
5 an argument that it's not based on the record, we won't  
6 object to that, but I don't guarantee for a moment I can  
7 intelligently respond, having seen it for the first time  
8 this minute.

9 CHAIRMAN SHARFMAN: What Mr. Reveley says is  
10 well-taken. If we find the record does not support these  
11 charts, naturally, we could not decide on the basis of them.  
12 If they do, it might be an convenient aid. On your  
13 representation -- Do you want to be heard?

14 MR. OLMSTEAD: It is satisfactory to me, as long  
15 as I have the right to object at the appropriate time.

16 MR. SHARFMAN: On that basis, Mr. Like, we will  
17 permit you to proceed.

18 MR. LIKE: Dr. Fisher, who is an employ of the  
19 County government and who rendered invaluable assistance  
20 in the case, helped me prepare charts I have displayed on  
21 this easel.

22 I will make the representation to you, similarly,  
23 that the information depicted on these charts is drawn from  
24 the evidentiary record and the exhibits that have been filed  
25 in that record.

bw

1 CHAIRMAN SHARFMAN: Those charts are different  
2 from the ones you have handed us?

3 MR. LIKE: They are additional charts.

4 MR. REVELEY: You mean -- the only way I can follow  
5 you is to walk around then?

6 CHAIRMAN SHARFMAN: I guess you better do that, if  
7 you want to see these charts.

8 MR. JOHNSON: Excuse me. I didn't quite follow  
9 that. These charts are not the same as what you just  
10 handed out.

11 MR. LIKE: They are not the same. They are  
12 different charts.

13 MR. OLMSTEAD: I do have a problem with that.  
14 Unless Mr. Like will agree to furnish us copies of the  
15 charts in this form. It is difficult for me to --

16 MR. LIKE: We will agree to do so. The theme of  
17 my argument is this: based on a cost-benefit balance,  
18 which is the requirement of the National Environmental  
19 Policy Act, this Board should reverse the determination  
20 of the Licensing Board and dismiss the Application.

21 I would like you to imagine a cost-benefit scale.  
22 On the benefit side would be the electricity that would be  
23 generated by a plant of this type, in order to meet the needs  
24 of the utility service area. That is the benefits I would  
25 balance. On the cost side we havenot only the economic

bw 1 cost, but the health, safety and environmental costs.  
2 If you can agree with me that each side must be weighed,  
3 in order to reach a prudent determination of whether a  
4 project of this sort should be licensed --

5 MR. SALZMAN: I hate to break into your argument,  
6 but is that the correct equation? I thought the National  
7 Environmental Policy Act was concerned with environmental  
8 costs? Unless there is no need for the plant-- if there is  
9 no need for the plant, you don't want to incur any  
10 environmental cost. It is our business, once there is a  
11 "need" for the electric power established, to consider whether  
12 this the best way for LILCO to do it. Isn't that a matter  
13 for the New York State Public Service Commission?

14 MR. LIKE: The National Environmental Policy  
15 Act does not limit the concept of environmental costs to  
16 impact upon aquatic ecology, for example, or traffic,  
17 for example. The definition "environment" is the human  
18 environment which includes health costs, safety costs,  
19 and socioeconomic impacts.

20 MR. SALZMAN: I am prepared to grant that. You are  
21 not putting on the cost side of the equation the cost of  
22 building the plant, are you?

23 MR. LIKE: Yes, because that is also a cost which  
24 must be taken into account under the National Environmental  
25 Policy Act.

bw 1 MR. SALZMAN: You are saying we must decide  
2 whether LILCO spends its money correctly in building this  
3 plant?

4 MR. LIKE: No. It is the duty of the Board to  
5 decide whether or not there has been a adequate cost-benefit  
6 balancing process as required by the Calvert Cliffs case and  
7 subsequent cases.

8 MR. SALZMAN: Is that cost-benefit balance to  
9 include our deciding whether LILCO should go around building  
10 some other kind of plant, because it would be cheaper for  
11 them?

12 MR. LIKE: The Staff has taken a position that  
13 it is the duty of the NRC to determine whether or not there  
14 is a need, because need, according to the Staff, is the  
15 benefit side of the equation.

16 MR. SALZMAN: That is need for power. I am willing  
17 to grant if there is no need for the electric power, it  
18 hardly makes sense to build the plant. If, let us assume,  
19 the electric power is reasonably determined to be necessary,  
20 are we supposed to decide whether the LILCO was correct in  
21 deciding to build an atomic power plant, rather than a  
22 coal plant, on the matter of which costs more money?

23 MR. LIKE: Yes, because another duty imposed by  
24 the National Environmental Policy Act is to make a serious  
25 evaluation of alternatives. Consequently, if the costs of

bw 1 alternatives appear to be less expensive than that of  
2 nuclear, that would be one of the inputs that would have to  
3 be taken into account.

4 MR. SALZMAN: I thought the question essentially  
5 was whether the cost of -- another alternative would be  
6 healthier if it is a better alternative of this one, the  
7 cost seems relevant.

8 MR. LIKE: The comparison of alternatives includes  
9 not only the environmental impacts, the health impacts and  
10 safety impacts of alternatives, but also their economic  
11 costs.

12 MR. SALZMAN: Then you think we should overrule  
13 our decision in Midland and overrule the Commission's decision  
14 to the same effect?

15 MR. LIKE: That is my concept of what the --

16 MR. SALZMAN: Are you familiar with -- we are bound  
17 by what our Commission says. Are you familiar with our  
18 decisions in the area, which are published?

19 MR. LIKE: I am not familiar with the specific  
20 decisions you have mentioned, but it is my understanding,  
21 based upon the judicial review of cases arising before agencies  
22 that in making a comparison of all alternatives for  
23 purposes of the National Environmental Policy Act, the Agency  
24 must take into account the health, safety, environmental and  
25 economic costs of those alternatives.

bw 1 MR. SALZMAN: You should be aware that you are  
2 laboring uphill here, because the Commission and this Board  
3 have both decided, unless it is shown -- assuming power  
4 is needed for the plant -- that the alternative is a more  
5 beneficial environmental alternative, then our job is at  
6 an end.

7 MR. LIKE: Even given that premise, and accepting  
8 the validity of that premise for purposes of this argument,  
9 the record indicates, and I believe we have taken this  
10 position, based upon the evidence, that from an environmental  
11 standpoint the alternatives to building this nuclear plant  
12 are beneficial and preferable to the nuclear plant.

13 MR. SALZMAN: That is a valid consideration.

14 MR. LIKE: Getting back to the cost-benefit  
15 equation, if you assign a weight to each side of the scale  
16 and if it turns out that there isn't a need for the plant,  
17 then, obviously, the weight tilts in such a way that  
18 on a cost-benefit balancing process, the plant shouldn't  
19 be built, because there is no need and no benefit.

20 Consequently, to the extent that the need for the  
21 plant diminishes, the benefit diminishes and the cost side  
22 rises and tilts the project against the plant.

23 I will show that this is precisely the situation  
24 here. There is no need for the plant. Even if there is a  
25 need, the need is so tenuous that the cost side of the scale

bw 1 rises to the point where its weight totally overcomes any  
2 possibility of claiming benefit, and, consequently, the  
3 project shouldn't be licenses.

4 In its decision at page 73, paragraph 117, the  
5 Board said that Jamesport is needed in the winter of 1984  
6 to meet NYSEG's needs. We have mounted Chart No. 1. This  
7 chart depicts the Board's table. If I may approach the  
8 chart, the line which runs from left to right, the heavy  
9 dark line, indicates the capacity which is available to  
10 NYSEG, for example. The orange-colored triangle depicts  
11 the peak demand for the NYSEG service area during the years  
12 in question as shown on Chart 1.

13 The yellow band depicts the calculation of the  
14 18 percent reserve required by the New York Power Pool.

15 This chart depicts the Board's understanding of  
16 the record with respect to NYSEG.

17 If I may now turn to Chart 2, here again you will  
18 notice that we have shown the LILCO service area and the  
19 NYSEG service area.

20 The peak sector is depicted in orange. 18 percent  
21 reserve in yellow. And the capacity line for LILCO is again  
22 the heavyset bar running from left to right, labeled  
23 "capacity."

24 Similarly, in the case of NYSEG, we have a capacity  
25 line which runs from left to right.

bw 1 MR. JOHNSON: At what date is the capacity  
2 value established for? In other words, does that include  
3 Jamesport 1 and 2 or 1 or either?

4 MR. LIKE: No. This assumes Jamesport 1 and 2 are  
5 not built.

6 MR. JOHNSON: Does it include all of the rest of  
7 LILCO's capacity which I believe I think rates a number  
8 peaking units?

9 MR. LIKE: Yes, and also includes the Shoreham  
10 plant scheduled to go into operation in the fall of 1980.  
11 The area shown in blue, which we have described as excess,  
12 represents the excess capacity on the LILCO system during  
13 the years shown on the chart and similarly the area shown  
14 in blue on the NYSEG side represents the excess capacity  
15 or the additional capacity that would result, if there were  
16 an export from LILCO to NYSEG.

17 CHAIRMAN SHARFMAN: Excuse me. This is based on  
18 the earlier forecast data; is that correct?

19 MR. LIKE: Yes, on the 1977 data which was the  
20 basis for the Board's decision.

21 MR. SHARFMAN: As I recall, the Board at the end  
22 looked at the more recent data.

23 MR. LIKE: Yes, but I intend to show that the Board  
24 didn't understand the record, based upon the 1977 data and  
25 reached erroneous conclusions and erroneous logic and,

bw 1 consequently the further findings with respect to the  
2 four-year deferral have been likewise impaired, as a result  
3 of a misunderstanding of the record.

4 MR. SALZMAN: You mark an 18 percent reserve.  
5 That is not quite accurate, is it? It is an 18 percent  
6 minimum reserve.

7 MR. LIKE: It is the required reserve under the  
8 New York Power Pool.

9 MR. SALZMAN: Minimum required reserve. What is  
10 the recommended power reserve?

11 MR. LIKE: 18 percent is regarded as the  
12 requirement under the Power Pool.

13 MR. OLMSTEAD: I don't want to interrupt, but this  
14 is based on what chart?

15 MR. LIKE: Chart 2, which has been drawn based  
16 upon the Winter 1977 data in the evidentiary record or  
17 part of the exhibits.

18 MR. OLMSTEAD: I thought you indicated this was in  
19 the Board decision?

20

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25

bw 1 MR. LIKE: The previous chart overlay, Chart 1,  
2 shows the Board's table which appears on page 75. I removed  
3 the overlay. We are now looking at the Chart 2 which shows  
4 both systems viewed in a combined way. In 1983 --

5 MR. SALZMAN: I lost you on your chart. Is that  
6 blue area representing the same excess in the lower chart  
7 as in the upper chart?

8 MR. LIKE: I will explain that, if you allow me.  
9 In 1983, based upon the winter 1977 data, LILCO had an  
10 excess capacity of 1900 megawatts, which includes the 18  
11 percent reserve. Put another way, an excess capacity of  
12 1300 megawatts over and above its 18 percent reserve.

13 If you look at the chart that excess capacity on  
14 LILCO's system continues until 1990 or thereabouts.

15 MR. JOHNSON: I have questions. I hate to  
16 interrupt again.

17 Looking at page 74, which I understood was the  
18 basis for this chart, the peak of the LILCO system in the  
19 summer of 1988 is given as 4920. I am looking at the bottom.

20 MR. LIKE: We are talking about winter now. Not  
21 summer. I made that very clear.

22 MR. JOHNSON: Not so clear that --

23 MR. LIKE: I represented several times this was  
24 a winter chart.

25 Yes. May I continue my argument and then --

1           MR. JOHNSON: No, because you are using numbers  
2 here in part of your argument, and I want to make sure these  
3 are numbers that appear in the record, so we know what we  
4 are dealing with.

5           Page 74, which I thought you said was the place  
6 this material came from -- both charts -- your are now  
7 saying the LILCO data doesn't come from page 74.

8           MR. LIKE: That is correct.

9           CHAIRMAN SHARFMAN: Where does it come from?

10          MR. LIKE: From the evidentiary record.

11          MR. SALZMAN: Where in the record?

12          MR. LIKE: Excuse me one moment. Exhibit 2, the  
13 1977 149(b) League of Women Voters Exhibit 2. This Board  
14 may take official notice of the 1977 149(b) proceeding.

15          CHAIRMAN SHARFMAN: If it is an exhibit, we are not  
16 required to take official notice.

17          MR. LIKE: You don't have to; that is correct.

18          MR. SALZMAN: Was it admitted in evidence?

19          MR. LIKE: Yes.

20          MR. OLMSTEAD: Is that in this proceeding or the  
21 state proceeding?

22          MR. LIKE: This proceeding. May I continue?

23          MR. JOHNSON: Yes.

24          MR. LIKE: This is eating into my time. I hope you  
25 bear that in mind.

bw

1 MR. SALZMAN: You were given an hour. You may  
2 use it as you wish.

3 MR. LIKE: I pointed out just before the question  
4 of the Board member that LILCO's excess capacity of 1900  
5 megawatts continues until the year 1990, as shown on Chart  
6 2.

7 This is the winter mode. If LILCO's excess  
8 capacity, which, as you can see, is quite considerable in  
9 the year 1983, is sold to NYSEG, and that hypothetical  
10 is depicted by the arrow indicating a transfer of a sector  
11 of this excess onto the NYSEG system, then the result of that  
12 is that NYSEG doesn't need any additional capacity until  
13 the year 1988. This contradicts the Board's finding that  
14 NYSEG needs Jamesport 1 in 1984 and that finding appears at  
15 page 73, paragraph 117.

16 MR. JOHNSON: I find the blue triangle coming to  
17 an end at 1986-87, I think, don't I?

18 MR. LIKE: That is correct.

19 MR. JOHNSON: You just said it was 1988.

20 MR. LIKE: 1988 would be the next beginning of the  
21 year. We are making calculations, based on the beginning of  
22 a year. It might happen in the middle of the year, but for  
23 purposes of evaluating needs, we are using the beginning of  
24 each year as a convenient demarcation.

25 CHAIRMAN SHARFMAN: I am sorry to keep asking

1 questions, but I want to be clear. Are you assuming in  
2 your blue area on the NYSEG chart that all the LILCO excess  
3 is being transferred to NYSEG?

4 MR. LIKE: Yes.

5 CHAIRMAN SHARFMAN: Or part of it?

6 MR. LIKE: Yes. The part over 18 percent.

7 CHAIRMAN SHARFMAN: All of the part over 18 percent?

8 MR. LIKE: That's right.

9 MR. JOHNSON: Is there evidence in the record to  
10 support that excess LILCO capacity would, in fact, be  
11 transmitted to NYSEG?

12 MR. LIKE: Yes. During the course of the  
13 proceeding there was testimony offered, for example, by  
14 NYSEG as to how they would meet their reserve requirements  
15 during the mid-80s towards the end of the 80s, and they  
16 identified LILCO and Central Hudson and Con Ed as examples  
17 of utilities from whom they could purchase. This is a common  
18 type of transaction within the New York Power Pool. If  
19 there is excess capacity available on a particular utility  
20 system, other utilities will contract to buy that.

21 What I am simply showing here is that the Board  
22 ignored the combined capacity of the two systems. It ignored  
23 LILCO's excess capacity. As a result, the Board was off by  
24 about four years, using 1977 data, because the Board said that  
25 NYSEG would need Jamesport in 1984. However, if the Board

bw 1 looked at LILCO's existing system and its excess, it would  
2 have realized part of that excess was available to take care  
3 of NYSEG's needs. It didn't do that.

4 MR. SALZMAN: Is that excess produced by base  
5 load plant?

6 MR. LIKE: That excess is derived from the entire  
7 controlled sources that are available to LILCO over and above  
8 the peak demand plus 18 percent reserve.

9 MR. SALZMAN: Base load plant is one which is  
10 designed to operate efficiently and continuously. A peaking  
11 plant is one that can be turned on and off quickly, but is  
12 expensive to operate. Your chart doesn't indicate whether  
13 you are getting a base load or peaking power. The difference  
14 is cost. In other words, while it may be theoretically  
15 possible, it gets very expensive to use peaking plants.  
16 It doesn't necessarily answer the question whether additional  
17 base load capacity would be appropriate.

18 MR. LIKE: The calculation of excess --

19 MR. SALZMAN: Let me give you an example. The  
20 question is, suppose you have to transport 100 people from  
21 A to B. The question comes how you should do it. If you have  
22 a 50-passenger bus, you could do it in two trips at  
23 relatively reasonable cost. If you have a two-passenger car  
24 or a limousine even, it becomes expensive. You can do it  
25 either way and have capacity either way. It doesn't give a

bw 1 straight answer, does it, to say that it can be satisfied here,  
2 because it can only be satisfied at great expense.

3 MR. LIKE: That doesn't follow necessarily, sir.  
4 The excess capacity, as I indicated earlier, is determined  
5 by looking at the total control sources and comparing it to  
6 the peak demand. The actual sale and purchase class of  
7 power is often a bookkeeping transaction which involves  
8 credits and debits. Obviously, if there is an excess  
9 standpoint of economic dispatch --

10 MR. SALZMAN: You are talking to someone familiar  
11 with the business. The actual credits and debits you are  
12 talking about are charged for on the basis of whether you  
13 are buying base load power, peaking power and the like and the  
14 difference in price is enormous.

15 MR. LIKE: This chart does not depict the cost  
16 of the transfer to NYSEG.

17 MR. SALZMAN: All that shows is if LILCO ran all its  
18 power plants in the winter, including peaking plants, it could  
19 serve the winter peak of NYSEG.

20 MR. LIKE: That is correct.

21 MR. SALZMAN: But it doesn't address whether it  
22 would be efficient or expensive to do it.

23 MR. LIKE: It doesn't address the cost.

24 MR. SALZMAN: Does it address whether this  
25 eliminates the need for another base load plant?

bw 1 MR. LIKE: Yes, because it indicates there is  
2 enough capacity remaining on the LILCO system for LILCO  
3 to operate its plants in whatever mix it determines to meet  
4 its peak demand and its 18 percent reserve requirement and  
5 still have leftover capacity to sell to NYSEG.

6 MR. SALZMAN: Not base load inexpensive capacity.  
7 That is the point. If you talk economics, you must understand  
8 that you are asking these people to supply electricity with  
9 a two-passenger car instead of a bus.

10 MR. LIKE: The issue on the need argument is not  
11 focused on the cost of selling the excess power to NYSEG.  
12 The issue is, do we have to build for reliability purposes  
13 or for NYSEG's reserve purposes on the base load plant on  
14 the LILCO system, when LILCO has existing excess capacity  
15 available to satisfy that?

16 MR. SALZMAN: Base load capacity?

17 MR. LIKE: Total capacity.

18 MR. SALZMAN: If you don't answer my question, it  
19 makes it difficult for me to appreciate your argument.  
20 Dodging the fact that there will be an expensive system  
21 doesn't help your argument much. You wanted to talk about  
22 cost. I point out this is a very expensive way of doing it.  
23 It makes me wonder whether this isn't a matter which is in  
24 the interests of the question of the two utilities concerned  
25 and the New York State Public Service Commission to decide

bw 1 whether this is the most efficient way, absent a showing  
2 of some environmental advantage to not building this plant.  
3 You can't have it both ways. If you want to look at costs,  
4 you have to show not only that the excess is available,  
5 but that it is available at a reasonable price.

6 MR. LIKE: From the standpoint of evaluating  
7 alternatives to the proposals made by the Utilities, the  
8 Board, Staff and Applicant didn't look at the alternative  
9 I am suggesting.

10 That alternative is to sell the existing excess.  
11 Had they evaluated that alternative the issue that you are  
12 raising now as to whether it would be costly, more costly  
13 or inefficient would have come up as part of that evaluation  
14 of the alternatives. It is not the burden of the Intervenor  
15 to prove that this is a more efficient or less costly  
16 alternative than the one prepared by the Utilities and Staff.

17 MR. SALZMAN: Before we go, you lost the case  
18 below. It is your burden to convince us — certainly, had  
19 they done so — that it would have been a reasonable way.  
20 My question is whether you have suggested to us this is  
21 a reasonable thing that should have been looked at.

22 MR. LIKE: I have suggested that the Board below  
23 didn't evaluate the existence of excess capacity on LILCO's  
24 system because that would be available to NYSEG.

25 MR. SALZMAN: The word "obviate" doesn't come into

1 play unless it is reasonable.

2 If it is unreasonable, you haven't done much with  
3 your chart.

4 MR. LIKE: Excuse me, may I confer?

5 (Pause.)

6 MR. LIKE: Dr. Fisher pointed out that all the  
7 circumstances you have raised were factors that the Board  
8 either considered or didn't consider -- it is not obvious  
9 from their decision -- when they assumed at this point there  
10 would be a need for NYSEG to have the Jamesport plant on-  
11 line, the Board said in its decision at this point in 1984,  
12 NYSEG, for reliability, efficiency purposes, cost reasons,  
13 and so forth, should have had Jamesport on-line, because  
14 that was the optimum way to move. I am suggesting in  
15 making that decision the Board below didn't evaluate the  
16 fact there was this excess on the LILCO system available for  
17 sale to NYSEG.

18 CHAIRMAN SHARFMAN: You said that. Let me approach  
19 it differently. Isn't it clear from the record that the  
20 Jamesport plant would be a base load generating plant; isn't  
21 that right?

22 MR. LIKE: Yes.

23 CHAIRMAN SHARFMAN: I thought the agreement between  
24 LILCO and NYSEG would be to share the output from the  
25 Jamesport plant on the premise it was a base load generating

bw 1 plant of low cost. Now, is there any indication that it  
2 would be feasible for NYSEG, or in the interest of NYSEG  
3 ratepayers for NYSEG, instead of meeting a major  
4 proportion of its needs, which even on your chart is more  
5 than a majority of its needs going up from the lower blue  
6 line of capacity to the top, by buying expensive peaking  
7 power from LILCO rather than buying base load power or  
8 producing its own base load power?

9 MR. LIKE: I am suggesting, Mr. Chairman, that  
10 we should not assume that that agreement, the 50-50 agreement  
11 to share a new base load plant, was the appropriate and  
12 optimal alternative followed. Another alternative available  
13 was for NYSEG to say to LILCO, "You have an excess capacity  
14 on your system we can use in the winter. We will buy that  
15 excess capacity and will not have to build Jamesport  
16 1984 and delay building it until 1988."

17 CHAIRMAN SHARFMAN: Look at your capacity line.  
18 That shows less than 3500 megawatts.

19 MR. LIKE: Correct.

20 CHAIRMAN SHARFMAN: The maximum peak, at least  
21 in 1983, is up close to 5000 megawatts.

22 MR. LIKE: Wait a minute. In 1983 the peak --  
23 which system?

24 CHAIRMAN SHARFMAN: NYSEG.

25 MR. LIKE: The peak on the NYSEG in 1983 is this

1 point here. Not 5000 megawatts?

2 CHAIRMAN SHARFMAN: What is the top of the blue  
3 line? How much would be available?

4 MR. LIKE: That's right.

5 CHAIRMAN SHARFMAN: I see. All right, look at --  
6 Then I am looking at the wrong part of the chart. That is  
7 correct. Take the peak plus reserve on NYSEG going up in  
8 the later years, for example, in 1988, 1988, 1989. Even  
9 if the blue were enough -- take where the two lines meet,  
10 1986 or 1987, I can't make it out. You haven't connected  
11 the lines down.

12 MR. LIKE: Beginning of 1987 is where the type of  
13 the blue triangle is.

14 CHAIRMAN SHARFMAN: Beginning in 1987, your  
15 chart shows 4200 megawatts needed by NYSEG and they only  
16 produced 3400. You would be talking of a very substantial  
17 amount of power they would have to buy. You are saying  
18 it would be a reasonable alternative for them to buy that  
19 at expensive peaking prices rather than base-load prices.

20 MR. LIKE: I am not saying that. I am saying  
21 that NYSEG, if we consider this combination on the existing  
22 systems of both, NYSEG doesn't have to buy power -- or has  
23 available a source of power on LILCO's excess which will  
24 carry it through to this year 1987 and beyond. Once we  
25 get to 1987 we have another problem I will get to in my

1 argument. I am simply showing from a winter 1977 standpoint  
2 in the record there is no need to build Jamesport in 1984  
3 to meet NYSEG's winter requirements if the transfer of the  
4 excess is arranged.

5 MR. JOHNSON: Mr. Like, with an apology for  
6 upsetting your argument a bit, the record shows it will take 7  
7 years for LILCO to build this plant, in any event. The record  
8 also shows that LILCO doesn't intend to start building the  
9 plant for another 18 months or so. So the most optimistic  
10 date at which Jamesport 1 and 2 might come into operation  
11 and be able to be a factor in the power production picture  
12 is somewhere around 1987-1988.

13 My question is: why are we, other than to make a  
14 debating point, spending so much time on the Board's  
15 initial -- the initial portions of the Board's decision  
16 relating to needs in 1984? The facts of the case now  
17 establish that it is 1988 that we are talking about and,  
18 therefore, it is 1988 in which our focus on the need for  
19 power should be directed.

20 MR. LIKE: This a foundation for my argument that  
21 the Board was wrong on the basis of the 1977 data, and I  
22 will show on the basis of the later data the Board is  
23 still wrong.

24 CHAIRMAN SHARFMAN: Why don't we get to the later  
25 data?

1                   MR. JOHNSON: Let me make one other point. It  
2 is true, is it not, that both of these utility campaigns  
3 are connected to the New York State Power Pool and that  
4 flows of power and the needs for reserve and the economies  
5 of production and transmission must be dealt with in the  
6 view of a complete New York State system in which there are  
7 numerous utilities meeting numerous loads, and it is not  
8 quite correct to just look at the two utilities and their  
9 loads and capacities in isolation.

10                   MR. LIKE: I believe that is a correct statement.  
11 In fact, neither the Staff nor the Applicant looked at  
12 the total system at the time and the Final Environmental  
13 Statement certainly didn't. That simply evaluated there  
14 application as if it was LILCO building Jamesport for its  
15 own service area.

16                   I argued in my brief that was a serious defect  
17 under NEPA. But I agree with you that the entire system  
18 is involved when you are looking at power needs. That was  
19 precisely what was not evaluated by the NRC Staff in the  
20 Final Environmental Statement.

21                   If you look at the other side of the coin, the Board  
22 said at page 73, paragraph 117, and now we are talking about  
23 summer, if you look at Figure 1-A you will be able to follow  
24 this branch of the argument. The Board said that LILCO  
25 needs Jamesport in 1984, in order to meet its 18 percent

bw 1 reserve.

2 This chart shows that if LILCO needs any additional  
3 plant for its 18 percent reserve, it is in 1985, not 1984.  
4 Now turn to Figure 1-B. Figure 1-B shows that for the  
5 summer period 1977 projection NYSEG has an excess  
6 capacity until the summer of 1989. Consequently if NYSEG  
7 sold part of its excess capacity to LILCO, LILCO would not  
8 need any additional plant capacity until the summer of  
9 1987.

10 What does this boil down to? It boils down to this:  
11 if the Board had looked at the existing systems as a combined  
12 resource, it should have come to the conclusion that LILCO  
13 had excess to sell to NYSEG to meet NYSEG's winter needs  
14 and NYSEG, in turn, had excess in the summer period to  
15 sell to LILCO to meet LILCO's summer needs.

16 There was that possibility of complementing each  
17 other, because LILCO was a summer peaking utility and NYSEG  
18 is a winter peaking utility.

19 So the Board failed to see this complementary  
20 area and instead mismatched the data for both companies.

21 CHAIRMAN SHARFMAN: Why do you think the two  
22 companies overlooked this? It could have saved them a lot  
23 of money if it were feasible under your theory.

24 MR. LIKE: I can't speculate as to that. I believe,  
25 objectively speaking, a careful analysis of both systems,

● bw 1 their capacities, demands, nature of the systems, should have  
2 revealed there was an alternative here which would make it  
● -2 3 possible under 1977 data to defer building Jamesport.  
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cmw 1            Now Chart 3. I want to show you the implications  
2 that flow from the Board's decision still using the winter  
3 mode to show that the foundation for the Board's decision  
4 is defective on the basis of the 1977 data.

5            Under the Board's decision, the building of  
6 Jamesport, and selling 50 percent to NYSEG is depicted by  
7 this purple portion on Chart 3. If this capacity, half of  
8 Jamesport, was sold to NYSEG, it would only meet NYSEG's  
9 needs until the beginning of 1986.

10           Now, however, building Jamesport adds an excess  
11 capacity on LILCO's already excess installed capacity and that  
12 is apparent if you look at the blue sector marked excess  
13 installed capacity and then gave LILCO another 50 percent  
14 of Jamesport depicted as excess new capacity.

15           The purple is the other half that goes to NYSEG.  
16 What has the Board accomplished? All that is accomplished is  
17 to build a plant which will only meet NYSEG's needs until  
18 the beginning of 1986 and already overloads LILCO's excess  
19 installed capacity.

20           Under the Board's logic, it then becomes necessary  
21 to build Jamesport 2 and sell 50 percent of that to NYSEG  
22 before 1986 to meet NYSEG's reserve requirements. In short,  
23 based on the Board's assumptions, it's requiring LILCO to  
24 build a second nuclear plant when one plant would have  
25 sufficed to meet NYSEG's needs if all 100 percent of it were

cmw 1 given to NYSEG.

2 MR. JOHNSON: I am not sure I understand your last  
3 statement about the Board requiring LILCO to build a plant.  
4 I thought economic decisions of that sort were made by LILCO  
5 and the Public Service Commission.

6 MR. LIKE: Perhaps the word "required" was an  
7 inartistic way of putting it. The Board's decision is putting  
8 its approval upon the proposal to build Jamesport to meet the  
9 1984 requirement and to build Jamesport 2 to meet the 1986  
10 requirement. What I am showing is by building Jamesport 1 it's  
11 only a temporary alleviation of NYSEG's problem until the  
12 beginning of 1986 and then you have to put Jamesport 2 on line  
13 in order to give NYSEG its winter reserve requirements for  
14 the future years.

15 CHAIRMAN SHARFMAN: Your thesis is that LILCO  
16 doesn't need a plant at any time under the 1977 data?

17 MR. LIKE: That's correct.

18 CHAIRMAN SHARFMAN: It's done solely for the benefit  
19 of NYSEG?

20 MR. LIKE: That is the implication of the Board  
21 decision. It doesn't need it. It already has a significant  
22 excess installed capacity. It's adding new capacity to meet  
23 NYSEG but only for a short time, so then you have to build  
24 Jamesport 2.

25 CHAIRMAN SHARFMAN: Because these charts are not in

cmw 1 the record, when you submit them you should submit them to  
2 us as well as to counsel and indicate as to all these charts  
3 where in the record the data is taken from. Otherwise we  
4 have no way of checking to see whether or not the data is  
5 depicted in a correct fashion.

6 MR. LIKE: I will undertake to do that.

7 MR. JOHNSON: Do I gather from your statements  
8 and your devotion of a considerable amount of your argument  
9 time to these charts that you didn't consider substitution,  
10 and that is the use of power generated by a nuclear or  
11 coal-fired power plant, to substitute for more expensive oil  
12 or by providing a diverse source of power, you don't consider  
13 these two aspects of the proposed plant as need in the sense  
14 that LILCO might wish to have this excess capacity in the  
15 form of nuclear generation to relieve their dependence on  
16 expensive oil?

17 MR. LIKE: I believe your question involves the  
18 so-called substitution doctrine which is that even if you  
19 don't need the plant to meet reliability reserve requirements,  
20 you ought to build it anyway.

21 MR. JOHNSON: That's not the way I understand the  
22 "substitution doctrine." I understand the substitution  
23 doctrine that you can demonstrate need for a power plant on  
24 the basis that that power plant would use a different type of  
25 fuel or would add reliability to a system by providing a

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1 diverse fuel source and that that is need as well as simply  
2 meeting an increased demand.

3 MR. LIKE: I don't understand that to be need and  
4 I don't believe that the state laws with respect to building  
5 new generating capacity set forth in the Public Service Law  
6 which we have indicated in our brief supports the building  
7 of a plant which is not needed for reliability and reserve.

8 In other words, building a plant for diversity  
9 purposes or because this will reduce imports of foreign oil  
10 and therefore is geopolitically supposed to be justified,  
11 I don't believe that is a sufficient justification for building  
12 a plant that is not needed for the specific statutory purposes  
13 provided.

14 MR. SALZMAN: It does appear to be the decision of  
15 this Commission and at least one Court of Appeals' suggestion  
16 as far as the NEPA definition of need, what psychology tells  
17 you is perfectly acceptable and indeed correct.

18 CHAIRMAN SHARFMAN: Mr. Salzman refers to the  
19 Seabrook case.

20 MR. LIKE: I pointed out in my brief, and I don't  
21 know what arguments were made in the Seabrook case, but I  
22 pointed out that for the NRC to take the position that a plant  
23 should be built purely because it enables a substitution of  
24 nuclear for oil constitutes a promotion of nuclear power in  
25 contravention of the federal statutes if that plant has not

cmw 1 been shown to be needed and therefore justified under a  
2 cost-benefit balancing process under NEPA.

3 CHAIRMAN SHARFMAN: Seabrook was affirmed by the  
4 First Circuit Court of Appeals.

5 MR. LIKE: That issue was not raised there as it  
6 is here. You didn't have a situation as you have here where  
7 there is so tenuous a case for need. In the Seabrook case,  
8 I don't understand the argument to be the plant was not needed  
9 for reserve and reliability purposes. That's your situation  
10 here. That affects the whole cost-benefit process, as I  
11 indicated at the beginning of my argument, and makes the oil  
12 substitution doctrine a cloak for promoting nuclear power.

13 CHAIRMAN SHARFMAN: You would say if there is some  
14 need there is another factor to be considered, but not if it's  
15 the only factor?

16 MR. LIKE: That's correct. If the need is marginal  
17 and you look at the weighing process of cost-benefit, you have  
18 to match against that very marginal need all of the health,  
19 safety, environmental and economic problems.

20 MR. SALZMAN: I think this Commission must discount  
21 the difficulty presented by the fact that Long Island is  
22 entirely dependent on oil, which may be in short supply when  
23 available.

24 MR. LIKE: There has been no demonstration that oil  
25 is in short supply and L.I. can't get oil.

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1 MR. SALZMAN: There was a fair demonstration a few  
2 years ago.

3 MR. LIKE: The cost of oil is a factor.

4 MR. SALZMAN: Am I wrong? Long Island was not  
5 affected by the oil embargo?

6 MR. LIKE: LILCO never had curtailment of its oil  
7 supply. The prices went up but there was never curtailment  
8 of the supply to LILCO. Let me make one more observation.  
9 Following the logic of the Board's decision, if Jamesport 2  
10 is built before 1985, LILCO excess capacity will then be over  
11 2000 megawatts and NYSEG will have 600 megawatts excess  
12 capacity, so that on Long Island in the winter of 1985 there  
13 will be about 7600 megawatts to meet a projected load of  
14 3500 or a reserve percentage of 94 percent.

15 MR. SALZMAN: You're mixing apples and ducks. If  
16 you want to talk about LILCO's excess capacity, talk about  
17 summer capacity. You told us LILCO was a summer plant.

18 MR. LIKE: I will talk about that.

19 MR. SALZMAN: Capacity must be installed and it's  
20 there. If you want to say LILCO has excess capacity, you must  
21 turn to when it needs it most.

22 MR. LIKE: This is the Board's decision. I am showing  
23 you that it's irrational on the subject of the winter  
24 projections. Now summer. If you will turn now to Figure 3,  
25 which was handed up to you --

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1 CHAIRMAN SHARFMAN: We finally reached the 1978  
2 data.

3 MR. LIKE: LILCO's 1978 data and the record evidence  
4 showed that Jamesport is not needed even for reserve until  
5 the summer of 1989 or 1990.

6 MR. JOHNSON: May I ask a clarifying question?  
7 Does Figure 3 refer to LILCO?

8 MR. LIKE: Figure 3, lower half, refers to LILCO.  
9 That's correct.

10 CHAIRMAN SHARFMAN: The upper half?

11 MR. LIKE: Refers to NYSEG.

12 CHAIRMAN SHARFMAN: It does not so state.

13 MR. SALZMAN: This is whose data?

14 MR. LIKE: This is the data that comes out of the  
15 1978 149-B proceeding. Exhibit 2.

16 MR. SALZMAN: This is the excess without Jamesport.

17 MR. LIKE: That's correct.

18 MR. SALZMAN: If read the chart correctly, Jamesport  
19 would not be needed until 1988-89.

20 MR. LIKE: According to Figure 3, not until 1989  
21 or 1990.

22 MR. SALZMAN: You're at the border between them.  
23 All right.

24 MR. LIKE: In that area.

25 MR. SALZMAN: Under current schedules Jamesport is

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1 to be built by 1989 or 1990.

2 MR. LIKE: That is the effect of the deferral,  
3 the four-year deferral.

4 CHAIRMAN SHARFMAN: Isn't that okay?

5 MR. LIKE: No.

6 CHAIRMAN SHARFMAN: Why not?

7 MR. LIKE: Various reasons. First, that deferral  
8 was never tested. We asked that the record be reopened so we  
9 could test the validity of those projections. That was not  
10 granted. If for no other reason the Board ought to remand  
11 so LILCO's latest data can be evaluated.

12 CHAIRMAN SHARFMAN: Okay. Let me stop you right  
13 there. Where did you ask that? I read your letter to the  
14 Licensing Board, a long, long letter responding to the January  
15 1978 data and you argue that it raised many new legal issues  
16 and wanted to file a new legal brief and they permitted you to  
17 do so. You didn't state you wanted to cross-examine and  
18 reopen the record.

19 MR. LIKE: It was my legal opinion that the deferral  
20 was fatal to LILCO's need case. But if you don't believe it's  
21 fatal to their case, I am saying that the issue of whether or  
22 not that deferral is valid should be tested on the basis of an  
23 evidentiary record. I don't think it has to. I am satisfied --

24 MR. SALZMAN: You didn't ask the Board to do it.  
25 If you don't ask the Board below and then decide, you lose that

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1 appeal.

2 MR. LIKE: I don't believe it's necessary to ask  
3 the Board below to reopen if the case is defective to the  
4 point where it ought to be dismissed.

5 CHAIRMAN SHARFMAN: I gathered from your submission  
6 at that time that you were willing to accept the 1978 forecast  
7 as correct.

8 MR. LIKE: No, sir.

9 CHAIRMAN SHARFMAN: You weren't willing to challenge  
10 it on the facts?

11 MR. LIKE: We pointed out in our papers that it's  
12 not correct.

13 MR. SALZMAN: Is my colleague wrong? You were then  
14 asking for a rehearing in the alternate if we didn't grant your  
15 legal argument?

16 MR. LIKE: I am saying this. If you decide that the  
17 need case is not fatal to LILCO's application, then you should  
18 remand the matter to the Board below to receive new evidence.

19 MR. SALZMAN: You were before the trial Board. You  
20 had the opportunity to ask the trial Board to decide a legal  
21 issue and also to ask it for a reopened hearing. You didn't  
22 ask the trial Board for a reopened hearing. Under normal  
23 legal practice anywhere, that waives it. You must ask for it.  
24 Unless things are so overwhelming that you can't be wrong,  
25 that as a matter of law it must be reopened.

cmw 1 MR. LIKE: As a matter of law, LILCO has not made  
2 out its need case, it seems to me, and this Board has no  
3 alternative but to dismiss its case.

4 CHAIRMAN SHARFMAN: Tell us why it hasn't made out  
5 its need case as a matter of law.

6 MR. LIKE: Okay. Take the observation you made  
7 earlier. It takes seven years to build the plant. If LILCO  
8 doesn't need this plant until 1989 and 1990, it doesn't have  
9 to start building it until 1982 or 1983. Consequently, there  
10 is no reason to give it a license to start constructing the  
11 plant at this time. Using its own estimates or time to build.  
12 If the time that that plant is needed is so far off there is no  
13 reason why it should be licensed to be built at the present  
14 time.

15 CHAIRMAN SHARFMAN: Don't you recognize there are  
16 often delays?

17 MR. LIKE: Yes, but that seven years is a figure  
18 LILCO presented which presumably takes into account the  
19 contingencies you talk about.

20 MR. JOHNSON: I am the one who offered that figure.  
21 I can cite where in the record I found it. That 84-month  
22 figure which translates into seven years was the time to  
23 construct without regard to administrative delays or any other.  
24 That was sort of an optimistic estimate of how long it takes  
25 to construct a large nuclear power plant today. I believe that

cmw 1 data comports well with the experience of the industry. So  
2 the seven-year period is how long it takes to build a power  
3 plant optimistically. It's not including any delays.

4 MR. LIKE: I don't understand that seven-year  
5 period can be suddenly stretched to ten years simply on the  
6 basis that you believe that to be an optimistic figure.

7 MR. SALZMAN: Where in the record does it indicate  
8 it will take only seven years to build it, all delays included?

9 MR. LIKE: The record -- I can't give you a citation  
10 at the moment, but the record indicates LILCO estimated it  
11 would take seven years to build this plant. The licensing  
12 record is full of evidence. It's full of material which  
13 presumably, if LILCO renewed an application in 1982 to build  
14 a plant in 1989, would not discard all of the evidence that  
15 was already presented in this record. It could even renew such  
16 an application based upon the evidence already in the records  
17 of this application.

18 CHAIRMAN SHARFMAN: I am sure you would be the first  
19 to say if we made them wait until 1982 even to consider this  
20 application that they would have to present completely new  
21 and fresh data because the total picture has changed. Then it  
22 would take another few years of hearing and they won't meet  
23 the 1988 or 1989 requirements.

24 MR. LIKE: But between now and 1982, let me show  
25 you what might happen. Turn to Chart 4. This chart shows the

cmw 1 progressive decline in LILCO's projections of summer peak  
2 demand beginning with the 1974 149-B proceeding. You will  
3 notice that each year there was a significant decline so in  
4 the 1977 year you have practically eliminated one entire  
e-3 5 Jamesport plant in terms of the magnitude of the error of  
6 their forecasting.

7 During the proceedings, based upon historic  
8 overshoot, the County presented an extrapolation indicating  
9 what the 1978 line looked like and this is the line marked  
10 in green. The actual 1978 149-B is this purple line showing  
11 that LILCO's actual line is even lower than the County  
12 projected. Which means LILCO has been wrong five times in a  
13 row and this chart shows the magnitude of this error. What  
14 would happen if you didn't give them a license today? We  
15 have a 149-B coming up now. When we see the new projections  
16 in that 149-B, it is very possible that the next projection  
17 will be even lower, which would make Jamesport not necessary  
18 until the '90s.

19 CHAIRMAN SHARFMAN: It's also possible it might be  
20 higher.

21 MR. LIKE: That's why you should wait and see what  
22 the shape of the curve should be. You shouldn't say start  
23 building this plant now when history may indicate very  
24 shortly that that date can be delayed even further as it  
25 has been historically going back from 1974.

jon 1 CHAIRMAN SHARFMAN: The argument can be made all the  
2 time to say you could never give a license because if there  
3 is always a seven to nine-year lead time you could always say  
4 we will know better in five years whether you need it and you  
5 will never have time to build it.

6 MR. LIKE: Something has been happening here which  
7 must be looked at. The effect of energy conservation and other  
8 factors are causing this persistent secular downward.

9 MR. SALZMAN: It is downward in the increase over  
10 electric power rather than absolute.

11 MR. LIKE: A downward projection over peak demand for  
12 the long range.

13 MR. SALZMAN: Lower rate of increase. You are not  
14 reducing power need.

15 In other words, you are saying that in 1989 you would  
16 be using less power than now?

17 MR. LIKE: If you look at this portion of the chart  
18 which indicates the actual trend of post-1973 summer peaks,  
19 this is what they call a summer normalized peak, you have a  
20 downward trend even in the actual summer peak itself shown by  
21 this chart.

22 What I am saying is giving more time to see what the  
23 shape of this load forecast curve will be would be very  
24 instructive because it may indicate that Jamesport wouldn't  
25 even be needed by 1989 and 1990.

jon 1           Let me call your attention to the latest filing, and  
2 this came into my office this week. The Public Service  
3 Commission in Case 27374, the current rate case by this  
4 company, has come in with a forecast, a preliminary forecast,  
5 which indicates -- this is the Staff's forecast, which is  
6 labeled as preliminary. It will be presented in the next  
7 149B evidentiary hearing.

8           They are showing on the high range, the upper range  
9 side, for 1988, a forecast peak of 3550 megawatts.

10           Look at what that means. It means that this actual  
11 1978 line will be lower than the purple line shown on Chart 4.  
12 That is their upper range.

13           On their lower range they are forecasting -- I am  
14 talking about the PSC staff -- 3410 as being the summer peak  
15 demand.

16           If you go further into 1979, in 1989 the staff is  
17 saying the forecast peak upper range is 3620 and the forecast  
18 lower peak range is 3465.

19           It is the opinion of the PSC staff, a reversal of  
20 testimony they have given in the past -- I regard it as a new  
21 development -- that Jamesport will not be needed until well  
22 into the '90s. Whether they are right or wrong is not for  
23 this Board to decide.

24           I am not suggesting you give probative value to the  
25 statement I am making at the present time. What I am saying,

ion 1 however, is that deferring the issuance of a construction  
2 permit will give time to see what the effects of energy  
3 conservation will be and what the curve will look like.

4 The passage of the National Energy Bill with all  
5 its provisions designed to stimulate energy conservation and  
6 so forth may contribute to the effect of this energy  
7 conservation and have a further derpressant effect upon summer  
8 peak demand.

9 CHAIRMAN SHARFMAN: Your hour is almost up. Perhaps  
10 if you have other issues to talk about you ought to get to them  
11 quickly.

12 MR. LIKE: I will do that.

13 In our brief we made the point at Roman V-A that it  
14 is uncertain whether nuclear or coal enjoys an economic  
15 advantage.

16 The record, in my opinion, shows it is problematical  
17 whether nuclear or coal enjoys that advantage and that nobody  
18 can really predict which is more economical over the next 30  
19 to 40 years because of the vast range of variables.

20 I would suggest a realistic decisionmaker should  
21 act on the premise that the issue is indeterminant and  
22 uncertain at the present time and that the alleged economic  
23 advantage should not be considered as a factor justifying the  
24 building of a nuclear or coal plant.

25 CHAIRMAN SHARFMAN: Mr. Salzman explained our

lon 1 decisions in Hartsville in 1977 and Midland in 1978 and  
2 Clinton in 1977 have all indicated that unless -- that unless  
3 the coal would be environmentally preferable, relative cost is  
4 not really an issue under NEPA.

5 MR. LIKE: The point is this: the alleged economic  
6 advantage was very heavily relied upon as justification not  
7 only for building nuclear versus coal, but also for early  
8 timing.

9 I am suggesting not only is the issue indeterminant  
10 but why get into the uncertainties of making that prediction  
11 when you don't even need the plant?

12 The uncertainty and indeterminacy of that issue  
13 weighs on the cost side of the scale and tilts against the  
14 project.

15 The same is true with respect to the uncertainty as  
16 to health safety environmental effects, which I dealt with at  
17 Roman V-B of our brief.

18 There is a controversy. Which is worse, coal fuel  
19 cycle or nuclear fuel cycle?

20 Both Staff and LILCO are missing the point.

21 As in the case of the comparative economic issue,  
22 the prudent decisionmaker should act on the premise that it is  
23 problematical which one has the greater health effect, which  
24 presents greater safety risk; even though we think the weight  
25 of the qualified evidence shows nuclear was the worst, the

1 point is the only justification for assuming any of these  
2 risks is that you need a plant.

3 MR. SALZMAN: In going through your brief you  
4 refer to a number of witnesses and give their reference to  
5 their testimony as Article 8 transcript.

6 Was that transcript introduced as part of the  
7 record?

8 MR. LIKE: Yes, it was received.

9 CHAIRMAN SHARFMAN: Where can we find that?

10 MR. SALZMAN: All of it received?

11 MR. LIKE: Selected portions were received. The  
12 portions received have been indicated.

13 MR. SALZMAN: Perhaps somebody could tell us where  
14 we can finish which portions were received. I see a nod from  
15 Mr. Bordenick. I take it the Staff will help.

16 MR. LIKE: The bottom line is that the less the need,  
17 the less the so-called benefit of building something you don't  
18 need.

19 The less the justification for assuming all of the  
20 health, safety and environmental risks, whether coal or  
21 nuclear.

22 In other words, a cost-benefit balancing judgment has  
23 to tilt against the project because of the serious health,  
24 safety and environmental problems.

25 In this connection I would ask you to take official

1 notice of recent federal reports, one of which is a report  
2 which indicates there is no assurance that a high level waste  
3 storage facility will be available in the 1980s.

4           Consequently, that uncertainty has been exacerbated  
5 and weighs even more heavily on the cost side of the cost-  
6 benefit balance.

7           I also ask you to take official notice of the  
8 Lewis Report which criticized the Rasmussen Report and  
9 recommended it not be relied upon as a basis for regulatory  
10 policy.

11           It happens that the Rasmussen Report is the  
12 underlying philosophic rationale for the Staff failing to  
13 evaluate the Class 9 accident.

14           MR. SALZMAN: I am sorry. I regret to interrupt,  
15 but don't waste your time. There is a stated Commission policy  
16 against evaluating Class 9 accidents, them being no more of a  
17 way of saying an accident is probable and Staff has no choice  
18 and neither do we.

19           MR. LIKE: I am suggesting the fact that the latest  
20 NUREG document of which you can take official notice says --

21           MR. SALZMAN: Commission policy forbids the  
22 consideration of Class 9 accidents. There is nothing we can  
23 do.

24           MR. LIKE: The policy is now undermined by the  
25 document known as the Lewis Report, and we are challenging --

1 CHAIRMAN SHARFMAN: Is that cited in your brief?

2 MR. LIKE: No.

3 MR. SALZMAN: My point is the policy is embodied in  
4 the directives. Until the Commission withdraws those, there is  
5 nothing we can do.

6 MR. LIKE: I suggest as a legal matter -- I make this  
7 argument because this is necessary to preserve my record --  
8 that in view of the Lewis Report, the Commission policy, if  
9 that is the policy that a Class 9 accident will not be  
10 considered, is no longer valid because it is based on  
11 Rasmussen and the Commission now acknowledges Rasmussen should  
12 not be used as a basis for regulatory policy.

13 In our brief in VI we also discussed unresolved  
14 generic design and operational problems associated with  
15 Jamesport.

16 Here again --

17 MR. JOHNSON: Where do they appear in the record,  
18 these unresolved generic issues?

19 MR. LIKE: That would be the testimony largely given  
20 by Bridenbaugh and Pollard. It was given in the Article 8  
21 hearing, but --

22 MR. JOHNSON: Will you point out where that testimony  
23 is incorporated in the record?

24 MR. SALZMAN: He doesn't have to do it now.

25 MR. LIKE: I can do it after the argument if you

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1 allow me to finish.

2 It is readily available in the hearing room.

3 CHAIRMAN SHARFMAN: Your time is really up, Mr. Like.

4 MR. LIKE: Could I ask for about 15 minutes of your  
5 time? 10 minutes? May I ask the Board's indulgence to grant  
6 me additional time to complete my argument in view of the  
7 lengthy questioning?

8 CHAIRMAN SHARFMAN: All right. We will give you  
9 another 10 minutes.

10 MR. LIKE: Thank you.

11 CHAIRMAN SHARFMAN: Not out of your time.

12 MS. TIEDKE: Thank you.

13 MR. LIKE: On the issue of unresolved problems,  
14 neither the Staff nor the Applicant denies the range of the  
15 seriousness of these issues. Instead, they offer technical  
16 arguments why they shouldn't be considered. They say they were  
17 generic, and so forth.

18 The generic issues cited directly relate to  
19 Jamesport. They involve ECCS, containment adequacy,  
20 pressure vessel failures, cable separation, et cetera.

21 Now, what the point is is that: why worry about  
22 unresolved generic issues, why take on the risk of saying we  
23 will build a plant and solve those problems later, when we  
24 don't need the plant itself?

25 This is another example of a factor which weighs

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1 upon the cost side, adds risk which tilt the balance against  
2 Jamesport.

3 CHAIRMAN SHARFMAN: You are conceding the other side  
4 may be right in saying under the Atomic Energy Act and the  
5 Commission's regulations you can't deny the construction permit  
6 on the basis of these arguments, but that they should be  
7 considered on the NEPA side.

8 MR. LIKE: Not at all. I have pointed out in my  
9 brief that the what are called generic issues should have been  
10 considered by the Licensing Board below because there was no  
11 rulemaking proceeding that was pending which was addressing  
12 those proceedings.

13 Consequently those issues were ripe for adjudication  
14 in the licensing proceeding.

15 CHAIRMAN SHARFMAN: That was a rulemaking proceeding  
16 on S3.

17 As to the other generic issues, there were rules.  
18 That was even better than rulemaking.

19 MR. LIKE: The case we cited -- I believe it arose  
20 out of the Vermont Yankee case -- said that if you have a  
21 generic issue which is not the subject of a rulemaking  
22 proceeding, then it is ripe for adjudication in the licensing  
23 proceeding.

24 The issues that we raised were issues that weren't  
25 the subject of pending rulemaking proceedings and consequently

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1 they were ripe for determination.

2 CHAIRMAN SHARFMAN: ECCS was the subject of a  
3 Commission rule.

4 MR. LIKE: There was a rulemaking on that.

5 MR. SALZMAN: Are there Commission rules as to how  
6 these are treated? We are bound to follow the rules. That's  
7 the point. We have no choice.

8 MR. LIKE: That's not the way I understand that case.  
9 As I understand the case, if you have an issue that is not the  
10 subject of a pending rulemaking proceeding it is ripe for  
11 adjudication.

12 MR. SALZMAN: Unless it is because there already is  
13 a rule.

14 MR. LIKE: The testimony given is there were issues  
15 unresolved. If you have something unresolved, it is not the  
16 subject of a rule. A rule can't deal with something without  
17 resolution.

18 Do you follow?

19 MR. SALZMAN: If there is no rule, you have no  
20 problem.

21 MR. LIKE: Unresolved issues have no rules. If there  
22 were rules, they wouldn't be unresolved.

23 MR. SHARFMAN: There is a bit of semantics. The  
24 Vermont Yankee case dealt with a subject that was not the  
25 subject of a Commission rule at the time of the Licensing Board

ion 1 hearing.

2 MR. LIKE: Not the subject of a Commission rulemaking  
3 proceeding.

4 MR. SHARFMAN: Also not the subject of a Commission rule.

5 MR. LIKE: The generic issues we raised weren't  
6 covered by rules because they were unresolved.

7 What NRC had indicated is we haven't resolved this  
8 problem yet. It will require more research and development,  
9 more testing and demonstration.

10 I say when you have that kind of situation and no  
11 pending rulemaking proceeding which is addressed to resolving  
12 those issues, they are then ripe for adjudication in the  
13 licensing proceeding.

14 MR. JOHNSON: Which of these unresolved issues were  
15 the subject of contention of Suffolk County?

16 Name a contention that was related to a generic issue  
17 that was not allowed into the proceeding.

18 MR. LIKE: I would have to refresh my recollection  
19 by looking through the testimony.

20 MR. JOHNSON: How about pressure vessel failure; did  
21 you have a contention in that?

22 How about wiring penetration; did you have a  
23 contention in that area?

24 MR. LIKE: I can't now give you specific contentions  
25 as to whether they covered those matters. There were a number

jon 1 of contentions not admitted. Some were admitted. Testimony  
2 was given by Pollard and Bridenbaugh with regard to  
3 unresolved issues.

4 I would take the position that even with a matter not  
5 the subject of contention on the part of the Intervenor, that  
6 it should be considered by the Board and the Staff under their  
7 responsibility to evaluate safety.

8 MR. JOHNSON: The Vermont Yankee case you cited said  
9 that if these generic issues weren't covered by a rule, then  
10 they were ripe for adjudication.

11 MR. LIKE: This is not my understanding of it. It  
12 said --

13 MR. JOHNSON: If what I said is the proper  
14 characterization of Vermont Yankee, then it remains in order  
15 for them to be adjudicated they must be brought into the  
16 hearing and made an issue in order that they be dealt with on  
17 the evidentiary record.

18 MR. LIKE: They were made an issue in the form of  
19 extensive testimony which was cross-examined in the Article 8  
20 case and then was, by stipulation, admitted into the record of  
21 the proceeding.

22 This is a record which carefully details exhaustively  
23 the issues that we claim were unresolved.

24 I am saying that those unresolved issues add weight  
25 to the cost side of that cost-benefit balance and that they

ion 1 full tilt the project against licensing.

2 MR. JOHNSON: But our hearings and our procedures,  
3 we deal with health and safety matters more or less on an  
4 absolute basis, and not on a cost-benefit balance basis.

5 Safety issues are not added into a cost-benefit  
6 balance. Safety issues are resolved or are resolvable.

7 MR. LIKE: That may be the case under the NRC  
8 licensing policy procedures, but I suggested at the opening  
9 of my argument the NEPA does require the cost-benefit balancing  
10 process.

11 I am suggesting the unresolved issues, another one  
12 of the elements on the cost side which tilts against building  
13 this particular project where you have no demonstration of  
14 need.

15 To wrap it up, because my time is up --

16 CHAIRMAN SHARFMAN: When you refer to Vermont Yankee,  
17 are you referring to the Supreme Court decision or Court of  
18 Appeals decision?

19 MR. SALZMAN: Or Board decision?

20 MR. LIKE: Whichever, it was not reversed by the  
21 Supreme Court. The ruling regarding ripeness for adjudicatory  
22 proceedings was not reversed by the Supreme Court. It was  
23 either in the Circuit decision or Supreme Court decision.

24 The remaining points which I was going to cover had  
25 to do with the quality control, quality assurance, the

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1 questionable accuracy, meteorological analysis, and the  
2 questions having to do with the suitability of a site,  
3 problems with regard to spent fuel, problems with regard to  
4 the dead-end location of the island, and, again, the concept  
5 there is that in all of those situations you have risks and  
6 uncertainties which when added on the cost side outweigh the  
7 benefits in view of the marginal, if any, need for the  
e-4  
8 project.

9 Thank you.

10 CHAIRMAN SHARFMAN: Thank you very much, Mr. Like.

11 MR. SINNREICH: May I note my appearance? Jonathan  
12 H. Sinnreich of Paul, Riss, Rifkin, Wharton and Garrison,  
13 representing the Town of Riverhead.

14 I understand the Board granted our application for  
15 Mr. Smith to address the Board and I thank you for that.

16 CHAIRMAN SHARFMAN: Yes.

17 MR. SALZMAN: Is Mr. Smith here?

18 VOICE: He will be here at the appropriate time.

19 CHAIRMAN SHARFMAN: Thank you.

20 We will now take a five-minute break.

21 (Recess.)

22

23

24

25

LT 1 CHAIRMAN SHARFMAN: May we come back to order,  
2 please?

3 Mr. Sinnreich, I just want you to know we would  
4 expect to have Mr. Smith speak after Mrs. Tiedke and  
5 Ms. Bachrach.

6 MR. SINNREICH: I understand. I told him to be here  
7 at 12 or shortly before, that being two hours after 10:00.

8 CHAIRMAN SHARFMAN: It looks like 12:30 would be  
9 more like it at this time. All right, Mrs. Tiedke, would  
10 you go ahead some or Mrs. Bachrach.

11 MS. TIEDKE: Well, I wanted to say two things. You  
12 asked for an update on the Siting Board record. When would  
13 you hear that?

14 CHAIRMAN SHARFMAN: You can address that at any  
15 time. We are happy to hear from anyone.

16 MS. TIEDKE: I would feel the applicant should do  
17 that first and we could fill in.

18 MR. SALZMAN: You are the appellant. You have your  
19 opportunity now. They may reply. If you don't care to  
20 address it, that is up to you.

21 CHAIRMAN SHARFMAN: It's up to you to make a  
22 judgment as to what you wish to do with your hour.

23 MS. TIEDKE: The other thing is our argument is  
24 divided into sections. If you wish to break for lunch, which  
25 I would recommend, we can stop after any given section.

LT 1 CHAIRMAN SHARFMAN: We would like to finish up with  
2 the League of Women Voters and Mr. Smith before breaking for  
3 lunch.

4 MS. TIEDKE: Do we have to stand?

5 MR. SALZMAN: You might find the lectern helpful  
6 and it will enable people to hear if you speak into the  
7 microphone.

8 Would you step up?

9 MS. TIEDKE: Mr. Chairman, you have not addressed --

10 CHAIRMAN SHARFMAN: You have to turn it on. Could  
11 you help Ms. Tiedke?

12 MS. TIEDKE: You have not addressed the question of  
13 the rejection of the brief of the -- of the League's brief  
14 by staff and applicant.

15 CHAIRMAN SHARFMAN: I think for the same reasons  
16 that I adduced with respect to the applicant, we would not  
17 reject the League's brief.

18 MS. TIEDKE: Mrs. Bachrach will go first.

19 MS. BACHRACH: I would like to distribute this to the  
20 parties and the board to accompany my remarks.

21 CHAIRMAN SHARFMAN: May I ask you, is this material  
22 an outline or summary of what your argument will be?

23 MS. BACHRACH: It's just an accompaniment to sort of  
24 visually help explain my argument.

25 CHAIRMAN SHARFMAN: Rather than -- you are not

LT 1 submitting this as if it were an exhibit of any kind?

2 MS. BACHRACH: I am going to read it as an  
3 accompaniment to my argument.

4 MR. SALZMAN: The point essentially is in proceedings  
5 you have to give the other side an opportunity to see what  
6 you are going to say so they can prepare.

7 MS. BACHRACH: I am going to read it in the record.

8 MR. SALZMAN: They are entitled to it ahead of time  
9 to prepare a rebuttle.

10 CHAIRMAN SHARFMAN: Are these arguments you made  
11 in your brief?

12 MS. BACHRACH: Yes.

13 MR. SALZMAN: Does counsel have any objection?

14 MR. REVELEY: No, sir.

15 CHAIRMAN SHARFMAN: We are not receiving them in  
16 a formal sense.

17 Just glancing at them as you suggest they might be  
18 helpful in understanding your argument.

19 MR. JOHNSON: I would like to make a comment at  
20 the outset. The little statement that appears at the top  
21 of your paper, whether or not these appear in the record,  
22 the real world can't be shut out, I would like to remind you  
23 that this board must make its decision on facts that appear  
24 in the record, the real world notwithstanding, and in fact,  
25 many, many times there are things that we are aware of because

LT 1 we also live in the real world that we are unable to use  
2 because they are not in the record.

3 It's not the first time that the real world and  
4 the record have been somewhat in conflict.

5 MR. SALZMAN: Mr. Like was explaining to us how the  
6 record doesn't reflect the real world at some length.

7 MS. BACHRACH: Well, it's really a document to  
8 enlarge upon what is in the record because a great many of  
9 these have been in our briefs.

10 They represent the alternative strategies as I stated  
11 to the proposed baseload nuclear power plants as dictated  
12 by variables in determining the amount and kind of energy  
13 required for the future.

14 One is the extent and rapidity of the efforts by  
15 applicant to shape and restrain demand. Under that heading  
16 is load management, time of day pricing, cogeneration,  
17 inverting rates to reflect lower kilowatt cost for less  
18 consumption, consumer education and advice on weatherization  
19 measures, appliance efficiency and usage analysis, district  
20 generation for industrial installations, fuel cells,  
21 refuse derived fuel and total energy systems.

22 This does not necessarily mean that this is the  
23 total number of possibilities but only those that came to mind.

24 MR. SALZMAN: Is there any evidence in the record  
25 which would tell us how much energy or how much peak demand

LT 1 would be reduced if these were adopted?

2 MS. BACHRACH: Not specifically because --

3 MR. SALZMAN: Either there is or there is not.

4 MS. BACHRACH: I guess their actual figures, though,  
5 that is true. But I will go on with this now. The licensing  
6 board we believe has erred in stating the substitution of  
7 nuclear power or coal for oil is the only direction to go.

8 The board in referring to the League's statement  
9 that all alternative means of reducing oil consumption must  
10 be employed as they stated in the footnote 54 of page 170  
11 of the PID describes four measures which they claim are the  
12 League's sole answer to nuclear substitution.

13 We disagree and offer this list to the parties  
14 and the board to show there is a far greater impact than the  
15 licensing board is willing to admit from the long list of  
16 variable affecting demand.

17 Even in the next footnote on page 170 on that page  
18 has not -- am I being heard?

19 CHAIRMAN SHARFMAN: Yes, we can hear you.

20 MS. BACHRACH: Even the next footnote 55 on the  
21 same page has not caught up with the downward spiraling  
22 for costs of applicant. The 44-month slippage should read  
23 68 months plus 18 months for renewed engineering and  
24 procurement as stated in the applicant's letter of January  
25 28, 1978 on page seven.

LI 1           The actual range in construction time is from 78  
2 months up to 184 months according to the construction status  
3 reports NUREG 0030, Volume 1, numbers four through seven.  
4 This is for plants projected over the calendar years 1984  
5 to 1990.

6           Next in the April, 1978 lists, construction time  
7 at 127 months. May, 1978, 24.9 months. June and July,  
8 121.7 months.

9           This translates to about 11.5, 10, and 10 years  
10 respectively. Therefore, the staffers at page eight in its  
11 brief in opposition that the facility would meet present  
12 demands for power. This is obviously untrue given the delayed  
13 operating dates and long lead time for construction of nuclear  
14 power plants.

15           The needs of the 1990 to 1992 period are not present  
16 demands, they are future demands. The substitution argument  
17 for the next decade will be of no use whatsoever.

18           Inasmuch as --

19           CHAIRMAN SHARFMAN: I don't follow that. Why is  
20 the substitution argument of no use?

21           MS. BACHRACH: Because we are going to have to  
22 substitute for oil starting now. Not 10 years -- not  
23 starting about it 10 years from now.

24           MR. SALZMAN: To have it 10 years from now, you  
25 have to start building now.

LT 1 MS. BACHRACH: I am pointing out the alternatives  
2 that I am suggesting will take care of this period until  
3 the decision is made as to what kind of future power will  
4 be needed.

5 CHAIRMAN SHARFMAN: As I gather from what you  
6 answered, Mr. Salzman before, the record doesn't show how  
7 much power will be saved by any of these alternatives within  
8 the timeframe of the next eight to 10 years, is that correct?

9 MS. BACHRACH: Yes, but I think that has partially  
10 been answered by Mr. Like's graph showing the downward  
11 trend in demand which has not yet reached a plateau.

12 We are still uncertain as to when the drop will  
13 end and there will be an upsurge so that we are still working  
14 with a downward --

15 CHAIRMAN SHARFMAN: His chart insofar as it showed  
16 an absolute downward trend referred to pages, as I recall,  
17 this proposed plant is baseload rather than peaking plant.

18 I don't know whether even Mr. Like was able to  
19 demonstrate to his satisfaction that there would be less  
20 baseload power needed.

21 MS. BACHRACH: I think that matter is shown in the  
22 newest projections for 1978 in the New York Power Pool  
23 Report.

24 CHAIRMAN SHARFMAN: The 149(b)?

25 MS. BACHRACH: Yes.

LT 1

CHAIRMAN SHARFMAN: Is that in the record?

2

MS. BACHRACH: Only indirectly, through amendment

3

seven.

4

CHAIRMAN SHARFMAN: Of the environmental report?

5

MS. BACHRACH: Yes. Inasmuch as the most recent

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projections by applicant in this January 28 letter of this

7

year don't indicate a leveling off as I pointed out there is

8

no indication how long it will continue as the incremental

9

effects of alternative scenarios aided by price elasticity

10

permanently reduce oil consumption.

11

The League stated in its proposed findings that

12

a five-year period should elapse before making any decision

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on the amount and kind of power that is needed and that we

14

can afford to wait to construct baseload power stations of

15

the size proposed.

16

Perhaps more data will confirm conclusively by

17

then that power plants larger than 800 megawatts are more

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subject to unscheduled outages and are less reliable than

19

smaller ones which we indicated in our exceptions to the

20

PID page 30.

21

MR. SALZMAN: Am I correct you oppose not merely

22

this nuclear plant but any new construction of baseload

23

facilities by LILCO?

24

MS. BACHRACH: I would, yes, for that period.

25

The board admitted in the PID at paragraph 295 that

LI 1 the additional time now available will likely lead to  
2 advancements in knowledge and improvements in technology  
3 which will enhance the safety of the proposed plant.

4 Applicant's witness, Cordero, in our proposed  
5 findings at page 53 also concurs on environmental grounds.  
6 The applicants have misunderstood the League's statement  
7 referred to on page 16 in this brief posing exceptions  
8 regarding QAQC. The inevitable delays in construction  
9 schedules and design errors of Jamesport's vendors and  
10 engineers supports our contention that alternatives to nuclear  
11 plants would be less costly in time and money.

12 It was not intended to attach the regulations. The  
13 licensing board does not suggest at any place that total  
14 reliance on nuclear power would be just as serious a risk  
15 as on all oil. The board erred in failing to consider the  
16 importance of diversity in the kind of power supply as a  
17 long-term solution.

18 MR. SALZMAN: I don't understand that. There is  
19 only a proposal to build one nuclear plant. At the moment,  
20 there is total reliance on oil. There is no suggestion here,  
21 is there, that the LILCO should pull down its oil plants  
22 and replace them with nuclear plants?

23 MS. BACHRACH: Of course not, but the point is  
24 the staff has not stated that other alternatives to oil or  
25 coal will come into play and that these must be considered

LT 1 by the lighting company in their total source of power  
2 supply.

3 MR. SALZMAN: What alternatives do you refer to other  
4 than oil and coal?

5 MS. BACHRACH: If you will refer to that list I  
6 extended, in addition to those which the applicants can use  
7 are the conservation measures which are being employed now  
8 by power users, such as lowering their thermostats in the  
9 winter, reducing air-conditioning, improving insulation  
10 including windows and doors, closing off unused rooms,  
11 solar-assisted hot water installation, setting hot water  
12 thermostats 10 degrees lower, wind generation, building  
13 site orientation and landscaping to reduce power consumption,  
14 the use of car pools and public transportation to reduce  
15 oil consumption, district generation.

16 MR. SALZMAN: You told us list no evidence in the  
17 record that says what that will do.

18 MS. BACHRACH: But we know that — we don't know  
19 the exact amount of incremental saving that is involved.

20 We only know that the total impact of all of these  
21 measures, whether they were carried out by the applicant  
22 or by the consumers, it is having a dynamic effect on the  
23 consumption of power.

24 MR. JOHNSON: Is that saturated? There were a great  
25 number of conservation measures that went into effect in the

LT 1 aftermath of the 1973 oil embargo.

2 How many of the people have got their thermostats  
3 down as far as they can comfortably accept them? How many  
4 air-conditioning systems are run at the maximum level of  
5 comfort?

6 In other words, just as there is a saturation in  
7 appliance use in a given area which would tend to reduce load,  
8 there will also be saturation effects in these conservation  
9 measures and do you have any feel or is there any evidence  
10 anywhere as to what fraction of saturation we have arrived  
11 at?

12 MS. BACHRACH: We don't have the means to evaluate  
13 such saturation levels and I think that that would be a very  
14 excellent idea for the applicant to perform in covering  
15 their future power needs.

16 MR. SALZMAN: You also mentioned price elasticity  
17 as a conservation measure. Would you explain how that  
18 works?

19 MS. BACHRACH: It's a very simple concept. The  
20 higher the price of oil heat becomes, the more people turn  
21 to alternatives to provide their power.

22 MR. JOHNSON: Such as electric heat?

23 MS. BACHRACH: Yes.

24 MR. JOHNSON: I see.

25 MR. SALZMAN: That would push up the need for

LT 1 electricity rather than reduce it.

2 MS. BACHRACH: I am saying they would not go to  
3 electricity. They would go to some other form. Solar or  
4 some other --

5 MR. SALZMAN: The difficulty with price elasticity  
6 is you have to break it down somewhat more than that.

7 Much electric power is used in industrial demand.  
8 The key factor is not merely -- what you have to realize is  
9 what percentage of the cost of producing the product is  
10 fairly attributable to the cost of electric power.

11 In most places, that is not an enormously  
12 appreciable amount. Consequently, even doubling the price of  
13 electricity frequently has not effect whatsoever.

14 It's not something you can just say off the top of  
15 your head will reduce the amount of electricity used. It may  
16 result in increasing the price of the product turned out.

17 It requires considerable study. Just throwing  
18 it in isn't terribly helpful to us.

19 MS. BACHRACH: Up until the present time, quantity  
20 consumption has been given a break by the utility. According  
21 to the new federal mandate under its engineering program,  
22 this has to be changed.

23 MR. SALZMAN: How much is to be saved? My point  
24 is, let us suppose it costs \$1.00 to manufacture an item and  
25 50 cents of that price is the cost of electricity. If the

LT 1 price cost of electricity is doubled, and it now costs \$1,  
2 that makes the price of the item \$100.50. I suggest that  
3 price elasticity will have little effect.

4 My point is not that that is the case but before  
5 you can say it will do something, you have to have some  
6 careful study of the subject matter. It's not an easy thing.

7 This is the point I am trying to make. It isn't  
8 enough simply to list all the things that might be done. You  
9 have to give us some indication of what could be achieved by  
10 such methods.

11 Absent that, there is very little to be gained by  
12 reciting all sorts of wishful thinking. I hope President  
13 Carter is right. I am sure he is delighted and that you are  
14 right that the energy bill will reduce --

15 MS. BACHRACH: I would think it would be in the  
16 interest of the utility to work with industrial users to show  
17 them how they can save on the use of electricity if it's  
18 going to keep the price of their product competitive because  
19 if the utility can do this to the extent of requiring  
20 less baseload power, they also will be in a better position.

21 MR. SALZMAN: I don't wish to get into a long  
22 discussion with you but if everybody has to pay the same price  
23 for electricity, it makes little difference. If one  
24 competitor does it, so does the other. If the matter is not  
25 a significant item, it isn't going to be terribly helpful.

LT 1 My point is entirely different. It doesn't serve  
2 the public's purpose or help in these proceedings to come  
3 forward with a list of things that might be wonderful without  
4 some kind of indication in the evidence about what the result  
5 of using these things could be.

6 You list wind power. Is there any evidence in the  
7 record that substantial use of wind power is possible? How  
8 much could be achieved? What it would be costing?

9 MS. BACHRACH: I am not saying at this instant that  
10 these measures are going to be shown in dollars and cents  
11 that they can save anything. What I am saying is that it  
12 takes at least 10 years, let us say, for a nuclear power  
13 plant of the size proposed by the applicant to be built.

14 I have no doubt that the increase in knowledge and  
15 technology in that period of time before the time a power  
16 plant is built will show him ways --

17 MR. SALZMAN: You may be right but the problem is  
18 you may be wrong. A utility company is caught in the bind.  
19 It must be ready and able to provide this electricity and  
20 if they are correct that 10 years from now you are going to  
21 need this extra power and they don't provide it, then they  
22 will be in even more trouble and hauled up again before the  
23 authorities, this time for not providing enough electricity.

24 Hence the reason Mr. Like is concentrating carefully  
25 on whether the record statistics show that the light company

LT 1 is right and will need this plant or not.

2 But the utility company, as Mr. Like appreciates  
3 in his argument this morning, is in no position to stand by  
4 and do nothing. It must have concrete data to work upon.  
5 It doesn't help us to suggest that a wind plant might be  
6 useful 10 years from now if there is no evidence that anybody  
7 will build them or that they can be used.

8 The light company must decide now.

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bw 1 MS. BACHRACH: One of my arguments which I have not  
2 yet stated deals with something that we put in our brief  
3 that the Applicants have it in their power to control the  
4 degree of what alternatives and the amount of power that  
5 is going to be used by the use of load management and the  
6 extent to which they implement time-of-day pricing and all  
7 of these items.

8 MR. SALZMAN: The Applicants or the Public Service  
9 Commission?

10 MS. BACHRACH: Well, both together, because if the  
11 Public Service Commission recommends these alternatives,  
12 and it is mandated by the Federal Government, the lighting  
13 company will certainly have to do this.

14 MR. SALZMAN: What is your point for us now?

15 MS. BACHRACH: I am saying that the speed with which  
16 the utility goes about implementing these things is sort of  
17 a self-fulfilling prophecy, as far as how much power is going  
18 to come from these alternatives.

19 MR. SALZMAN: It is very easy for you to stand  
20 here as a representative of the League and suggest it would  
21 be a wiser idea if electric rates ought to be reduced for  
22 things after 10 o'clock -- you use electric power late at  
23 night, and you should raise the price of airconditioning  
24 during peak load times. But the countering arguments have  
25 been made, quite serious ones, that for the well-to-do the

bw 1 increase in electric power will make little difference.  
2 They will continue to use their air conditioners in the  
3 afternoon when it is hot and will not do the laundry at  
4 10 o'clock at night. The impact of a number of your  
5 suggestions would be essentially to cut out the comforts  
6 or relative comforts of airconditioning for those of us  
7 who are not so fortunate, to force people who work to  
8 work later to do their laundry at night. In short, a  
9 disproportionate amount of the sacrifices that you are  
10 suggesting will come from people not like yourself or us,  
11 but those who are not well placed to defend themselves.

12 This is neither here or there. The point is  
13 that, absent again some suggestion that the programs you  
14 suggest are likely, practical and will result in real  
15 achievement in savings of electric power, in the absence of  
16 such factors, it leaves us little choice but not to put much  
17 weight on what you give us. We are bound to take into  
18 consideration the facts in the record. Your brief is simply  
19 devoid of factual support showing what is to be gained by  
20 doing things this way. That is a problem in these  
21 proceedings. The hearing record is set up so to the extent  
22 possible factual arguments are presented and we can look  
23 at them and see the proof.

24 Mr. Like's presentations weren't to entertain us.  
25 They were there to educate us on the things he says are in

bw 1 the record that show that the company doesn't need it.  
2 But your presentations this morning, without underlying  
3 material to show that it would be effective, are little help.  
4 No one on this Board thinks the League of Women Voters  
5 shouldn't be here. In fact, the League has in a number of  
6 cases helped us a great deal in pinpointing issues and  
7 pointing out things to be looked at. But the way to proceed,  
8 to be most helpful, is bring forth the witnesses and evidence  
9 who can tell us things we can rely on. What we are telling  
10 you this morning is we must base our decisions on the facts of  
11 record.

12 That is true for every federal adjudicatory board.  
13 We hear your arguments, sympathize with you, but there is  
14 little we can do, unless you can do what Mr. Like does,  
15 saying look at exhibit so and so.

16 My point is that that is what we have to look for.  
17 We are required to look for it as a matter of law. We can't  
18 impose our notions of what things should be willy-nilly. We  
19 must see what the record shows is likely to be the case.

20 MS. BACHRACH: You have taken the Applicant's word  
21 that the size of the plants that they are proposing, 1250  
22 megawatts --

23 MR. SALZMAN: We haven't taken their word for  
24 anything, rest assured. His turn will come.

25 MS. BACHRACH: The Licensing Board has done so.

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1 MR. SALZMAN: The Applicant presented witnesses  
2 who are experts, supposedly, on the area, to explain why  
3 they were doing it.

4 CHAIRMAN SHARFMAN: Taken his word at what?

5 MS. BACHRACH: That that size and number of plants  
6 is the only answer for Jamesport. We have questions as to  
7 whether that number and that much power, base-load power, is  
8 really what they need, in view of the uncertainties with  
9 extra large nuclear power plants. That is one of our  
10 questions.

11 MR. SALZMAN: I don't follow you. Uncertainties  
12 about what?

13 MS. BACHRACH: We believe it is conceivable that,  
14 say, a plant of 800 megawatts may be more reliable.

15 MR. SALZMAN: Again, you say "may be." The point  
16 is supposedly, at least --

17 MS. BACHRACH: Because there is very little in  
18 any data to show that plants over 800 megawatts have been  
19 reliable.

20 MR. SALZMAN: Is this discussed in the record  
21 below?

22 MS. BACHRACH: Yes.

23 MR. SALZMAN: That is what we are interested in  
24 hearing. If your brief points out where this in the record --  
25 I presume that material is in your brief?

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MS. BACHRACH: Yes.

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MR. SALZMAN: All right. You think the Applicant should just build an 800-megawatt plant?

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MS. BACHRACH: If it is shown after about five years we think this is a fair length of time to elapse, and the -- and there is a change upward in the demand, this will give us time -- give them time to build a nuclear power plant, judging from the latest report that the present projections are for 1990 and 1992, in constructing these plants. When we remember the original estimate was for 1981-83, that is quite a difference in time span. I think the Staff of the NRC also mischaracterized the use of the word "exotic fuels," which they referred to in the opposition on page 27, where the heading proposed the use of exotic fuels not in base-load plants but as an assist in slowing down the eventual need for base load.

The Staff also erred at pages 24 and 25 of its opposition in stating that the League failed to address the need for power in its findings. The League explained in the introduction at page 1 what it would and would not cover in that document and why, and also paragraphs 158 and 159 in our findings which also set forth our views relating to the need for power. The Staff in its findings on page 24 and 25 states because we didn't address need for power citing the Consumers' Power Company Midland Plant and ALAB 120 and

bw 1 10 CFR Part 2.754 that the League's exceptions on need  
2 should be disregarded. We believe the Appeal Board must  
3 make its own decisions and also believe the need for power  
4 as it appeared in 1973, the date of that ALAB decision,  
5 is not relevant to 1978. We maintain also that the  
6 Applicants have done very little in developing innovative  
7 programs such as ConEd had done with United Technologies  
8 fuel cell power system. Why don't the Applicants use fuel  
9 cels or heat storage devices to boost peak load ability  
10 in their coal and oil plants, as is suggested in PID at  
11 134(c)? Why isn't the Applicant doing research and  
12 development on total energy systems, as suggested by  
13 Mr. Dubin, a Suffolk County witness?

14 The League pointed out if Applicants do the  
15 minimum to diversify power generation, they create  
16 a self-fulfilling prophecy for costly large base-load power.  
17 This included failure in adding transmission facilities which  
18 were the real cause of the power failure experienced by  
19 ConEd a year and a half ago.

20 At page 54 of the League brief, we suggest that  
21 that may be the critical issue, rather than the additional  
22 need for power generation in the near future.

23 Contrary to the Licensing Board's curious and  
24 highly inaccurate statement at PID-287 that the League  
25 tacitly expressed the assumption that oil is forever, the

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1 League believes that the great need is to conceive  
2 energy, both foreign and domestic, today.

3 In fact, long before today. See the League  
4 response on Amendment 7, April 3, 1978, where it is  
5 stated that the need to save oil is immediate.

6 Elsewhere in that response the League presented  
7 argument about the alleged economic advantage of Jamesport,  
8 suggested alternative measures for reducing peak load,  
9 quoted Mr. Freuleicher, of LILCO, on the advantages of  
10 solid waste recycling and other matters. We are more  
11 optimistic than the Applicants or the NRC that a variety of  
12 less spectacular measures will add up to a real impact  
13 on oil consumption and with more immediate effect.

14 The League brief cites the footnote of the  
15 Board on page 170 that all alternative means should be  
16 used to reduce oil consumption so that the Board does  
17 recognize that other alternatives are available.

18 We noted that Amendment 7 to the ER by Applicant  
19 deleted in the statement in its January 1, 1978, submittal  
20 that "The 1978 forecast shows a continuing need for Jamesport  
21 on peak reserve ground."

22 The single option of nuclear power proposed by  
23 the Applicant and wholly supported by the Licensing Board  
24 encourages the increase of capital investment on which  
25 the company's rate of return can be established and is a

bw 1 self-serving measure that is not in the interest of the  
2 ratepayers in the service territory or the country as a  
3 whole. The Staff's brief in opposition page 6 cites the  
4 Seabrook Station ALAB-422 and Catawba ALAB-455 which notes  
5 if need is not established then the benefit half of the  
6 cost-benefit equation would be absent and justification for  
7 building the facility problematical. We believe Applicants  
8 and Staff have failed to establish a need based on the  
9 continuing lowered projects and also on the merit of awaiting  
10 completion of standardization policy for safety assurance  
11 and technological advances, which a five-year reevaluation  
12 period will allow. See page 15 of the League's proposed  
13 findings.

14 Thank you.

15 CHAIRMAN SHARFMAN: Thank you.

16 Ms. Tiedke?

17 MS. TIEDKE: I was not aware that you expected all  
18 of us to provide an update, but --

19 CHAIRMAN SHARFMAN: We don't require you to do  
20 it, if you are willing to take the Applicant's presentation,  
21 then feel free -- or if you think it isn't that important  
22 for your side, feel free to go to the things you think are  
23 most important.

24 MS. TIEDKE: We don't have a side. We have an  
25 opinion, but we don't have a side in this proceeding.

1                   CHAIRMAN SHARFMAN: I thought your side was in  
2 opposition to the grant of a construction permit.

3                   MS. TIEDKE: If you put it that way, yes. But  
4 we are not opposed to nuclear power per se. You understand.

5                   CHAIRMAN SHARFMAN: I see.

6                   MS. TIEDKE: We think there is a difference.  
7 The State Siting Board, as I understand it, will meet  
8 November 21 to discuss action on various actions made since  
9 the hearings ended. One motion is to terminate the  
10 proceeding. Other motions included reopening the record  
11 on need for power, cost and economics, and environmental  
12 matters, and other motions are to delay a decision on the  
13 site.

14                   I believe the generic hearings in the state,  
15 I believe the hearings are concluded. I don't know if  
16 there is a decision.

17                   CHAIRMAN SHARFMAN: These motions are motions  
18 the League made?

19                   MS. TIEDKE: No, motions from various parties in  
20 the Siting Board hearing. This all refers to the decision  
21 with the state hearings which you asked about.

22                   CHAIRMAN SHARFMAN: Fine.

23                   MS. TIEDKE: I believe the hearings on the 1978  
24 149-B report are proceeding. I believe the hearings on the  
25 transmission line which comes within the Jamesport Application

bw 1 under Article 7 have been concluded, and I don't know if  
2 a decision has been rendered on that yet.

3 Again, Applicants can tell you about that.  
4 That is generally the situation with the Siting Board at  
5 the moment.

6 JUDGE SHARFMAN: Thank you.

7 MS. TIEDKE: We weren't only accused of not  
8 adhering to 10 CRF 2.762(a), but we were also accused  
9 of putting extra record material into our brief. Let me  
10 explain. After studying the PID, we were concerned that  
11 so many of the League's arguments were again being  
12 misinterpreted and misrepresented, as they have been in  
13 Staff's and Applicant's briefs. I can document that, if  
14 you wish.

15 JUDGE SHARFMAN: It is not really necessary.

16 MS. TIEDKE: This led us to consider how we  
17 could clarify our previous arguments. In connection with  
18 that, we called Staff counsel down in Washington and asked  
19 for advice on how to proceed with our brief for this  
20 Appeal Board hearing. We specifically inquired if extra  
21 record material -- we don't use that word. We said  
22 material that is not in the record -- could be used, and we  
23 understood him to say, yes, it could be used, provided it  
24 was adequately cited. We proceeded to use extra record  
25 material, and we think we adequately cited it and now

bw 1 find ourselves in hot water.

2 JUDGE SHARFMAN: No one will put you in jail for  
3 using it. Our problem is that the decisions of all federal  
4 agencies are governed -- every one of the Executive agencies  
5 who have to decide things on an adjudicatory record are  
6 governed by the Administrative Procedure Act. That requires  
7 that we decide things on the basis of the evidence in the  
8 record. There is no way out of it. You have to understand  
9 that that is designed to insure fairness to everyone and  
10 to make sure that people just don't decide on the basis  
11 of unreliable clippings and bits of paper that people put  
12 in, quotations that may not be true, things that are taken  
13 out of context. It is very difficult to have a fair  
14 proceeding, unless people are required to submit evidence  
15 and have a right to cross-examine and that kind of thing.  
16 That is why we have this requirement.

17 MS. TIEDKE: We do point out that Amendment 7 and  
18 the January 28, 1978, submission by Applicant, which was  
19 material taken from the 1978 149(b) on forecast, have both  
20 been admitted in the record and weren't ever cross-examined.

21 JUDGE SHARFMAN: True, but if you or Mr. Like  
22 asked to cross-examine on them, you would have had a right  
23 to do so.

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1 MR. SALZMAN: It is the opportunity to cross that is  
2 important. You don't have to take it.

3 CHAIRMAN SHARFMAN: If you asked for that opportunity  
4 you would have had it.

5 MS. TIEDKE: We understand. I know you are aware we  
6 have always worked without benefit of counsel, except as  
7 occasional questions have been asked, and we also operated  
8 without benefit of funds, which does make it more difficult.

9 There were two things we did put in as extra record  
10 material -- referred to as extra record material in our brief  
11 in opposition -- in our brief on exceptions which I believe  
12 should be in the record.

13 One is the 1978 149B report, the proper title of  
14 which is "Report of Member Electric Systems of New York Power  
15 Pool and the Empire State Electric Energy Research Corporation  
16 Pursuant to Article 8, Section 149B of the Public Service Law."

17 Small sections from forecast from previous 149B  
18 reports have been entered into the record previously, the latest  
19 being League Exhibit 2, one of which was League Exhibit 2,  
20 which LILCO failed to document because it was admitted by the  
21 Licensing Board after they wrote their brief.

22 These volumes from 149B contain information from all  
23 the state's major utilities and the Power Authority of the  
24 State of New York.

25 They include projections, environmental planning,

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1 construction plans, conservation, et cetera.

2 We didn't refer to all the volumes.

3 We do think if there is a way of getting into the  
4 Appeal Board record it would be appropriate in terms of the  
5 decisions you have to make.

6 We also referred to the Public Service Opinion 78-3  
7 dated March 6, 1978, entitled "Opinion Analyzing Plans Pursuant  
8 to Section 149B of the Public Service Law and Order Directed  
9 Additional Studies."

10 This was prepared by the Commission following the --  
11 by the Commissioners following the 1977 149B hearings.

12 This Public Service Commission Opinion 78-3 which  
13 shed light on the current thinking of the Public Service  
14 Commission, in view of the fact that FES did say that they  
15 evaluated need by reference to needs of the New York Power  
16 Pool, and that is, I believe -- I took that from Staff's brief  
17 on page 18 -- I think it would be incumbent upon you, if there  
18 is any way for us to do it now, to accept a request to get  
19 these two documents into your record.

20 CHAIRMAN SHARFMAN: Excuse us a moment.

21 (Pause.)

22 CHAIRMAN SHARFMAN: Mr. Saizman has a very good  
23 suggestion. That is that perhaps during the lunch break you  
24 might want to consult with Mr. Reveley and counsel for the  
25 Staff and see if they have any objection to some of these

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1 documents.

2 MS. TIEDKE: This refers only specifically to these  
3 two.

4 MR. SALZMAN: Consult with them.

5 CHAIRMAN SHARFMAN: Maybe you can tell us after lunch  
6 what the result of that consultation is.

7 MS. TIEDKE: All right.

8 I do have a copy of the first volume of the 1978  
9 149B.

10 MR. SALZMAN: The problem is not the copy. The  
11 problem is if they object.

12 You are using your time now. When it is up, it is  
13 up.

14 MS. TIEDKE: I have a copy of the opinion and of the  
15 first volume here, if you wish to look at it.

16 MR. SALZMAN: It doesn't make a difference. We can  
17 look at it if it is not in the record. And there is no  
18 agreement yet.

19 You are missing the point.

20 MS. TIEDKE: How much time do I have left?

21 CHAIRMAN SHARFMAN: About 17 minutes.

22 MS. TIEDKE: The Licensing Board erred in  
23 uncritically accepting the Jamesport site as the preferred  
24 site as presented by the Applicants by denying statements  
25 presented by the League regarding societal costs. League's

1 brief, page 1316.

2 CHAIRMAN SHARFMAN: What do you mean, denying  
3 statements?

4 I don't know what you mean.

5 MS. TIEDKE: By not accepting them.

6 CHAIRMAN SHARFMAN: Evidence or arguments?

7 MS. TIEDKE: This is in the PID.

8 CHAIRMAN SHARFMAN: By not accepting arguments you  
9 made?

10 MS. TIEDKE: Yes.

11 CHAIRMAN SHARFMAN: Okay. I understand.

12 MS. TIEDKE: By repeatedly mentioning tax benefits  
13 and Staff's erroneous opinion that such benefits would mean  
14 Riverhead could purchase agricultural development rights, by  
15 making Applicant's argument this proposal will further the  
16 goals of the Nassau-Suffolk Regional Planning Board, by  
17 apparently agreeing with Applicants, that part of the  
18 Jamesport property and the beach might be available to the  
19 public without any resolution of whether or not that will be  
20 permitted by the NRC, by agreeing that the Jamesport plans are  
21 in partial conflict with the Nassau Regional Development Plant,  
22 and stating that Applicants have given abundant consideration  
23 to land use impact, and by assuming the need for power will be  
24 greatly reduced since their application was filed as a benefit  
25 overriding all environmental costs.

1 We summarized for the benefit of the Appeal Board --

2 MR. JOHNSON: May I interject?

3 I believe most of what you are referring to was  
4 information presented in argument in the context of which was  
5 the preferable site for a nuclear power plant, Jamesport or  
6 Shoreham.

7 MS. TIEDKE: I didn't state, but that is what I am  
8 addressing at the moment. Only.

9 MR. JOHNSON: You went on to say test with part of  
10 an overwhelming -- they were ignored in terms of the need-  
11 benefit balance, but they were entered into the record in  
12 terms of which site was better. Not whether the overall  
13 balance was struck properly.

14 Were they not?

15 In other words, you were mentioning disadvantages to  
16 the Jamesport site. These were entered as disadvantages that  
17 would not be encountered at the Shoreham West site.

18 MS. TIEDKE: If I could finish, I think you would  
19 understand what I was saying. I summarized as best I could  
20 from the record some of the pros and cons of both sites.  
21 Shoreham West -- I have documentation. If you want me to take  
22 the time, I can read it. Otherwise not. It is in the record.

23 Shoreham West was slightly derated because of the  
24 presence of elevation, marshlands and controversy over  
25 cumulative impact of thermal outpower.

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1 I divided this into four categories: Shoreham  
2 West with regard to the Grumman Study, one stating why it is  
3 less suitable, one stating why it is as satisfactory as  
4 Jamesport, and one why it is superior.

5 This is in the record.

6 Shoreham West is less suitable because of the  
7 cumulative impact from outfall. Population density at  
8 Shoreham West is greater right now. Evacuation of off-site  
9 population would be more sensitive at Shoreham West. Delays  
10 would occur due to further licensing requirements. Less  
11 satisfactory flushing rates for cooling water dispersion.

12 Beach bluffs at Jamesport would require less  
13 excavation.

14 There is more ecologically important vegetation at  
15 Shoreham West.

16 In the literature indicating that one is as  
17 satisfactory as the other, both sites are owned by LILCO,  
18 both large enough to sort two units, both have adequate site  
19 drainage, both have adequate cooling water availability, both  
20 have highway barge access and railroads within about six miles;  
21 both sites will suffer traffic impact, both have been  
22 disrupted by man, major geological conditions are similar,  
23 evacuation time in event of an accident would be about the same  
24 on either site, atmospheric dispersion characteristics are  
25 similar, and radioactive releases would be similar.

700.07.7

1 Shoreham West is superior to Jamesport, less  
2 aesthetic impact due to the site disruption from Shoreham I.

3 This is in terms of public viewing of the plant.

4 There is good natural screening provided by trees  
5 and woods.

6 Facilities ancillary to the construction are already  
7 on the Shoreham I site.

8 A private service road is already in place.

9 Shorter transmission lines are required.

10 Transmission lines mostly cross scrub woods, not agricultural  
11 land.

12 LILCO already owns the necessary ROWs from Shoreham  
13 West.

14 Less traffic impact.

15 Nassau-Suffolk Regional Licensing Board recommends  
16 keeping Jamesport open space as recreational.

17 Virtually no agricultural land on the site, and  
18 little contiguous with it.

19 No archaeological site.

20 Fewer wildlife species.

21 The groundwater table is higher, ranging from sea  
22 level to 20 feet above or more.

23 The more valuable trees at the Shoreham site could  
24 be felled and could be sold.

25 There are no historical landmarks within 10 miles.

9700.07.8

Jon

1 Erosion problems along the shoreline are less  
2 severe, so there is less need for expensive and extensive  
3 beach nourishment and dredging at Shoreham West.

4 Barge deliveries during construction would arrive  
5 at the existing Shoreham West.

6 CHAIRMAN SHARFMAN: You know our standard. I got a  
7 little confused. I wonder if you are confused from your brief.

8 MS. TIEDKE: No doubt.

9 CHAIRMAN SHARFMAN: As to what our standard is.

10 The Commission decided in the Seabrook Case that in  
11 order for us to accept an alternative site to the one proposed  
12 by the utility, it would have to be obviously superior.

13 Now, when we add up those things you have talked  
14 about, I think it is hard to see why the Shoreham West site is  
15 obviously superior.

16 Perhaps you think it is a little better. Some of  
17 those points could be argued both ways.

18 Is it really obviously superior?

19 MS. TIEDKE: Anything can be argued both ways.

20 As I interpret the PID -- and I find it very  
21 difficult -- particularly from the area of cost-benefit  
22 analysis, and I discussed this with Staff counsel and got the  
23 impression that it is indeed difficult to determine, the cost-  
24 benefit analysis really didn't consider all the factors of  
25 both sites.

700.07.9

lon

1 Now, I realize that the fact that Applicant prefers  
2 the Jamesport site is an important factor also in terms of the  
3 Licensing Board's decision.

4 Whether or not the cost-benefit analysis would turn  
5 out to be different can be determined by reading, as I read,  
6 the PID.

7 MR. SALZMAN: Different from what circumstance?

8 MS. TIEDKE: Different from cost-benefit analysis of  
9 the environmental societal cost versus need for power as they  
10 apply to Jamesport.

11 CHAIRMAN SHARFMAN: There was evidence in the record  
12 on these points.

13 MS. TIEDKE: There is. That is why I cited them. I  
14 think the problem is one of interpretation of the evidence.  
15 This has been a problem all the way along.

16 CHAIRMAN SHARFMAN: Are you saying you think there is  
17 such a big difference it is obviously superior?

18 MS. TIEDKE: My personal opinion is there is not a  
19 great deal of difference, but what difference there is I think  
20 weighs in favor of the Shoreham West site.

21 This is our League opinion.

22 CHAIRMAN SHARFMAN: Did you take into account the  
23 destruction of that summer camp at the Shoreham West site that  
24 might be necessitated by building the plant? Or is that not  
25 in the record?

1 MS. TIEDKE: I don't think so. There is very little  
2 in the federal record about Shoreham West. There was a great  
3 deal more on the State Siting Board record.

4 I don't recall specific information about that.

5 I think that's a very negligible point. I think a  
6 major point certainly is the visual impact is clearly worse at  
7 Jamesport in my opinion -- in our opinion.

8 If Jamesport is built at Jamesport.

9 CHAIRMAN SHARFMAN: The visual impact back from the  
10 road?

11 MR. TIEDKE: I am speaking primarily from the road.  
12 Flat. No trees. No hills. Shoreham West certainly has an  
13 entirely different location and they would be replacing --  
14 rerouting that road we talked about yesterday which would be  
15 even further away from the plant if it were built at Shoreham  
16 West.

17 MR. JOHNSON: Which of these plants do you think  
18 would be preferable for a refuse-burning power-generating  
19 station? Which of these sites?

20 MS. TIEDKE: I am not really competent to answer  
21 that, but it seems to me that either plant has access, would  
22 have access for barges, which I would assume might be the most  
23 efficient way of transporting refuse-derived fuel.

24 The other problem is that it is quite probable the  
25 garbage would not be transported to the site, that it would

9700.07.11

Jon

1 have been treated initially at whatever area it came from.  
2 Which would reduce transportation problems, reduce smell  
3 problems, mess problems, et cetera.

4 MR. JOHNSON: Some form of it, though, would  
5 eventually have to be transported through the site, would it  
6 not?

7 MS. TIEDKE: Yes.

8 MR. JOHNSON: And over by barge or truck.

9 MS. TIEDKE: Probably. The railroad is not effective  
10 out here. It is well within the realm of possibility.

11 MR. JOHNSON: In your opinion, would a refuse-burning  
12 site plant be better at either of those sites than a nuclear  
13 power plant from the standpoint of the environmental impact?  
14 Or are they equal?

15 MS. TIEDKE: In terms of health and safety, yes, I  
16 think so.

17 MR. JOHNSON: You think there are more health and  
18 safety problems associated with the nuclear plant than the  
19 refuse site?

20 MS. TIEDKE: More potential health and safety  
21 problems, yes.

22 MR. JOHNSON: How about real ones?

23 MS. TIEDKE: I have not seen detailed information  
24 about what kind of pollutants are produced by RDFs, but I  
25 understand that they can be much cleaner, for example, than

700.07.12

jon 1 coal.

2 Also, of course, LILCO is already involved in a  
3 similar plant down at the west end of the island.

4 MR. JOHNSON: Do they have any operating experience  
5 with this plant, or is it still in the building stage?

6 MS. TIEDKE: I believe it has been in operation.  
7 You would have to check with the Applicant about that.

8 CHAIRMAN SHARFMAN: What about the relative proximity  
9 of public beaches to each site? I do remember seeing one  
10 fairly close to Shoreham West. How close is the nearest one  
11 to Jamesport?

12 MS. TIEDKE: The Mattatuck Park District Beach is  
13 about two and a half miles east. It is by the Mattatuck  
14 jetties.

15 The Iron Pier Road Park, the Town of Riverhead Park,  
16 is perhaps a mile to the west of the Shoreham West property.

17 MR. SHARFMAN: I gather from looking at the site, it  
18 seemed to me the public beach near Shoreham West is closer  
19 than a mile.

20 MS. TIEDKE: I really can't tell you without looking  
21 it up in the record or measuring a map. We are at a loss to  
22 understand why the ER misrepresented the previous use of the  
23 Jamesport site. That is at page 8.2 -- Amendment 5, which  
24 says the operation was shut down from the previous sand mining  
25 operation by the towns for misusing the land.

9700.07.13

Jon

1 In reality that operation was shut down by the  
2 New York State Attorney General's office for allegedly  
3 contributing to very severe erosion east of the site from the  
4 presence of the jetties and the jetties were ordered removed.

5 We saw the remains of those jetties yesterday.

6 MR. JOHNSON: Was that allegation tested?

7 MS. TIEDKE: I believe it is still in a court case.

8 MR. JOHNSON: But there is no decision that it was  
9 in fact the jetties that caused the erosion?

10 MS. TIEDKE: The Attorney General was so convinced it  
11 was, he ordered them removed. If the court reverses him, I  
12 don't know what would happen.

13 CHAIRMAN SHARFMAN: Wouldn't the state have to  
14 approve new jetties for LILCO?

15 MS. TIEDKE: Primarily it is the Corps of Engineers.  
16 The jetties were a problem.

17 What is my time?

18 CHAIRMAN SHARFMAN: You have about two minutes.

19 MS. TIEDKE: Can I have the same extra 10 minutes  
20 Mr. Like had?

21 MR. SALZMAN: Why don't you take five minutes more.

22 MR. JOHNSON: Why don't you continue.

23 CHAIRMAN SHARFMAN: Mr. Salzman is having a little  
24 trouble with his back, so I wonder if you would indulge us with  
25 a five-minute recess and then we could let you continue without

9700.07.14

Jon

1 undue discomfort to him.

2 MR. SALZMAN: Otherwise they will have to carry me  
3 out of this chair.

4 (Recess.)

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1 CHAIRMAN SHARFMAN: May we come back to order?

2 Ms. Tiedke, you may resume.

3 MS. TIEDKE: I am sure you're familiar enough with  
4 the record to know the League made a motion in January and a  
5 request for consideration of the denial of that motion in  
6 February regarding accepting the Corps of Engineers hearing  
7 record from the December hearing here in Riverhead on the  
8 Applicant's application for jetties, beach nourishment and  
9 beach erosion control problems plans at Jamesport. That was  
10 denied by the Board. I have a complete record of the dates  
11 if you wish it, but it's in the record. We apparently ran  
12 afoul of regulations --

13 CHAIRMAN SHARFMAN: You're talking about the  
14 Licensing Board?

15 MS. TIEDKE: Right.

16 CHAIRMAN SHARFMAN: What was the date of that denial?

17 MS. TIEDKE: I have the whole list.

18 CHAIRMAN SHARFMAN: Just the denial date.

19 MS. TIEDKE: Two of them. They denied our motion and  
20 then denied our request for reconsideration. I will give them  
21 to you after if that's all right.

22 CHAIRMAN SHARFMAN: Fine.

23 MR. JOHNSON: Can you state briefly what the basis  
24 for that denial was, if there was a basis?

25 MS. TIEDKE: The basis appeared to be the Staff

cmw

1 claimed it was out of order because we didn't do it in the  
2 proper legal fashion. Now, Applicants made a similar  
3 statement but the Licensing Board relied apparently on Staff's  
4 recommendation that they delay it.

5 MR. JOHNSON: Because the form of the motion was  
6 improper?

7 MS. TIEDKE: That's our impression, yes. I will  
8 give you the list later. Staff interpreted our motion as  
9 asking to reopen the record which we didn't do. We asked in  
10 effect that the Licensing Board accept these documents on  
11 their own motion to assist them in making a determination  
12 about the term "regarding beach erosion, beach nourishment  
13 plan" and the general effects of the jetties.

14 MR. JOHNSON: It's true, however, if the Corps of  
15 Engineers denied the permit for the jetty, it would be fatal  
16 to the Applicant's plan to put the site at Jamesport.

17 MS. TIEDKE: It would be fatal to the plan to use  
18 once-through cooling from the spot where they are planning to  
19 do it, yes. But they might have to change their plans. It  
20 wouldn't be fatal to the application necessarily.

21 MR. JOHNSON: Surely you're familiar enough with  
22 Seabrook to realize if once-through cooling at this site  
23 were denied, that would initiate a whole new round of  
24 environmental considerations by NRC.

25 MS. TIEDKE: I am not sure that that's so because

9700.03.3

cmw 1 I think that here is an onshore cooling plant. At least in  
2 the state record offshore cooling was always discussed. A  
3 system of cooling the water not from between jetties. We  
4 think it would be appropriate for this material to be  
5 incorporated into the record in whatever way — we don't know.  
6 We are not lawyers. We have not had very much legal  
7 assistance. In our opinion, jetties dredging and beach  
8 nourishment, certainly the results of whatever plan is used,  
9 could affect the health and safety of the public east of the  
10 Applicant's property as well as affect the shoreline of  
11 Applicant's property itself.

12 We asked to have the Corps hearing accepted and the  
13 report prepared by Dr. J. Douglas Glazer for that hearing.  
14 I have a copy of that separate report here also.

15 CHAIRMAN SHARFMAN: Were you asking the report of  
16 the Corps be accepted or the evidence of the entire hearing?

17 MS. TIEDKE: The hearing transcript.

18 CHAIRMAN SHARFMAN: And is the reason that this  
19 wasn't done earlier because it wasn't available earlier?

20 MS. TIEDKE: Right. And the Staff did admit it was  
21 new evidence which hadn't been available earlier. They said  
22 the League could have hired an expert to do it but of course  
23 that was utterly beyond our means.

24 MR. JOHNSON: For whom did Glazer do his report?

25 MS. TIEDKE: Town of Southold. Very current because

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1 the property that would be most affected is within the Town  
2 of Southold, not the Town of Riverhead. We believe --

3 MR. SALZMAN: The Town of Southold is not  
4 represented here?

5 MS. TIEDKE: No, they didn't participate in the  
6 federal hearings. That has nothing to do with it, I think,  
7 because this was a Corps of Engineers hearing at which this  
8 material appeared. We believe that effects on the Benton  
9 community will be more severe than stated in the Applicant's  
10 plan. There will be additional costs which have not been  
11 considered in the record adequately. Additional monitoring  
12 may be required. A revised jetty plan design might be  
13 required. There is a possibility the program will not work.  
14 There is material from primarily Dr. Glazer which is why we  
15 believe it should be incorporated in the record.

16 CHAIRMAN SHARFMAN: Did the Corps render a decision?

17 MS. TIEDKE: They have deferred a decision until  
18 the Siting Board makes a decision. This information we got  
19 from the Corps itself. They also -- we believe if the  
20 Applicants had presented a proper analysis of their own data,  
21 which they have been collecting, I believe since 1974, on  
22 the beach processes they would have caused a different  
23 approach to cross-examination if this had been in the record,  
24 it would have required different testimony from its witnesses,  
25 it would have resulted in a different presentation in the

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1 partial initial decision and a different cost-benefit analysis.  
2 The Glazer report analyzes some of the data from the beach  
3 monitoring program which the Applicants have never presented  
4 at either hearing.

5 We mentioned this in our own briefs and  
6 cross-examination at the hearing. I am having to shorten this  
7 up because of my time, you realize. We have made other  
8 references to coastal problems. We found that the Staff  
9 witness testifying in this area was not an expert and this is  
10 a very highly specialized area. We believe also that  
11 Applicant's witness is certainly not an expert in this area  
12 since he is an engineer with some environmental training.  
13 Dr. Glazer, on the other hand, is a certified professional  
14 geological scientist No. 4124 with a specialty in coastal  
15 processes. Copies of his report were distributed to the  
16 Licensing Board members and to Dr. Gilbert for their  
17 consideration.

18 MR. SALZMAN: Did Mr. Glazer similarly analyze what  
19 would happen to the beach at Shoreham West if they put on a  
20 plant there?

21 MS. TIEDKE: He didn't, no, because that was not  
22 the topic of the Corps of Engineers hearing. I am sure he  
23 would be glad to so for a fee.

24 DR. SALZMAN: No doubt.

25 MS. TIEDKE: We believe this material was timely

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1 offered but improperly handled by the League in its  
2 presentation and we would respectfully request that the  
3 Board of Appeal give us some idea of what to do with this.

4 Perhaps the same as we are doing with the other,  
5 of consulting with --

6 MR. SALZMAN: If your opponents have no objection  
7 to it, that would be another matter. I gather from what you  
8 told us that they do object. You can certainly speak to them.

9 MS. TIEDKE: It's quite contrary to what they  
10 presented at both the state and federal hearings.

11 CHAIRMAN SHARFMAN: If that's the case, we will have  
12 to consider whether the Licensing Board was correct in denying  
13 your motion. What that covered by one of your exceptions?

14 MS. TIEDKE: Yes. It's in our brief on exceptions.

15 MR. SALZMAN: Didn't the Applicant have the  
16 opportunity to cross-examine Dr. Glazer at the hearing?

17 MS. TIEDKE: There was no cross-examination at the  
18 Coast Guard hearing, as I recall it. They are run very  
19 rigidly. Dr. Glazer presented details of his report and then  
20 finalized that report. The colonel who ran the hearing held  
21 the record open for 30 days because of the controversial  
22 material.

23 MR. SALZMAN: Dr. Glazer was not cross-examined?

24 MS. TIEDKE: No one was. They don't allow that.

25 MR. SALZMAN: The Army is an interesting place.

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1 MS. TIEDKE: I would have to agree.

2 CHAIRMAN SHARFMAN: You have almost one more minute.

3 MS. TIEDKE: I think you will get no agreement from  
4 the other side for that reason. The difficulty is in these  
5 adjudicatory hearings the opportunity for cross-examination  
6 is paramount and that's why they are unhappy, because they had  
7 no opportunity to cross-examine him. This was presented to  
8 the Licensing Board after the record was presumably closed.

9 MR. SALZMAN: The point is a substantive one.  
10 The Applicant and the Staff would like to have the opportunity  
11 to find out precisely --

12 MS. TIEDKE: He was there and testified.

13 MR. SALZMAN: But he couldn't cross-examine. That is  
14 a major stumbling block. Perhaps the Applicant is willing to  
15 let the material in. Why don't you discuss it with him over  
16 lunch?

17 MS. TIEDKE: Is this contrary to what Mr. Sharfman  
18 said about your decision being whether to --

19 CHAIRMAN SHARFMAN: If everybody is willing to have  
20 it in, we may well have it in. But if, as I suspect, they will  
21 object, then the only thing we can decide is whether or not  
22 the Licensing Board was correct in denying your motion.

23 MR. SALZMAN: The question is, was the objection a  
24 valid one? That's all.

25 CHAIRMAN SHARFMAN: Was there objection to the

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1 granting of your motion a valid one or not?

2 MS. TIEDKE: As far as we could see, it was  
3 primarily or on legalistic grounds.

4 MR. SALZMAN: I am sure they will tell us.

5 MS. TIEDKE: I am sure they will.

6 CHAIRMAN SHARFMAN: You understand, if it's a  
7 matter of discretion on the part of the Licensing Board,  
8 then the question is whether or not they abused their  
9 discretion. The question for us. Okay, your time is really  
10 up. Thank you very much. I'm sorry, there are a lot of  
11 questions, but you have to understand when we have arguments  
12 of this type, if there aren't questions, they aren't useful.

13 MS. TIEDKE: It would have been much better if the  
14 Licensing Board proceeding went on in this fashion, in my  
15 opinion.

16 CHAIRMAN SHARFMAN: We would like to hear now before  
17 the lunch break from Mr. Smith of the Town of Riverhead.

18 MR. SINNREICH: Mr. Chairman, members of the Board,  
19 may I introduce the Honorable Alan Smith who will speak for  
20 the Town of Riverhead.

21 MR. SALZMAN: Could you explain for us what office  
22 you hold and your relationship to the proceeding?

23 ORAL ARGUMENT OF ALAN M. SMITH, ON BEHALF OF THE  
24 TOWN OF RIVERHEAD.

25 MR. SMITH: I shall. My name is Alan Smith. My

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cmw 1 official title is town supervisor of the Town of Riverhead.

2 I have been elected to that position since 1976.

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LT 1 As you made your travels yesterday from Shoreham  
2 and you looked out across the meadow to the east, you saw  
3 a stream. That would be the westerly jurisdictional boundary  
4 for the town or Riverhead.

5 As you went further on your travels, and I missed  
6 you because of a scheduling problem, to Jamesport and looked  
7 slightly to the east, at that point, say several hundred yards  
8 past the meteorological tower, that would be the easterly  
9 jurisdictional boundary of the town of Riverhead. As town  
10 supervisor, I preside as a member and the presiding officer of  
11 the governing body of the town of Riverhead.

12 MR. SALZMAN: You are the town executive as well?

13 MR. SMITH: Yes. As the employees put it, I sign  
14 the paychecks. We are responsible for all services from  
15 sanitation to police services, et cetera. That is a thumbnail  
16 sketch of the position.

17 MR. SALZMAN: Are you also a member of the  
18 legislature of the County of Suffolk?

19 MR. SMITH: No, sir, I am not. We have a  
20 separately-elected county legislature in this jurisdiction and  
21 some of the views -- many of the views you will here from me  
22 today are at variance with those of Mr. Like.

23 In fact, our opinion is probably diametrically  
24 opposed to his.

25 MR. SALZMAN: Mr. Like represents the county

LT 1 government.

2 MR. SMITH: He does. Our town is one of 10 towns  
3 in the country.

4 MR. SALZMAN: Jamesport is in your town?

5 MR. SMITH: Yes, sir.

6 MR. JOHNSON: The town as you refer to it, then,  
7 includes more than the small community of Riverhead, which  
8 I would call a town and includes towns such as Jamesport and --

9 MR. SMITH: There are a couple of very minute and  
10 minutia technical errors. You refer to towns such as  
11 Jamesport, et cetera. Those are hamlets. There is no  
12 mayor. There is no town board. There is no police department.  
13 There is no sanitation department. The governing body of the  
14 people of all of this geographic area I described is the  
15 town board of the town of Riverhead, of which I am the  
16 presiding officer.

17 MR. SALZMAN: Do your views represent the majority  
18 of the town board?

19 MR. SMITH: They represent the unanimous opinion  
20 of the town board. Prior to my being elected as town  
21 supervisor of the town of Riverhead, I was the town attorney  
22 for this jurisdiction for the years 1974-75 and prior to that,  
23 I have had seven to eight years of practice of law, essentially  
24 specializing in municipal law.

25 I have been a resident of the town of Riverhead

LT 1 all my life, attending local high schools, et cetera, and  
2 returning here to practice.

3 As I have said, I speak on behalf of the town board  
4 of the town of Riverhead and it is a unanimous opinion that  
5 I express.

6 That opinion is that we concur in the partial  
7 decision and the order attached thereto. I will only argue  
8 those issues that are germane to the responsibilities of  
9 the town board and within the competence of the town board.

10 The town board has stated not only in this proceeding  
11 but in the other proceeding involving this power allows that  
12 we don't pretend to be experts in any ash, in coal, in the  
13 major issues of the production of uranium ore, et cetera.

14 I am only -- this is the federal system. That is  
15 why we have you gentlemen here. I tend to these issues which  
16 I will address and it is the system that I don't substitute  
17 my judgment for your judgment and your staff's judgment on  
18 those areas where your responsibility lies. Although it  
19 may be argued clearly by some other intervenor's letter, the  
20 town board of the town of Riverhead believes in that particular  
21 approach.

22 Firstly, with reference to zoning and planning,  
23 your decision correctly states at pages 96 and 97 --

24 CHAIRMAN SHARFMAN: The licensing board decision.

25 MR. SMITH: Yes. Which quite possibly you might

LT 1 concur in. At pages 96 and 97, it says that zoning and  
2 planning in the context of an application such as that  
3 which is pending is a matter of intelligence and proper  
4 zoning and planning such that when a powerhouse comes into  
5 existence that those concerns of planning and zoning are  
6 properly addressed and can be properly addressed as it stated  
7 in the decision.

8 It is addressed, as is stated at pages 31 through 33,  
9 with certain intelligent approaches towards population and  
10 land-use control. Among those mentioned or the farm land  
11 preservation programs, the zoning laws of the town of Riverhead,  
12 which do zone this site as an industrial site today, and  
13 studies such as those of our consulting engineering firm,  
14 Coles, Michaels, McClintock and Murrel, which will enable this  
15 particular jurisdiction and myself as one of the people who  
16 will predict the future of the town of Riverhead.

17 With my experience as an attorney, with my elected  
18 positions, with my advisors, such that there will be no  
19 adverse effects by the siting of this power house and the  
20 licensing of it as a nuclear power house by your agency.

21 Another concern is that of the environment of our  
22 community. It might be argued, if it has not already been  
23 argued today, that the town board of the town of Riverhead  
24 and the local jurisdiction is selling its soul for tax  
25 dollars. That rings somewhat hollow to me, if the argument

LT 1 has been made, or it has been thought, because that argument  
2 is probably being made by people who don't have to live here.

3 I have two sons that will eventually inherit the  
4 area about which we talk. Not your sons. Not the intervenors'  
5 sons. But my sons. I consider the idea and that argument  
6 that we are selling out for tax dollars somewhat insulting  
7 in a very personal way.

8 The test is set forth in the decision at page 21.  
9 It is a test of weighing the needs of electrical generation  
10 power, the needs and legitimate needs of the environment, and  
11 coming up with a reasonable approach to both.

12 We can't have all things in this life but I am  
13 of the opinion -- and the town board is of the opinion -- that  
14 we can have this power house and have a sound environmental  
15 future in the town of Riverhead.

16 We also believe that this tax environment thing  
17 drawn as a dichotomy with some sort of Berlin Wall between  
18 the two is incorrect and that at pages 100 and 101, the  
19 equation is properly stated that in fact, the tax benefits  
20 that will arrive by reason of the siting and licensing of  
21 this power house can aid us in this particular community  
22 in doing those things that are necessary for the preservation  
23 of the environment.

24 With reference to the economy of this particular  
25 community, I guess that probably the major concern here is with

LT 1 reference to the farming community and the economy and dollars  
2 that we derive from that community. This is addressed at  
3 page 92 of the decision and it's essentially those articles  
4 made in Article 7 of the Public Service Rules Board.

5 The town board, thought it withdrew from this  
6 particular proceeding, has maintained an active participation  
7 in the Article 7 proceeding and from an educated viewpoint,  
8 it is my opinion that the decision as currently written  
9 properly states that the farming aspects of this economy  
10 and the power plant are compatible.

11 Second, the argument again can be made with  
12 reference to the economy of our particular community that  
13 the tax dollars derived as I have mentioned with reference  
14 to the environment can also help the economy of our locale.

15 There are other municipal issues. They are somewhat  
16 minute by comparison to some of the others that we have  
17 mentioned, such as traffic. We note the comments and the  
18 decision on those items. We believe there are some  
19 hard-working town members and people with some education in  
20 such matters and that these items are handleable and will be  
21 within the competence of the town board to handle.

22 MR. SALZMAN: Are there any present plans or plans  
23 contemplated to use any of the area that would be used for  
24 Jamesport for any kind of recreational facilities?

25 MR. SMITH: The County of Suffolk, pursuant to the

LT 1 Agricultural Markets Law of the State of New York, and  
2 Mr. Kounz, one of the officials of the Nassau Suffolk Planning  
3 Commission, recommended recently the inclusion of areas  
4 near and adjacent to the proposed power house in what is  
5 called an agricultural district.

6 That is not a recreational use as such but it is  
7 in the nature of preservation for the general community. It's  
8 that kind of thing that is oncoming and unfortunately is not  
9 reflected in the record.

10 The recreational area that you made inquiry about  
11 is the Iron Pier Beach. It's to the immediate west of the  
12 site, and probably she overestimates the distance.

13 It's a quarter of a mile to a half mile away. There  
14 is agreement between the Long Island Lighting Company and  
15 the town for them to help us with reference to recreational  
16 facilities and quite frankly if there are concerns about  
17 proximity of recreational facilities on the site, it has  
18 already been discussed with the Long Island Lighting Company  
19 that we would apply our agreement, which you may have read,  
20 to other facilities, whether it is Iron Pier or elsewhere.

21 I have one comment in closing. I come before you  
22 this morning, this afternoon, such that the recognition of  
23 the electorate of the town of Riverhead is clear. We are  
24 a democracy. A small democracy, if you will, in the town of  
25 Riverhead. But I think there is some confusion about how the

LT 1 townspeople of the town of Riverhead feel about this  
2 particular application.

3 The point is, no one else in this room is elected  
4 by that electorate. I am. I stood on this issue as in support  
5 of the power house and I got elected by the majority. That is  
6 the system under which we work.

7 Not that some intelligentsia will decide for us  
8 what is good and right. The answer is that we have elections.  
9 We have elections every two years. And I have run both times  
10 in support of the power house and I have won. And I come to  
11 you to express the opinion of that electorate in support of  
12 the decision that is before you.

13 I thank you.

14 CHAIRMAN SHARFMAN: Thank you very much, Mr. Smith.  
15 We will now recess for lunch for one hour.

16 (Whereupon, at 1:05 p.m., the hearing was recessed,  
17 to reconvene at 2:05 p.m., this same day.)

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AFTERNOON SESSION

(2:00 p.m.)

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CHAIRMAN SHARFMAN: May we come back to order?

Let me start the afternoon proceedings by remedying a defect that was called to my attention concerning the morning proceedings. That is, I departed from our usual custom of introducing the members of the Appeal Board. I apologize for that. I am Jerome Sharfman, Chairman of the Appeal Board. On my right is Mr. Richard Salzman. On my left is Dr. W. Reed Johnson.

Now, a lady approached me before we went back into session. I believe she is Dr. Grantham, asking if she could make a statement. I believe Dr. Grantham is not a party on the appeal. The practice of the Commission is that at hearings of the Licensing Board we do allow limited appearance statements by any nonparties who wish to make them. At appellant arguments we don't do that because we are no longer in the realm of gathering facts. We are no longer in the realm of getting initial views. That was done at the trial level. We merely have the appeal of the parties who have briefed the case. We did make an exception of Mr. Smith because he was the town supervisor of Riverhead where the plant is located. He was a party below. He didn't appeal, but the Commission has a very strong policy that it has enunciated in a number of cases of extending the greatest

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1 courtesy and deference to any and all state and local  
2 governments who want to be heard at any stage of our  
3 proceedings. However, in the case of private persons, the  
4 right to make a limited appearance statement is limited to  
5 the hearings before the Licensing Board. So your request,  
6 Mrs. Grantham, will be denied.

7 I believe it's Mr. Reveley's turn on behalf of  
8 the Applicant.

9 ORAL ARGUMENT OF W. TAYLOR REVELEY, III, ON BEHALF  
10 OF THE APPLICANT.

11 MR. REVELEY: Yes, sir. Let me speak first to an  
12 item left pending in the wake of the hearings argument. The  
13 Applicant would have no objection to the admission into  
14 evidence of the 149-B proceeding, 1978 version, nor would we  
15 object to the Public Service Commission's order that was  
16 issued following the 149-B hearings in 1978. Those are two  
17 of the items that Ms. Tiedke mentioned.

18 CHAIRMAN SHARFMAN: Do you mean the entire record  
19 of the proceeding?

20 MR. REVELEY: No, sir. We are talking about two  
21 volumes that look like this, plus an administrative agencies  
22 order. I don't know how long it is.

23 MS. TIEDKE: It's this.

24 MR. SALZMAN: Can someone get us a copy?

25 MR. REVELEY: It's the proceeding on the 19.77

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1 forecast that is conducted in 1978 and called accordingly  
2 the 1978 proceedings.

3 MR. OLMSTEAD: Mr. Chairman, I don't like to be in  
4 this position but since the Staff has not been privy to  
5 those documents the only thing we can do at this time is  
6 waive objection to that portion of the 149-B report which has  
7 been admitted previously to the extent that it's an update  
8 of that material. As to the decision in the pink book and  
9 the rest of the 149-B material, the Staff would have to object  
10 until it had an opportunity to evaluate it. I hate to rest  
11 on such technicality but we have not seen it.

12 CHAIRMAN SHARFMAN: Well, can you submit your views  
13 on that? How much time do you need to do that?

14 MR. OLMSTEAD: Ten days.

15 CHAIRMAN SHARFMAN: All right, fine. Let us know  
16 in ten days whether or not you do object. In the meantime, it  
17 might be a good idea, if you have a copy — let me ask  
18 Mr. Like, do you object?

19 MR. LIKE: No.

20 CHAIRMAN SHARFMAN: If you have a copy of these  
21 documents, we don't, so you will have to get them to us in  
22 some fashion.

23 MR. OLMSTEAD: Nor does the Staff.

24 CHAIRMAN SHARFMAN: That's a problem, too. The  
25 Staff has a right to look at them.

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1 MR. REVELEY: We will provide you gentlemen with  
2 copies and also send one to the Staff.

3 CHAIRMAN SHARFMAN: Thank you very much.

4 MR. SALZMAN: Can you provide Mr. Like a copy?

5 MR. REVELEY: Yes, in our cornucopia tradition we  
6 will provide him with a copy, too.

7 MR. OLMSTEAD: Is our ten days to run from the  
8 receipt of the document?

9 MR. REVELEY: It won't bother you. You have seen  
10 it before.

11 (Laughter.)

12 MR. SALZMAN: No extra time if he sends it by mail.

13 (Laughter.)

14 MR. REVELEY: I would like to cover two housekeeping  
15 matters. A question arose as to how this Board is to determine  
16 what parts of the Article 8 record were incorporated into the  
17 NRC record. I would like to also, after I approach this one,  
18 comment on the status of the various proceedings regarding  
19 Jamesport other than this proceeding.

20 CHAIRMAN SHARFMAN: Thank you.

21 MR. REVELEY: In the course of that, I will respond  
22 to Ms. Tiedke's desire that the Corps record, including the  
23 Glazer report, be admitted into evidence here. If you will  
24 turn in your partial initial decision to the appendix following  
25 page 177, I can explain most easily what parts of the Article 8

cmw 1 record have been incorporated. By way of preface, we pursued  
2 a course in both the NRC proceeding and state Article 8  
3 proceeding of incorporating a particular germane portion of  
4 the other record in an attempt to avoid redundant hearings  
5 and speed the process along.

6 The Appendix A and the partial initial decision is  
7 basically a document the Applicants prepared and submitted  
8 with their proposed findings. I am reasonably familiar with  
9 it. You will note that Applicant's Exhibit 1 is entitled  
10 Testimony of Norman Kelly in the Siting Board Proceeding.  
11 Wherever you see the phrase "in the Siting Board proceeding,"  
12 in this appendix, you will know that that is Siting Board  
13 material that was incorporated into the NRC record. You will  
14 note also we frequently have footnotes accompanying those  
15 exhibit numbers. The first points out that some of the Siting  
16 Board transcript has been physically received by the Licensing  
17 Board below.

18 We Xeroxed it and gave it to each member of the  
19 Board and to the reporter. Some of the Siting Board  
20 transcripts, however, that were incorporated at Suffolk  
21 County's request, came by reference so the Board below didn't  
22 have it physically in hand and solely by page number.

23 CHAIRMAN SHARFMAN: There is not a copy of these  
24 pages in the record?

25 MR. REVELEY: Whenever Applicants wished to

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1 incorporate Article 8 material, we provided copies. Upon  
2 occasion when Mr. Like wished to incorporate it, he didn't  
3 provide copies. That is indicated explicitly in the footnotes  
4 set out in this appendix, the precise page numbers. You can  
5 read them and you will know what physically you have and don't  
6 have. It's my understanding the Staff has a copy of the  
7 entire Article 8 transcript so there lives and breathes in  
8 Bethesda a transcript from which these pages can be obtained  
9 but physically accompanying the record you receive there will  
10 be these pages if they were incorporated by reference.

11 MR. OLMSTEAD: As you know, I entered into this  
12 matter at a rather late date. I asked for the Staff's copy  
13 of that and never received it. As yet, nobody told me who  
14 has custody of it. It may be at the laboratory. It might be  
15 buried in our technical staff's file box someplace, but it—

16 MR. BORDENICK: I have one suggestion. My  
17 recollection is the Licensing Board was provided with a copy,  
18 a complete copy, or --

19 MR. REVELEY: Yes, either in toto or those portions  
20 which Mr. Like had incorporated by reference. After all, they  
21 had to read what was incorporated by reference. It may be  
22 that administratively between the two Boards you can arrange  
23 to have the Licensing Board loan you their copy.

24 CHAIRMAN SHARFMAN: What we will do is ask the  
25 Licensing Board if they have a copy and if they do we will

cmw 1 borrow it from them. However, if they don't, I think the  
2 burden will have to be on the County if it wanted those parts  
3 of the transcript included to provide us with copies so we can  
4 look at them.

5 MR. LIKE: I believe Mr. Bordenick's recollection  
6 is correct. It was my impression the Board had a complete  
7 copy. If it's determined --

8 CHAIRMAN SHARFMAN: We will let you know.

9 MR. REVELEY: Applicant's Exhibits 1, 5, 10, 11, and  
10 18 are Siting Board material. The other major dose of Siting  
11 Board material is Suffolk County Exhibit 52. I would like to  
12 speak to that. Mr. Like discussed earlier today testimony of  
13 Messrs. Bridenbaugh, Pollard, among others. That is Suffolk  
14 County Exhibit 52. A very large exhibit. Mr. Like indicated  
15 it was received by stipulation. That's not quite the case.  
16 We objected to much of it, though we didn't object to ending  
17 the hearing by stipulating it come in subject to our  
18 objections. Those objections will be heard by the Licensing  
19 Board, or had been. They will be acted upon in the course  
20 of the radon decision, because the Licensing Board hasn't  
21 acted on any health and safety fuel cycle matters.

22 I assume we will get rulings on our objections to  
23 portions of Exhibit 52 in the remaining part of the initial  
24 decision. So it's not the case that everything in Suffolk  
25 County Exhibit 52, particularly as it cuts to such gentlemen

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1 as Bridenbaugh and Pollard, was stipulated into this record.

2 MR. JOHNSON: I understood that some of that had  
3 to do with generic issues.

4 MR. REVELEY: Yes.

5 MR. JOHNSON: How does that relate to the fuel  
6 cycle?

7 That was part of our problem with it. We didn't  
8 think it related to the issue for which it was advanced.

9 MR. SALZMAN: Did the Licensing Board rule on that  
10 part at all?

11 MR. REVELEY: No.

12 CHAIRMAN SHARFMAN: It didn't rule at all?

13 MR. REVELEY: No. It received this material in the  
14 last day of hearing subject to our motions to strike portions  
15 of it. The issues that will bring up those motions have not  
16 yet been acted on by the Licensing Board.

17 MR. SALZMAN: All of them?

18 MR. REVELEY: All.

19 MR. SALZMAN: Some of the matters Mr. Like referred  
20 to I would think are before us now.

21 MR. REVELEY: Some of the matters he referred to are  
22 before you now, but this particular wad of testimony submitted  
23 for health and safety purposes but including generic comment on  
24 things such as steam generator tubes, ATWS, turbine missiles,  
25 was submitted by the County in the context of the health

cmw 1 effects discussion. We objected either because there was no  
2 contention in the proceeding on it or the proceeding  
3 explicitly dealt with that subject at another point.

4 MR. JOHNSON: These things are not fuel cycle related  
5 in the sense that they are pertinent to a particular plant.  
6 I understood fuel cycle issues to be those covered by things  
7 like Table S3 which a portion of them are attributed to --

8 MR. REVELEY: That was our understanding also and  
9 that's apparently why we objected. We don't think the  
10 testimony the County sought to admit in the guise of  
11 comparative fuel cycle information was appropriately submitted  
12 as such. We assume the Licensing Board agrees with us but  
13 they haven't acted as yet.

14 CHAIRMAN SHARFMAN: Okay, proceed.

15 MR. REVELEY: Let me discuss the status of the  
16 proceedings involving Jamesport. You will tell me if you don't  
17 want to hear about certain of these proceedings.

18 MR. JOHNSON: I will just ask another question on  
19 this. Is it possible that at some later date the Licensing  
20 Board may rule during the fuel cycle hearing that some of  
21 this material which relates to other matters is in fact on the  
22 record or is not on the record, and therefore we are somewhat  
23 in limbo as to know whether we can use it to base our  
24 decision on or not.

25 MR. REVELEY: I think before it becomes a live issue

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1 for you, before it comes to you in the radon context, in  
2 the larger fuel cycle context, you will have a ruling from  
3 the Licensing Board below so you will know whether in their  
4 judgment at least the information is appropriately before you.  
5 Let me hasten to add if they ruled against us and admit the  
6 information, that's okay, too.

7           We cross-examined Mr. Bridenbaugh and Mr. Pollard.  
8 We made clear why we didn't think their comments had merit in  
9 this case. We have testimony in this record on issues such  
10 as steam generator tubes and ATWS that were properly presented  
11 to the Board.

12           So we are not afraid of that testimony. If it comes  
13 in, so be it. You can use it for what it's worth. We just  
14 don't think it was appropriately presented and we think it  
15 should be struck.

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1                   MR. JOHNSON: From our standpoint, in terms of what  
2 we may and may not use in order to make our decision, we are  
3 unable to proceed until -- or we would have to proceed as if it  
4 were, and another track as if it were not.

5                   MR. REVELEY: I suppose that's true. If that posed a  
6 problem, I would ask the Licensing Board to rule.

7                   MR. SALZMAN: We are here for appeal from the  
8 decision of the Licensing Board and we would have to presume,  
9 since the Board didn't rule on it, it could not have based its  
10 decision on any of that evidence.

11                   Therefore, it is not before us, either, is it?

12                   MR. REVELEY: I don't believe so, on the issues being  
13 considered.

14                   MR. SALZMAN: If they didn't admit it, they didn't  
15 rely on it. They must have rejected it at least for the  
16 purposes of the decision now before us.

17                   If they will admit it, that would be for the next  
18 decision.

19                   MR. REVELEY: I think that is accurate. The two  
20 federal proceedings regarding Jamesport, two state proceedings  
21 and one hybrid.

22                   Your are intimately familiar with the NRC federal  
23 proceeding. Second is the Corps of Engineers' proceeding.  
24 That has been going on since May 1976. On December 8, 1977,  
25 The Corps held a legislative type hearing. In other words,

1 nobody was under oath. Nobody was cross-examined. Anybody  
2 who wanted to could talk. Many did. Including Dr. Glazer.

3 CHAIRMAN SHARFMAN: What was the issue there?

4 MR. REVELEY: It focused on jetties and, thus on  
5 bluff and beach erosion.

6 MR. SALZMAN: In a particular area? Focused on  
7 Jamesport?

8 MR. REVELEY: Yes. This is the Jamesport application  
9 to the Army Corps of Engineers.

10 MR. SALZMAN: They don't base their decisions about  
11 an adjudicatory record by law, do they?

12 MR. REVELEY: No. It is a legislative type agency.  
13 Quite a change. But that is the root of the problem with our  
14 acceptance of the Corps' record. We don't think the Corps'  
15 record can be admitted into an adjudicatory record here because  
16 it was legislative type, absent an opportunity for us to  
17 engage in cross-examination.

18 What is going on before the Corps, however, is the  
19 following: the Corps asked the Lighting Company a number of  
20 questions. We will respond to them in several months, I  
21 understand. Those questions will deal with Dr. Glazer's  
22 report and with other concerns that the Corps itself generated.

23 That information, still all legislative type, will  
24 be before the Corps. It can act on it in its wisdom.

25 If it turns the jetties down or seriously modifies

1       them, we are back before the NRC for remedial action.

2               Therefore, there is a failsafe mechanism. If the  
3 Applicants are incorrect that the jetties and the proposed  
4 build-up of the beach during the construction process and the  
5 proposed bypass arrangements don't work in the Corps' opinion,  
6 the Corps will turn the jetties down.

7               It is our position, as far as your concern, the  
8 record is already adequate in this proceeding, sworn and  
9 cross-examined, on the literal aspects of the case, and that  
10 on this record you may affirm the Licensing Board decision.

11               The Jamesport jetties, coupled with the build-up of  
12 the beaches to the east with construction material and bypass  
13 programs thereafter, which continually replenish the beach,  
14 all provide an adequate basis for finding the environmental  
15 impact of the jetties is acceptable.

16               In the Applicant's opinion what we now have east of  
17 Jamesport is a natural process of degradation. Bluffs eroding,  
18 beaches being eroded.

19               The Applicant's witnesses believe that nature will  
20 be improved upon by this arrangement. Instead of worsening  
21 the situation, the Lighting Company's willingness to put sand  
22 on the beaches initially and on a periodic basis will improve  
23 the situation.

24               But the record is there for you to examine.

25               CHAIRMAN SHARFMAN: Mr. Reveley, what do you do with

1 the League's argument that this record contains some  
2 important new evidence which wasn't previously available, but  
3 which would also bear on the issues under NEPA related to the  
4 effect of the jetties and the question of erosion?

5 MR. REVELEY: What I have been suggesting. You  
6 look and see if there is another --

7 CHAIRMAN SHARFMAN: I was asking what you do with it.

8 MR. REVELEY: Respond to it in the context of the  
9 Corps' proceeding.

10 I am informed by our experts they don't think  
11 Dr. Glazer is well advised in his critique. They think he is  
12 wrong. They will tell the Corps why they think so. That  
13 information will be put before the Corps.

14 CHAIRMAN SHARFMAN: You mean the Corps' proceeding  
15 is not over yet?

16 MR. REVELEY: No.

17 CHAIRMAN SHARFMAN: I didn't realize that.

18 MR. REVELEY: Ms. Tiedke suggested the Corps  
19 indicated there would be no decision until after the state  
20 decision. They have not so intimated to us yet, but we don't  
21 always get told things that other people get told.

22 The Corps' decision is a long way off, I imagine.

23 We are still to file information that the Corps has  
24 requested. That information will include a response to  
25 Dr. Glazer as the Corps requested. Glazer's material and

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1 everything else in the Corps' record, our response, will be  
2 before the Corps.

3 The Corps can then act in the failsafe mode I have  
4 been talking about. If the Corps concludes for some reason  
5 Dr. Glazer is correct and the jetties will wreak havoc on the  
6 east end, they will turn them down or force their modification.

7 MR. JOHNSON: Is this analogous to the 410 hearing  
8 before EPA or State Control Board in which this Commission in  
9 the past has accepted the results of an EPA decision as in  
10 Seabrook, or state decisions?

11 MR. REVELEY: Somewhat analogous, but I doubt if the  
12 Commission would accept the results of this in the same fashion  
13 they accept the results of an EPA proceeding that is  
14 adjudicatory.

15 It is not clear to me the Commission would accept  
16 EPA results that lack a full-scale adjudicatory hearing.

17 MR. JOHNSON: The Commission is bound to accept as a  
18 fait accompli an unfavorable decision which says the jetties  
19 can't be built as planned.

20 MR. REVELEY: I am drawing a distinction between the  
21 final decision which says you have to have jetties that look  
22 like this on one hand and a decision preliminary to that that  
23 says the impacts of the jetties are these.

24 My understanding is the Commission has decided when  
25 EPA has a full-scale adjudicatory proceeding, it will accept

ion 1 decisions not only as to the final nature of the control system  
2 but also as to the impacts that EPA says flow from the  
3 existence of that control system.

4 NRC would be bound by the Corps' decision that they  
5 won't accept the jetties here.

6 You might conclude something else, but if the Corps  
7 concludes the contrary, we are in equipoise.

8 CHAIRMAN SHARFMAN: That point was made in the  
9 Seabrook Case, that we would accept the findings of EPA; but  
10 there is in the case of Federal Water Pollution Control Act  
11 a statutory provision that tells us that we are not allowed  
12 to deal with that issue independently as I interpret it.

13 MR. REVELEY: That's correct. Though that doesn't  
14 resolve whether you are allowed to deal with the impacts of  
15 the technology chosen.

16 You can wisely resolve the latter.

17 CHAIRMAN SHARFMAN: That's right.

18 MR. REVELEY: We think there are adequate remedies  
19 in this situation to take care of the Glazer situation, that  
20 can act on the record before you, that the Corps in turn will  
21 act on its own record. They will not be identical records.  
22 But if for some reason the Applicants are incorrect, that  
23 Glazer is wrong, the Corps presumably will pick it up.

24 The only other alternative is to reopen this record,  
25 receive Glazer, wait, and at some future point receive our

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1 reaction to Glazer, have more cross-examination, and generally  
2 spin out this proceeding.

3 I think unless there is a clear and compelling case  
4 that there is a need to do that, we could pass the time at  
5 which that is appropriate.

6 MR. SHARFMAN: You say pass the time. I gather the  
7 Glazer testimony didn't become available until the time the  
8 League made its motion.

9 MR. REVELEY: That could have become available  
10 sooner, in my opinion. The town of Southhold has been a  
11 party to the Article 8 proceeding all along. Jean represents  
12 both the Town of Southhold and the League.

13 MS. TIEDKE: No. Not at the state. Southhold only  
14 in the state hearing.

15 MR. REVELEY: Not the League also?

16 In any event, there is a close community of interest  
17 housed in Ms. Tiedke's body between the Town of Southhold and  
18 the League, however it worked out jurisdictionally.

19 I don't agree the Glazer Report could not, via the  
20 Town of Southhold, from whence it ultimately came, have been  
21 produced earlier.

22 CHAIRMAN SHARFMAN: Was there an offer of proof made  
23 when that motion was presented?

24 MR. REVELEY: They submitted the Glazer Report  
25 physically to the Licensing Board. Not only was there an

1 offer of proof -- yes, there was. The report is in the record.  
2 Simply not admitted.

3 MR. JOHNSON: Mr. Reveley, there has been a  
4 suggestion that the Glazer Report was based on material only  
5 recently obtained from LILCO or discovered from LILCO, which  
6 seems to cut against what you just said.

7 Presumably this material became available at some  
8 point in time and, therefore, the Glazer assessment of it had  
9 to follow that.

10 So I guess when the Glazer Report could have been  
11 made available, the decision was to be determined by when the  
12 material that was allegedly obtained from LILCO was made  
13 available to Glazer or --

14 MR. REVELEY: I don't think that is accurate, but I  
15 can't dogmatically state that.

16 Was Glazer premised on material coming from us or  
17 on his own investigations.

18 MR. MILHOUS: I would say it was a combination of  
19 the two. The material we provided was in the Corps' files all  
20 along.

21 MR. REVELEY: We will be glad to provide you with an  
22 answer in writing to that, if you would like, that is superior  
23 to the one I just offered.

24 CHAIRMAN SHARFMAN: All right. That would be  
25 acceptable.

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1 MR. REVELEY: In writing.

2 MR. JOHNSON: One other question. Does the record  
3 speak to the erosion issue relative to the two sites? In other  
4 words, what is the comparative severity of the beach erosion  
5 issue between Jamesport and the Shoreham West site?

6 MR. REVELEY: I am certain the state record does.  
7 I think the federal record also does. If the federal record  
8 does not, we would certainly have no objection to any portion  
9 of the state record that bore on it being placed before you.

10 But that sort of comparative information has been  
11 developed and I think it is in fact the case that there is  
12 less of an impact at Shoreham West.

13 The problem exists in more pronounced form in  
14 Jamesport, and the issue, as I understand it, is essentially  
15 whether the Applicant's remedial measures will in fact, A,  
16 remedy the situation, and B, perhaps, improve on nature.

17 MR. JOHNSON: Thank you.

18 CHAIRMAN SHARPTON: You were going through the various  
19 proceedings.

20 MR. REVELEY: Yes, sir. The two state proceedings  
21 arise under Article 8 of the New York Public Service Law and  
22 that is the famous New York Siting Board proceeding which has  
23 involved 123 days of hearings and generated 29,000 pages of  
24 record.

25 A somewhat less famous New York State proceeding has

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1       been going on before the Public Service Commission under  
2       Article 7 -- not 8, but 7 -- of the Public Service Law.

3               That proceeding deals with transmission facilities  
4       in the Jamesport context. That proceeding has gone on for  
5       approximately 50 days and generated a record of 10,000 pages  
6       approximately.

7               The Article 8 proceeding was completely briefed in  
8       December 1977. Decisions came from the Presiding Examiner  
9       and Associate Examiner in June of this year.

10              CHAIRMAN SHARFMAN: You are talking about the  
11      Siting Board.

12              MR. REVELEY: Yes. Briefed last December, totally.  
13      Decisions in June of this year from the Presiding Examiner and  
14      the Associate Examiner.

15              CHAIRMAN SHARFMAN: That is something beyond. I  
16      think I came across that somewhere in a newspaper story that  
17      there were two different decisions.

18              What does that mean?

19              MR. REVELEY: The Presiding Examiner, a  
20      representative of the Public Service Commission, named by the  
21      Public Service Commission, decided it would be appropriate to  
22      build two nuclear stations as proposed at Jamesport. His  
23      opinion was 198 pages long.

24              The Associate Examiner, appointed by the Department  
25      of Environmental Conservation, preferred one nuclear unit at

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1 Shoreham West. His opinion was approximately 25 to 28 pages  
2 long.

3 In short, there are two decisions because the  
4 gentlemen didn't wholly agree. They concurred on the type of  
5 fuel. They disagreed on the sites and on the number of units.

6 CHAIRMAN SHARFMAN: What happens next in the State  
7 Siting Board proceeding?

8 MR. REVELEY: Would that we knew. The two  
9 preliminary motions I need to mention, the Farm Bureau, an  
10 intervenor in the state proceeding, at the conclusion of 123  
11 days of hearing, after the compilation of the 29,000-page  
12 record, filed a motion for summary judgment. It was rejected,  
13 understandably, by the Presiding and Associate Examiners and is  
14 now on appeal to the Public Service Commission.

15 It is always a question when you talk about the  
16 Siting Board as to who handles the appellate part of the  
17 business.

18 The Farm Bureau has taken the denial of its summary  
19 judgment motion to the Public Service Commission. They have  
20 not acted, but the motion is outstanding.

21 A number of other parties.

22 The Public Service Commission staff in their  
23 forefront have requested that the Siting Board reopen the  
24 hearings because of changed load forecasts and changed  
25 commercial operating dates. That motion was certified by the

700.11.12

ion

1 two Examiners to the Siting Board, the Presiding recommending  
2 denial and the Associate Examiner recommending it be granted.

3 The parties briefed that in late June. That is still  
4 pending.

5 I would imagine when the Siting Board meets November  
6 21, which we have been told is the date of its meeting, they  
7 will act on at least the motion to reopen the record and  
8 possibly they will act on the position for summary judgment  
9 as well.

10 There is not a snowball's chance in hell the motion  
11 for summary judgment will be granted, but the motion to reopen  
12 the record is a more serious suggestion.

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bw 1 MR. SALZMAN: Your revelations of how the  
2 licensing process before the NRC can be improved or speeded  
3 up are tremendous.

4 MR. REVELEY: Don't get involved with the state.

5 CHAIRMAN SHARFMAN: I still don't understand  
6 what is the decision of the Siting Board? You have decisions  
7 of examiners. Is that supposed to be followed through some  
8 sort of appellate process by a decision of the Siting Board?

9 MR. REVELEY: Unlike practice before this agency,  
10 all you get from the examiners at the Siting Board are  
11 recommended decisions. No force. Simply recommendations.  
12 As if they were special masters appointed by the Supreme  
13 Court to hear evidence and make a recommendation. It has  
14 no force other than the advisory force of someone who sat  
15 through 123 days of hearings. The Board itself makes  
16 the initial operative decision. There is no Siting Board  
17 decision yet. There are simply examiners' recommended  
18 opinions.

19 CHAIRMAN SHARFMAN: They are supposed to act on the  
20 recommendations of the examiners.

21 MR. REVELEY: Yes. As with you people they may  
22 engage the evidence de novo, if they wish.

23 CHAIRMAN SHARFMAN: There is no indication at all  
24 as to what they will do with the merits of the actual case.

25 MR. REVELEY: They have decided to wait until

bw 1 after the election to sit for the first time. I don't  
2 know what sort of soothing effect that may have on them.  
3 No, we don't know what they will do at this point. We  
4 think, as we think in this case, there is a very powerful  
5 record, that we have made a powerful record showing that  
6 we have complied with every conceivable statute and  
7 regulation from the weight of the evidence.

8 We think that record will ultimately out with the  
9 Siting Board, as we hope it will prevail with you. But  
10 it may take the Siting Board longer than it takes NRC to  
11 complete its administrative process.

12 MR. SALZMAN: Is there no indication at all  
13 when the Siting Board is likely to decide?

14 MR. REVELEY: The only case they ever decided  
15 involved the Sterling Station. They decided that case and  
16 took it back awhile later when the load forecast changed.

17 New York State discovered generic proceedings  
18 a couple of years ago. They are relevant to this discussion.  
19 They have completed a generic proceeding on the comparative  
20 cost of nuclear and fossil power.

21 CHAIRMAN SHARFMAN: Who is "they."

22 MR. REVELEY: Public Service Commission.  
23 That proceeding went on at some length and involved the  
24 New York Power Pool companies and the various interested  
25 state agencies and a number of other parties. Thus the

bw  
1 state is on the verge of generic findings as to economics  
2 among different types of fuel. The decision could come at  
3 any time. That is Generic Proceeding No. 1. Generic  
4 Proceeding 2 is an annual undertaking that the Public  
5 Service Commission goes through to evaluate each utility's  
6 load forecast in conservation measures. It is the fruits  
7 of that proceeding we were discussing earlier with  
8 Mrs. Tiedke.

9 MR. JOHNSON: The projections that have been put  
10 into the record in Amendment 7 to the ER which presumably  
11 come from the 149(b) hearing, are those demand projections,  
12 the projections of the utilities themselves, or are they an  
13 assessment of the utilities projections modified in some  
14 way?

15 MR. REVELEY: The former. The material LILCO  
16 and NYSEG presented in a document -- I don't know what color  
17 it will be this year -- such as the blue one Mrs. Tiedke has.  
18 Those projections are taken and subjected to adjudicatory  
19 hearings before the Public Service Commission. Those  
20 hearings are still going on this year. They result in a  
21 decision by the PSC itself that does comment on the  
22 methodology and results of each company's forecast.

23 MR. JOHNSON: Has that decision been rendered  
24 year on the 1978 projection?

25 MR. REVELEY: No. That is ongoing at the moment.

bw 1 MR. JOHNSON: The information we are talking about  
2 is still in the realm of raw data in terms of the ultimate  
3 assessment of this information by the Public Service  
4 Commission.

5 MR. REVELEY: My clients would hate to describe  
6 their product as raw data, but it is still in the situation  
7 in which the hearings haven't been completed and the  
8 Public Service Commission hasn't expressed its view.

9 MR. SALZMAN: What is the effect in this scheme of  
10 things of the Public Service Commission's view on the  
11 need for power?

12 MR. REVELEY: In the past the principal effect  
13 has been that it governed what the Public Service Commission's  
14 witnesses and lawyers would say at individual proceedings.

15 MR. SALZMAN: It doesn't have anything to do  
16 directly then with whether you get a go-ahead on this plant,  
17 but indirectly it will.

18 MR. REVELEY: It may well have a very important  
19 bearing on whether we get a go-ahead. That information will  
20 be available to the Siting Board before it acts.

21 CHAIRMAN SHARFMAN: It is not legally binding on  
22 them.

23 MR. REVELEY: Not under the old Article 8 scheme.  
24 Under the new one that went into effect this morning, and  
25 I don't think it will be in play for this year's 149(b)

bw 1 proceeding, the state is talking about, as I understand it,  
2 a generic proceeding under the auspices of the New York  
3 Energy Office that will, in fact, be binding on all  
4 utilities in the state.

5 The state, on a generic basis, will make  
6 determinations as to the load that must be met in the future.  
7 I don't think that will happen in time to have much impact  
8 on Jamesport, but I think the pending proceeding, the  
9 pending generic statewide 149(b) proceeding probably will.

10 MR. SALZMAN: Since it is clear you must have  
11 a go-ahead to build this plant, at least from the NRC  
12 and Siting Board, and I suppose failure at either front  
13 is fatal, one of the questions in both proceedings is the  
14 need for power, first let me ask you : is the record  
15 on need for power more recent and comprehensive in the Siting  
16 Board proceeding than it is in our proceeding? If the  
17 answer is yes, then wouldn't it simply be wise, given the  
18 fact that those are the circumstances and the fact  
19 our decision would be useless if the state territories don't  
20 agree, to defer a decision on the need for power until  
21 the state authorities act?

22 CHAIRMAN SHARFMAN: Take the first question first.

23 MR. REVELEY: What was that one?

24 MR. SALZMAN: Is the evidence basically more  
25 recent?

bw 1 MR. REVELEY: I don't believe so. In both  
2 instances we had annual rites. We presented annually a  
3 need case, as a matter of necessity. We presented our  
4 last case in both proceedings. It was the same testimony.  
5 Forecasts and commercial operating dates then changed once  
6 again. At that point we informed both agencies, the  
7 cases being before both for decision, that the change  
8 had occurred. There ensued the process that you are  
9 familiar with in this forum of the Licensing Board compiling  
10 a record to determine what needed to be done, based  
11 principally on our Amendment 7 to the ER and Staff affidavit  
12 by a gentleman named Cleary responding to it and on Mr. Like's  
13 30 pages with 30 pages of a pending cease argument.

14 In the third state we knew we would be entering  
15 the 149(b) generic proceeding, so we didn't do quite as much.  
16 That would go into even more detail. So there isn't any  
17 difference really in either record on these. But, no,  
18 I very emphatically don't think that you should stop your  
19 administrative process and wait for the state to finish its.

20 A) there hasn't been any debate in this record  
21 over NYSEG's serious and sincere need for power. B) whatever  
22 the metaphysics over LILCO's classic need, LILCO has an  
23 impregnable substitution argument, because it is 100 percent  
24 oil fire. As a matter of law, that is all you need under  
25 your decisions and under the First Circuit's recent

bw 1 decision.

2 CHAIRMAN SHARFMAN: Clarify something for me.  
3 I am confused. These documents Mrs. Tiedke wants to put  
4 in the record and that you have no objection to, are they  
5 the 1978 proceedings or the 1977 proceeding?

6 MR. REVELEY: They will be the proceedings  
7 involving that which is in Amendment 7 which is the -- the  
8 forecast prepared in 1977 issued to the world in 1978. They  
9 come out in late December or early January.

10 CHAIRMAN SHARFMAN: What is that rose-colored  
11 document?

12 MR. REVELEY: The prior year's effort.

13 MS. TIEDKE: No. It is the opinion.

14 MR. REVELEY: But it is not on the present set.

15 CHAIRMAN SHARFMAN: The rose-colored document is  
16 the opinion of the Public Service Commission on last year's  
17 proceeding and is not evaluating this year's material.

18 MR. REVELEY: This year's is still going on.  
19 Witnesses are still being cross-examined in this year's.  
20 The Pool files all its forecasts in April of the year.  
21 You then get into an evidentiary proceeding that goes  
22 on and on and on and on. It finally ends in the fall.  
23 Then PSC takes a while to make up its mind.

24 MR. SALZMAN: You think we ought not to hold back  
25 our hand even in light of the Supreme Court comment in

bw 1 Vermont Yankee that the need-for-power questions are in  
2 the first instance matters for the State Public Service  
3 Commissions.

4 MR. REVELEY: The next paragraph said under NEPA  
5 that, of course, the situation is somewhat different.  
6 Furthermore, even in the first paragraph, commenting about  
7 the Atomic Energy Act, the Court noted that there will be  
8 extensive consideration of need for power in the Midland  
9 case. You people are bound to make an independent judgment  
10 on whether this plant is needed. Not just to meet rising  
11 peak demand. Not just to ward off starvation. But also  
12 for any other appropriate benefits that it might convey.

13 MR. SALZMAN: We are also bound under NEPA to  
14 give considerable weight, as I understand it, to the  
15 opinions and decisions of the local agencies who have the  
16 primary responsibility for seeing that electric power is  
17 provided.

18 MR. REVELEY: I think you should give deference  
19 to their views just as you give deference to your views.  
20 We need all the help we can get. All of us. The more  
21 crucial point is that this case has been going on for over  
22 four years. 217 days of hearings when you take them  
23 all into account. Its transcript is 49,000 pages long, when  
24 you take the two state proceedings and NRC proceedings.

25 It is time for somebody to make up their mind yes

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1 or no, or yes with conditions.

2 I think there is very little merit in terms of  
3 coherent national energy policy, fairness to the Applicant  
4 in terms of this administrative process or the NRC's own  
5 apparent capacity to decide cases up or down within a  
6 reasonable period of time for you people to wait,  
7 particularly given your clear recognition of a substitution  
8 or replacement basis for need.

9 Seabrook makes very clear -- I forget which one --  
10 that need is shorthand for the benefit side of the cost-  
11 benefit equation. Wolf Creek, I think, makes clear that  
12 Seabrook was decided in terms of need, solely on a  
13 substitution basis, because the Licensing Board's arguments  
14 as to classic need weren't found acceptable. Or the  
15 Licensing board's opinion as to classic need. As a matter  
16 of common sense, there is a strong case for taking a  
17 utility such as LILCO, which is oil-fired, and NYSEG, which  
18 is coal-fired and giving it a diverse source of power as  
19 soon as possible. There was some suggestion by Mr. Like  
20 that during the oil crisis LILCO didn't suffer. LILCO's  
21 fuel costs went up three or four times during that crisis.

22 There is no guarantee during another crisis there  
23 will be sufficient oil to keep the machines running.

24 From the standpoint of balance of payments, from  
25 the standpoint of national foreign policy, it does not make

bw 1 sense to avoid substitution arguments on the ground  
2 there is confusion over the blackguard of load forecasting.  
3 I admit load forecasting is a blackguard. The Light  
4 Company at the moment is taking a very bearish view of  
5 growth. Something like 3 percent in peak demand. No  
6 guarantee they are not underestimating it and in 10 years  
7 they may find demand much greater than that.

8 CHAIRMAN SHARFMAN: There is one point that  
9 troubles me somewhat. That is there: you recognize we  
10 have to give -- we have decided in the Sharon Harris case,  
11 an Appeal Board decision in August of this year, that we have  
12 to give great deference to state agencies' determinations on  
13 need for power and our own decision on need for power under  
14 NEPA.

15 Now we reach the situation of a case where the  
16 state agency has not yet acted.

17 The question is: should we do it ourselves or  
18 should we wait some reasonable period of time? Maybe there  
19 will be a need and maybe there shouldn't be more delay.

20 But we can't go ahead and give the Applicants  
21 the right to build this plant on our own anyway. They have  
22 to get state approval. So that our doing this more quickly  
23 will to give them the right to build a plant.

24 In view of that situation, might not the waiting --  
25 I am just asking this to try to draw your views out -- might

bw 1 not waiting make some sense? If now, why?

2 MR. REVELEY: I don't think so. As to the first  
3 point, perhaps the various states are more capable of making  
4 forecasts of future peak demand? The individual states  
5 are certainly not any more capable than this agency of  
6 deciding whether it makes sense to pursue fuel diversity  
7 from a variety of perspectives.

8 MR. SALZMAN: Mr. Like tells us that is not  
9 grounds for building a new plant. Even if we say --

10 MR. REVELEY: He is wrong, as a matter of law and  
11 as a matter of common sense.

12 MR. SALZMAN: You addressed that in your brief?

13 MR. REVELEY: Yes.

14 CHAIRMAN SHARFMAN: You rely on Seabrook.

15 MR. REVELEY: Yes. Mr. Like suggests in  
16 New York State you may not build a power plant for any  
17 reason, except the analog to warding off human starvation.  
18 If you need the plant for any reason other than rising  
19 peak demand, you can't build it. That doesn't make sense, as  
20 a matter of policy. I know of no New York law that so  
21 provides. The presiding examiner in the state proceeding  
22 didn't so hold. One of his arguments for approving the  
23 facility was, in fact, that it would displace oil. I think  
24 Mr. Like is incorrect that there is any existing state law  
25 in New York that says you can have a substitution basis for

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1 need, and I think he is incorrect that there will be.

2 It doesn't make sense.

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LT 1 MR. JOHNSON: If there were a provision of New York  
2 State law that said you could not determine need under state  
3 proceedings on the basis of substitution, would that preclude  
4 this agency from using substitution to determine whether  
5 or not there is a benefit associated with the plant from the  
6 standpoint of balancing costs?

7 MR. REVELEY: No. You are determining need under the  
8 NEPA, which is a federal statute. You are not bound by  
9 clear state determination. In the real world, what would  
10 happen is if that situation developed, you would find utilities  
11 attempting, and other reasonable people, to get the decision  
12 overturned by the state legislative process and probably  
13 go into federal court and argue preemption under one ground  
14 or another.

15 It doesn't occur to me immediately which one. I  
16 think you would see people seeking both judicial relief in  
17 the federal courts and political relief within the states.  
18 It doesn't make sense that you only build power plants if you  
19 have rising peak demand.

20 CHAIRMAN SHARFMAN: Are Suffolk County and the League  
21 parties in the state Siting Board proceeding?

22 MR. REVELEY: Very much so.

23 CHAIRMAN SHARFMAN: Can you review for me the scope  
24 of the issues in that Siting Board proceeding?

25 MR. REVELEY: No, sir, I can't because they are like

LT 1 the scope of the issues here, only even more so. In this  
2 proceeding, we at least went through six prehearing  
3 conferences to attempt to determine what the issues were and  
4 finally came up with a reasonably secure process.

5 The state used to lack that proceeding. Therefore,  
6 in the state, we litigated more things than here. As is the  
7 case here, Mr. Like challenged all of them, or will challenge  
8 all of them. So we are still litigating everything from the  
9 most minute, insignificant points to the most fundamental.

10 I think that perhaps in the state proceeding, there  
11 is greater concern over whether coal or nuclear power is  
12 economically the more tenable form of generation than here.

13 Otherwise, the litany is basically the same.

14 CHAIRMAN SHARFMAN: What is the statutory standard?

15 MR. REVELEY: For economics?

16 CHAIRMAN SHARFMAN: In general for the state  
17 Siting Board's decision.

18 MR. REVELEY: Article 8 of the New York Public  
19 Service Law, you get a basically more articulated NEPA  
20 standard that lists -- I don't have the statute with me --  
21 it lists all sorts of considerations of an environment,  
22 technological, economic, and social nature.

23 MR. SALZMAN: Since everybody seems to be party  
24 to both proceedings and both seem to have the same issues,  
25 why isn't everybody bound by the state proceeding? Why are we

LI 1 bound by it?

2 MR. REVELEY: All the people are not in both  
3 proceedings. The staff is not in the state proceeding. Many  
4 people in the state proceeding are not in their proceeding.

5 MR. SALZMAN: Why aren't you bound?

6 MR. REVELEY: You are acting under federal statutes  
7 and may not avoid your obligation to act under them by  
8 reliance on what a state agency does unless the federal  
9 statute, as is proposed in the abortive nuclear licensing bill,  
10 you go through a process in which NRC delegates NEPA  
11 authority to a state attorney to specific standards.

12 As NEPA now stands, I don't think NRC could delegate  
13 authority to the state. NRC can participate jointly with a  
14 state, as in Green County, but I don't think they can avoid  
15 their NEPA obligations by turning them over to a state.

16 Though much might have been said in Calvert Cliffs'  
17 days if someone said this won't work, will take forever,  
18 confuse everyone and cost vast amounts of money.

19 Figure out a better way of doing it. At that time  
20 perhaps the solution should have been that if a state met  
21 certain standards of expertise and expedition, it might conduct  
22 the NEPA review.

23 It never passed.

24 MR. SALZMAN: You would never agree that the New  
25 York proceedings met those standards?

LT 1 MR. REVELEY: The New York bureaucrats agree they  
2 don't. They have gone a long way toward trying to tighten them  
3 up. There has been a fairly significant learning process.

4 Their agency, right after Calvert Cliffs, had a lot  
5 of loose-end flapping, too. It came a long way. EPA started  
6 out with loose ends flapping and it's moving. State of New  
7 York is doing the same.

8 CHAIRMAN SHARFMAN: What do you say to Suffolk  
9 County's argument that the licensing board should have  
10 considered other alternatives upstate and didn't adequately  
11 do that?

12 MR. REVELEY: I think they adequately considered  
13 other alternatives. Mr. Gunderson's testimony from the  
14 FPT, and Mr. Madson, on our behalf.

15 CHAIRMAN SHARFMAN: Were any specific sites  
16 evaluated?

17 MR. REVELEY: No. No need to because there are two  
18 basic reasons. Long Island is, in fact, an island. It's  
19 incredibly expensive to get transmission lines on and off the  
20 island. When you take the transmission costs and add them  
21 to a normal comparison of sites, unless you had an awful  
22 site from an environmental perspective on this island, it would  
23 be virtually impossible to tip the balance.

24 CHAIRMAN SHARFMAN: Why is there a difference between  
25 sending the power downstate as opposed to sending it upstate?

LT 1 MR. REVELEY: That's reason two. 50 percent of the  
2 demand in the state exists in the New York-Long Island  
3 area. The great bulk of the cheap power in the state exists  
4 along the Hudson River and upstate regions. Accordingly,  
5 the flow of juice is to the south. From north to south right  
6 now.

7 To try to send more power down from north to south  
8 to serve Long Island would require exceedingly expensive  
9 transmission additions beyond that already planned.

10 That was Madson's testimony, following transcript  
11 page 7322 -- well, it's cited in our brief. Mr. Like  
12 cross-examined him at great length. He didn't like to hear  
13 what Mr. Madson had to say at all.

14 It's in the record. What Madson said. What Mr. Like  
15 tried to do to it. His failure to do anything to do it.

16 CHAIRMAN SHARFMAN: What I don't understand is this:  
17 Am I not correct in thinking, and I am not sure if I read  
18 this somewhere or not, that New York State Electric and Gas  
19 would not have agreed to pay for half the cost of Jamesport  
20 if LILCO hadn't agreed to share costs for generating plants  
21 in NYSEG's area, is that right? At some later date?

22 MR. REVELEY: They entered into two joint ventures.  
23 The first Jamesport, and the second units, NYSEG's one and two  
24 upstate.

25 CHAIRMAN SHARFMAN: Why is it impractical to send

LT 1 power from upstate to downstate if LILCO will be contributing  
2 to NYSEG's plants upstate?

3 MR. REVELEY: Once NYSEG builds its units upstate  
4 and LILCO owns half, instead of sending half of NYSEG's units  
5 downstate and half of Jamesport's units upstate, the Lighting  
6 Company would keep Jamesport's power on Long Island and you  
7 would have a bookkeeping transaction.

8 MR. SALZMAN: Wouldn't you be using the same  
9 facilities to transmit power in both directions? Why is it  
10 possible to transfer some of the Jamesport power upstate but  
11 difficult to transport power down?

12 MR. REVELEY: You are not transporting it upstate.  
13 That power stays on Long Island or goes to the city. Some of  
14 the power that would have moved down from upstate, the cheap  
15 baseload nuclear power, stops off and takes care of NYSEG  
16 upstate.

17 Decker, in the licensing proceeding explored this  
18 at length. Pages 51 and 52 of our brief, I set out a lengthy  
19 quote from Mr. Madson that speaks to this point. I think the  
20 answer to why an upstate site is not feasible for Jamesport  
21 is covered explicitly in Gunderson's testimony.

22 Mr. Like didn't like the answer. He cross-examined  
23 at length. But I believe when you study the record, you will  
24 find a satisfactory answer to that very pertinent question.

25 CHAIRMAN SHARFMAN: I have another question that is

LI 1 bothering me. I hate to contribute to using up your time  
2 here but I want to clear up some of the things that are  
3 troubling me.

4 You say in your January 23 submission to the  
5 licensing board that you would start construction 18 months  
6 after firm approval of the plant at both the state and federal  
7 levels including judicial review.

8 Now, my question is this: Even assuming the later  
9 time for coming online that you projected in January, by  
10 when would you really need to start building in order to  
11 meet that new schedule for completion of the plant?

12 MR. REVELEY: We set out four different dates. If  
13 and when the station is licensed, we don't plan to wait until  
14 judicial review is complete before going forward.

15 Shoreham, for example, which is being built on this  
16 island, still has its CP remanded before the court of appeals  
17 in Washington in the wake of Vermont Yankee. It doesn't  
18 mean anything but presumably it still has the CP adjudicacy.  
19 Just waiting to see if anything like a stay might come along.

20 I am not sure I understood the further thrust of  
21 your question.

22 CHAIRMAN SHARFMAN: If you are saying that state and  
23 federal proceedings have to be finished, by when do you have  
24 to start to require the opening date, the coming online date,  
25 in your projections?

LT 1 MR. REVELEY: There is an answer to that in  
2 Amendment 7. The various pieces of the delay are tracked.  
3 Which answer is it -- answer six. We were talking about  
4 getting final licensing approval in December, 1979. Plus  
5 an opportunity to wait and see if anything was judicially  
6 stayed. That gets us up until December, 1979.

7 We then were talking about 18 months of renewed  
8 engineering and procurement to support the beginning of  
9 significant work in the field which takes us to July, 1981.

10 July 1981 is when under current projections, the  
11 applicants planned to go into the field with the licensing  
12 behind us, with enough engineering behind us so that one  
13 doesn't go into the field and make a lot of mistakes that have  
14 to be taken out and fixed.

15 We are then projecting an 84-month construction  
16 period which is longer than the period previously projected  
17 but seems to be in accord with recent experience in major  
18 power plant construction.

19 This is all set out in the answer to question six  
20 and Amendment 7 to the ER so the short answer to your question  
21 is July 1981 is the date for commencing major work in the  
22 field.

23 That is contingent on licensing with some  
24 opportunity to see what the courts might do earlier.

25 CHAIRMAN SHARFMAN: Do you deal in the brief with

LT 1 Mr. Like's arguments about meteorology?

2 MR. REVELEY: Yes. Those arguments were made by  
3 Mr. Frizzola and they were dealt with -- they were relevant  
4 to so many things I forget where we dealt with them.

5 CHAIRMAN SHARFMAN: Look at it later and tell us  
6 before we adjourn. We won't take your time now. Your time  
7 is close to being up and I think you still have a bit to go.

8 MR. SALZMAN: You have two minutes to finish up.  
9 We better give you another minute.

10 CHAIRMAN SHARFMAN: We will give you at least as  
11 much extra time as the others.

12 MR. REVELEY: If what we said in our brief doesn't  
13 persuade you, I won't persuade you here. Page 19, it starts.  
14 Full of cites to the record. All sorts of interlocking  
15 reasons.

16 CHAIRMAN SHARFMAN: What about Mr. Like's charts?

17 MR. REVELEY: I did want to talk about them. There  
18 are three problems. The first problem is this is just the  
19 nth time he came in during the post adjudicatory, post  
20 evidentiary stage with a new analysis of load forecast.

21 We complain every time. We haven't had a chance  
22 to cross-examine it. We deal with it and invariably it's  
23 no good.

24 If you would like, we will do the same thing again,  
25 take his charts, take the record, submit something in writing

LT 1 explaining why they are absolutely wrong.

2 CHAIRMAN CHARFMAN: We would like that. I don't  
3 think it's fair to make you respond off the cuff to those.  
4 You don't have them yet, I believe.

5 You will get copies.

6 MR. REVELEY: Three of them vaporized. Three  
7 reasons I can mention off the cuff.

8 First, you don't assume all your generating capacity  
9 is also going to be available to operate. Part of Mr. Like's  
10 economic case was to bring on Charles Kominov many times to  
11 tell us our nuclear plants won't run even if we get them  
12 built.

13 You may not assume 100 percent availability for  
14 your installed capacity. Some will invariably be down for  
15 refueling and maintenance. Scheduled outages.

16 MR. SALZMAN: He took that into account with the  
17 reserve?

18 MR. REVELEY: That is just for emergencies. You  
19 are not supposed to use up your emergency — it's designed  
20 to keep your system online if despite the units you have down,  
21 you don't have enough power.

22 MR. JOHNSON: Surely you don't mean that.

23 MR. REVELEY: I am not sure whether I do or not.  
24 If you say surely I don't mean it, I probably don't.

25 (Laughter.)

LT 1 MR. JOHNSON: My only knowledge of how this capacity  
2 and reserve situation is added up is that the total  
3 generating capacity represents the peak plus 18 percent, or  
4 whatever the reserve margin is in the particular utility area.  
5 But the 18 percent is on top of total capacity, not on total  
6 capacity weighted by availability.

7 MR. SALZMAN: 18 percent above peak demand. You  
8 have to remember peak demand is only complete a few times  
9 during the year. You have a lot of 18 percent reserve, that  
10 gives you a lot more than just 18 percent.

11 MR. REVELEY: The larger the units become and the  
12 more your power, the more dicey it becomes. One 820  
13 megawatt unit is a different kettle of fish than one 400.

14 MR. SALZMAN: The pool decision on 18 percent  
15 presumably takes that into account. Otherwise, you would have  
16 to have a reserve as large as your largest plan.

17 MR. REVELEY: Two ways of handling light. Your  
18 own capacity committed to you. The other is by the help  
19 you get via interconnections. LILCO is not all that  
20 interconnected right now.

21 CHAIRMAN SHARFMAN: Aren't you coming into the  
22 New York pool?

23 MR. REVELEY: Yes, but the ties between Long Island  
24 and New York City and the ties between Long Island and  
25 Connecticut amount to slightly over 500 megawatts at the

LT 1 moment. Though there will be 10 50-megawatts in 1985, I  
2 think.

3 MR. SALZMAN: What is the largest plant now for  
4 LILCO?

5 MR. REVELEY: 385 megawatts, four oil-burning  
6 units at North Port.

7 MR. SALZMAN: The pool lets you get away with 18  
8 percent reserve? What is the total capacity of peak demand  
9 now?

10 MR. REVELEY: It's in number seven. 3000-some  
11 megawatts right now.

12 MR. SALZMAN: That would call for an about-700  
13 reserve. You just got that 400 interconnected.

14 MR. REVELEY: Yes, about 500 megawatts of  
15 interconnections. Somewhere cited in our brief is a statement  
16 by Mr. Madson if the Lighting Company wasn't in fact  
17 interconnected, it would need a much higher reserve margin,  
18 something like 50 percent.

19 MR. SALZMAN: That's true.

20 MR. REVELEY: The 1978 peak was 30-30. We will  
21 get that straightened out in our written reply.

22 MR. LIKE: Did you say 1978 peak or 1977?

23 MR. REVELEY: 1978 forecast. This year.

24 MR. SALZMAN: Let us interrupt, Mr. Like. We  
25 reserve the right to ourselves.

LT 1 MR. REVELEY: You can't take all your installed  
2 capacity and assume it will always be available, whatever  
3 the numbers.

4 Second, it's the case that the Lighting Company,  
5 pointed out on page 25 of my brief, already has a thousand  
6 megawatts of gas turbines, half being built a few years ago.

7 A lot of the capacity now is gas turbine. That is  
8 not the power NYSEG will want to buy for baseload purposes.

9 MR. JOHNSON: Do you have a figure at hand, I  
10 understand it's in the 149(b) proceedings, as to the one,  
11 whether or not baseload demand has gone up in the LILCO area  
12 over the last three or four years, and what the peak to  
13 baseload average ratio is.

14 MR. REVELEY: I think that is 30 percent. Whether  
15 baseload was gone up, I don't know. Is 30 percent right? I  
16 think the ratio of baseload to peak is something like 30 but  
17 I don't know whether baseload itself has gone up as opposed  
18 to peak.

19 My other problem with Mr. Like's chart, off the  
20 cuff, is there is this north to south flow of electricity  
21 in the state. In the summer, when LILCO has its peak and  
22 needs to import power from NYSEG, ConEd also has its peak  
23 and needs to import great amounts of power. You couldn't  
24 do it without building a lot of transmission lines.

25 We will in fact respond in writing to those

LT 1 exhibits. The only thing I was trying to do at the outset  
2 that I haven't finished was tell you about the pending  
3 proceedings. Perhaps I had finished doing that.

4 I believe I had.

5 CHAIRMAN SHARFMAN: I think you did.

6 MR. REVELEY: I am perfectly willing to subside with  
7 a final statement of confidence that there is in this  
8 gargantuan error everything the licensing board needed to  
9 approve the application and everything I believe that you  
10 gentlemen will need to administer the partial initial  
11 decision.

12 It's a gripping experience to encounter it because  
13 it exists in such incredible detail and at times in some  
14 confusion but it's there. We have attempted in our brief  
15 a slimmed-down some-70-page brief to point you in the  
16 appropriate direction.

17 CHAIRMAN SHARFMAN: Thank you very much.

18 We will take a five-minute break.

19 (Recess.)

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1 MR. SHARFMAN: May we come to order, please?

2 MR. REVELEY: Mr. Chairman, may I wrap up one last  
3 end?

4 The discussion of Mr. Frizzola's testimony, the  
5 meteorological arguments, appears principally on pages 7 and 8  
6 of our brief where the pertinent testimony is referenced.

7 Pages 7 and 8 for that discussion.

8 MR. SALZMAN: The only thing I note, that Ms. Tiedke  
9 and Ms. Bachrach are not here yet -- oh, here they are.

10 MR. REVELEY: The other thing to establish is a  
11 schedule for submission of our comments on Mr. Like's  
12 exhibits. When should we file that once we receive the  
13 exhibits?

14 There is apparently some problem about reducing the  
15 cardboard ones to paper.

16 MR. SALZMAN: Can't you take pictures of them?

17 MR. LIKE: I am conferring with Dr. Fisher to see  
18 how soon we can supply them with copies. We are willing to  
19 surrender the charts that were displayed before the Board --  
20 loan them, let me say, so that Applicant will have time to  
21 review them.

22 MR. REVELEY: Staff wants them, too.

23 MR. SALZMAN: Staff can photograph them.

24 CHAIRMAN SHARFMAN: You will have to give them to  
25 everybody. It would be better for you to make the copies.

1 MR. LIKE: We will try to do that within a week.

2 CHAIRMAN SHARFMAN: How much time would you like  
3 after you receive them?

4 MR. REVELEY: 10 days would be fine.

5 CHAIRMAN SHARFMAN: Okay.

6 Mr. Olmstead, it is your turn.

7 MR. OLMSTEAD: Mr. Chairman, members of the Board --

8 CHAIRMAN SHARFMAN: Excuse me. I want to make clear:  
9 any party will have an opportunity 10 days after receiving  
10 copies of Mr. Like's charts to make any comments in reply. Not  
11 merely the Applicant.

12 Whoever would like to may do so.

13 MR. OLMSTEAD: Mr. Chairman, members of the Board:  
14 I don't plan to take advantage, but there are two cases that  
15 were referenced here this morning that I would like to formally  
16 adopt as part of the Staff's brief which came out after we  
17 filed our brief, or received copies of them.

18 One is New England Coalition on Nuclear Pollution  
19 vs. the NRC, which you mentioned earlier this morning, which is  
20 77-1219 in the First Circuit Court of Appeals.

21 I don't yet have a federal second cite.

22 That is the Seabrook decision.

23 MR. SALZMAN: You wanted to use these cases for some  
24 purpose?

25 MR. OLMSTEAD: I think they are important on --

1 CHAIRMAN SHARFMAN: You haven't mentioned both yet.

2 MR. SALZMAN: Before we finish that, those have been  
3 reported for a while. You were under an obligation, if you  
4 wanted to use them, that the minute you saw them to bring them  
5 to the attention of your opponents.

6 MR. OLMSTEAD: You mentioned them this morning. You  
7 and the Chairman. I just wanted to follow up on the comments  
8 you made. They have not been officially referenced in the  
9 record, to my knowledge.

10 That is why I did, because I thought somebody might  
11 discuss them this morning.

12 I don't think they are critical to the Staff's  
13 brief, but since they have been discussed here, I feel the  
14 citations to those cases should be in the record.

15 CHAIRMAN SHARFMAN: What is the second case?

16 MR. OLMSTEAD: The Shearon Harris case, which came  
17 out August 21, ALAB 490 in the matter of Carolina Power & Light  
18 Company.

19 CHAIRMAN SHARFMAN: That is the one I mentioned.

20 MR. OLMSTEAD: Yes.

21 In light of the Applicant's discussion of the  
22 reserve margin requirement just a bit earlier, Mr. Salzman  
23 indicated some surprise that 18 percent was the reserve margin  
24 for LILCO.

25 There is testimony in the record by Madson and

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1 Gundersen concerning the dispatch of power in the New York  
2 Power Pool.

3 The New York Power Pool requires an 18 percent  
4 reserve margin although the pool itself, I believe the  
5 evidence shows, maintains a 22 percent reserve margin which  
6 takes account of the different peaking.

7 MR. SALZMAN: My surprise was the suggestion that the  
8 18 percent was intended to cover emergency outages only and not  
9 to cover normal, when a plant is down for maintenance.

10 I assumed that was one of the requirements of the  
11 reserve as well. That was my surprise.

12 MR. OLMSTEAD: That is part of the reserve  
13 requirement, but it is not all -- all maintenance outages  
14 are not included in that.

15 MR. SALZMAN: They have to reserve margin -- assuming  
16 a plant is down for repairs and another one goes out, the  
17 reserve margin is 18 percent of the operating capacity.

18 MR. OLMSTEAD: They are required to maintain 18  
19 percent as a utility, but because they are dispatched by the  
20 New York Power Pool, my understanding is that they take  
21 advantage of some reduction in reserve margin gained by  
22 dispatching all the utilities in the New York Power Pool  
23 together.

24 If you were dispatching LILCO by itself, the reserve  
25 margin would have to be higher.

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1 I think Gunderson testified as much as 30 percent.

2 MR. SALZMAN: The pool is operated centrally.

3 MR. OLMSTEAD: Every four hours, I think, the  
4 generating capacity of the individual utilities are updated at  
5 the central dispatch center.

6 MR. SALZMAN: Do they change the loads and split the  
7 loads centrally?

8 MR. OLMSTEAD: Yes. A fairly brief discussion of  
9 that that is clarifying is Gunderson's testimony in the record.

10 Now, this morning there was discussion from Mr. Like  
11 about the Board's ruling denying him the opportunity to  
12 cross-examination on the basis of the updated need projections  
13 presented into the record.

14 I would merely note for this Board's information that  
15 the Licensing Board arrived at a ruling preliminarily on the  
16 basis that evidence which is favorable to a party's case is not  
17 necessarily subject to cross-examination by that party.

18 There might have been a different situation had the  
19 Applicant sought to challenge that evidence, and in the Sharon  
20 Harris case I believe they note that in that case, that where  
21 a party sought to cross-examine on evidence which favored their  
22 case-in-chief, the Board was upheld by the Appeal Board in  
23 determining not to afford that opportunity.

24 CHAIRMAN SHARFMAN: You surely don't mean if somebody  
25 demanded to cross-examine a witness that an antagonistic party

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1 offers, that the Board can deny that right to cross-examine  
2 on the ground it feels the testimony is favorable to his case?

3 MR. OLMSTEAD: I don't think we have that situation  
4 here. I think the evidence was offered by the county and they  
5 were seeking to cross-examine —

6 CHAIRMAN SHARFMAN: The evidence was offered by the  
7 Applicants.

8 MR. OLMSTEAD: The updated 149 proceedings have been  
9 offered by stipulation in this proceeding by various parties.  
10 Today you just had the League offering the same updated 149(b)  
11 testimony.

12 CHAIRMAN SHARFMAN: I thought we were talking about  
13 the January 28 submission of updated forecasts by the  
14 Applicants.

15 MR. OLMSTEAD: Right. But it showed a reduced  
16 demand, reduced projection of need by the Applicant.

17 CHAIRMAN SHARFMAN: If Mr. Like asked to  
18 cross-examine at that time, surely the Board could not have  
19 said, "Well, we think" -- I agree, I didn't see his request  
20 either, but you said the ground was it was favorable to him.

21 MR. OLMSTEAD: I am just pointing out in the  
22 Sharon Harris case, page 8 of the slip opinion in that case,  
23 the intervenors did ask for further evidentiary hearings to  
24 permit cross-examination on evidence on a similar type which  
25 was offered in that proceeding, and the Board said that because

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1 it viewed the evidence more favorable to the intervenors'  
2 position than earlier evidence, it was within its rights to  
3 decline further evidentiary hearings.

4 This is the Appeal Board decision, ALAB 490.

5 MR. SALZMAN: I am not sure that is right. Suppose  
6 it was Mr. Like's point the forecast shows a decrease of  
7 perhaps 3 percent in peak demand and he is prepared to show  
8 those figures, if interpreted correctly, it would be a 10  
9 percent reduction.

10 Why shouldn't he be entitled to cross-examination?

11 MR. OLMSTEAD: If he made that offer of proof and the  
12 parties made their arguments as to whether that was a  
13 significant decrease or not --

14 MR. SALZMAN: Was there an offer of proof made?

15 MR. OLMSTEAD: I don't believe so.

16 CHAIRMAN SHARFMAN: In this case there wasn't even a  
17 request. I don't know what was in Sharon Harris.

18 MR. SALZMAN: There was no request here to reopen the  
19 hearing, was there?

20 MR. OLMSTEAD: No, sir.

21 The other question I would like to address is -- you  
22 raised the question as to whether you should follow Sharon  
23 Harris concerning the situation we have in this case where the  
24 state board has not yet ruled.

25 CHAIRMAN SHARFMAN: I wouldn't put it that way. I

ion

1 don't think Sharon Harris reached the question of the type  
2 we have here.

3 Sharon Harris had a state determination and  
4 decided to give deference to it. We don't have a state  
5 determination.

6 MR. OLMSTEAD: That's correct. I agree with that  
7 analysis. That was going to be my point, that Sharon Harris  
8 is not applicable in the situation.

9 CHAIRMAN SHARFMAN: The question was whether we  
10 should extend Sharon Harris.

11 MR. OLMSTEAD: My answer is no. There is a simple  
12 thing you can do if that bothers you: you can condition the  
13 issuance on permits pending the receipt of a favorable  
14 Article 8 proceeding.

15 MR. SALZMAN: It doesn't make much difference, does  
16 it? They can't go ahead without that.

17 MR. OLMSTEAD: That's right. The Staff position is  
18 you don't need to. The record is complete. The Licensing  
19 Board made findings as required by NEPA and the Atomic Energy  
20 Act. Our duty is to proceed.

21 CHAIRMAN SHARFMAN: I don't see that as a legally  
22 valid means of proceeding. Even according to Sharon Harris,  
23 we only give deference to the state determination. We don't  
24 abdicate in favor of the state determination. So that we would  
25 have to evaluate the state determination, and that evaluation

ion  
1 might involve new hearings before us.

2 MR. OLMSTEAD: My point is that that only occurs if  
3 you don't arrive at a decision. If you do arrive at a decision  
4 and affirm the Licensing Board case, the Staff or a party to  
5 the proceeding would have to move appropriately under the rules  
6 of practice and demonstrate there is significant new  
7 information to justify reopening the record.

8 MR. SALZMAN: Do you think it would be totally  
9 irrational for this Board to delay decision on need for power  
10 pending a decision by the New York State Board on the same  
11 issue?

12 MR. OLMSTEAD: I don't think it would be totally  
13 irrational but I think it puts the agencies in a position where  
14 the Applicant gets caught in a revolving door.

15 What prevents the state from saying, "We would like  
16 to see what NRC has to say about need for power because they  
17 have to consider some other issues here"?

18 MR. SALZMAN: There are two answers to that. One,  
19 they haven't said that. Second, a need for power is normally,  
20 as far as we know, an issue not of primary concern to the NRC,  
21 but of primary concern to the state agencies.

22 MR. OLMSTEAD: The projections are a primary concern  
23 to the state agencies.

24 MR. SALZMAN: The state government is responsible for  
25 seeing that electric power is submitted to the people in the

ion 1 states. Not NRC.

2 MR. OLMSTEAD: True, but they don't have the NEPA  
3 obligation that has caused this Board to focus on the  
4 substitution doctrine and the coal versus nuclear cost  
5 comparisons either. They are slightly different  
6 considerations.

7 MR. SALZMAN: The substitution doctrine isn't a  
8 product of NEPA. It is a product of common sense to a certain  
9 degree.

10 I presume the State of New York is as common sensical  
11 as anybody else in this area, or ought to be.

12 MR. OLMSTEAD: I don't think that you are legally  
13 barred in staying your hand. I just think you have to  
14 assess the practicality of agencies getting involved and  
15 wanting to be the last to act.

16 We have a complete record here. There is no  
17 demonstration that there is new evidence that would  
18 substantially affect the decision that the Licensing Board  
19 made. Particularly based on our precedents and the need for  
20 power area, I don't see what the Board would gain by deferring  
21 and waiting for a state decision.

22 CHAIRMAN SHARFMAN: I gather the state decision is  
23 likely -- well, a 149(b) decision has to come out in the fall,  
24 but we don't know when the Siting Board on Jamesport will  
25 decide; is that right?

1 MR. OLMSTEAD: That's correct. I really have no way  
2 of projecting what the state decision schedule might be.

3 MR. SALZMAN: Or if they will even reach one.

4 MR. OLMSTEAD: That's correct.

5 I really don't have any other points to cover except  
6 that I did want to, in passing, mention one thing that I think  
7 is important to take note of.

8 We mentioned it in a brief that was filed before the  
9 Licensing Board, but the League of Women Voters did bring to  
10 the Staff's attention in their case the Golden Nematode, which  
11 resulted in a condition being placed on the licensee to protect  
12 the potato crops in Long Island.

13 CHAIRMAN SHARFMAN: What is that?

14 MR. OLMSTEAD: An insect which attacks the potato  
15 root and has been a problem in Long Island for some time and  
16 can be transmitted by carrying earth or vegetation from field  
17 to field. It did result in a condition placed on the license  
18 by the Long Island Board and the Staff was appreciative of the  
19 League's efforts in bringing this to our attention.

20 CHAIRMAN SHARFMAN: What is the relevance of that on  
21 appeal?

22 MR. OLMSTEAD: It isn't relevant. I felt obligated  
23 to bring it to your attention because the League was, this  
24 morning, indicated that it was laboring under some difficulty  
25 and I wanted it to realize that its efforts were appreciated.

1 CHAIRMAN SHARFMAN: All right.

2 MR. SALZMAN: What about Mr. Like's argument in view  
3 of these new developments on need for power it is necessary to  
4 redraft the statement to reassess the need for the plant and  
5 recirculate it?

6 I . other words, you need a new impact statement.

7 I take it your point is he is just incorrect about  
8 the need for power and, therefore, we don't reach the question?

9 MR. OLMSTEAD: I think he is incorrect about the need  
10 for power argument because he is still arguing a record showing  
11 projections at 1984 and the record has been updated to the  
12 1989-'90 time frame.

13 But on the recirculation argument, I think the recent  
14 Seabrook case addresses the recirculation issues well and that  
15 is that this is not a matter where there is any party in  
16 interest who hasn't had notice of these developments nor was  
17 unable to comment effectively on the draft statement and the  
18 environmental impact statement process.

19 CHAIRMAN SHARFMAN: Which recently Seabrook decision?  
20 There have been so many. The First Circuit?

21 MR. OLMSTEAD: Right, which you mentioned earlier  
22 this morning.

23 If there are no further questions --

24 CHAIRMAN SHARFMAN: Let me go down my list here and  
25 see.

All right. Thank you.

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1           There was a question this morning as to whether  
2 some of the Intervenors wanted a brief right of rebuttal.  
3 Would you still like some rebuttal time?

4           MR. LIKE: YES.

5           CHAIRMAN SHARFMAN: We will give you five minutes.

6           MR. LIKE: Could I have a few minutes to assemble  
7 my notes?

8           CHAIRMAN SHARFMAN: Surely. Would the League like  
9 that, too? All right.

10          (Recess.)

11          CHAIRMAN SHARFMAN: We will come back to order,  
12 please. Ladies and gentlemen, we would like to get the hearing  
13 back to order.

14          Mr. Like, you have five minutes for rebuttal.

15          MR. LIKE: Thank you. I believe it does make sense  
16 for this Board to await the determination of the Siting Board.  
17 As we have argued in our brief, the states do have the  
18 responsibility for determining need and in the process of  
19 making that determination the issues of substitution and  
20 diversity which have been alleged by the Applicants as  
21 justifying your Board in proceeding will of necessity be  
22 decided by the state board.

23          The state board doesn't just look at whether or not  
24 there is a need to meet peak demand. It will look at all the  
25 arguments presented by the Applicant and Staff and the state

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1 has a peculiar propensity to do this, which is not present  
2 in this proceeding. That is the Public Service Commission  
3 staff is a participant in the proceeding with all their  
4 expertise, the Department of Environmental Conservation is  
5 also a participant. So the record in that proceeding is more  
6 comprehensive than the record before the NRC on the issue of  
7 need, on the issue of diversity, on the issues of substitution  
8 and all the arguments that have been preferred by Mr. Reveley.

9 Contrary to his comment, the Siting Board record  
10 on the issue of need is of necessity more comprehensive than in  
11 this proceeding because of the nature of the participants and  
12 their statutory responsibility. Namely, the fact that the  
13 Public Service Commission staff and DEC staff are statutory  
14 parties to that proceeding. Once the Siting Board does reach  
15 a determination as to need, then that determination becomes  
16 an input which should then be used by NRC as part of its  
17 cost-benefit process, so that indicates --

18 MR. SALZMAN: Are we bound by the Siting Board  
19 decision?

20 MR. LIKE: You're on the question of need, on the  
21 question of whether or not the plant is needed and whether or  
22 not the plant should proceed. If no certification is given,  
23 as I believe some of you mentioned, this may be fatal to the  
24 Applicant's plans.

25 CHAIRMAN SHARFMAN: Suppose they decide the plant

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1 is needed and give certification. Are we bound?

2 MR. LIKE: If they decide the plant is needed, you  
3 must independently under the NEPA as part of the cost-benefit  
4 process plug that determination into the benefit side and then  
5 do the weighing process.

6 CHAIRMAN SHARFMAN: We are bound if they decide  
7 your way, you're telling us?

8 MR. LIKE: You're bound as to whether the project  
9 can go forth because if the state doesn't give certification  
10 the project can't go forth. However, the state certifies  
11 there is a need you still must make an independent  
12 determination based on all the other factors and cost-benefit.

13 MR. SALZMAN: You just told us the state is uniquely  
14 qualified to do this and they have their environmental agency  
15 present and recommend on the Board. If they decide in favor  
16 of the plant, shouldn't we be bound that way, too?

17 MR. LIKE: No, because you may find there are  
18 environmental, safety or other factors which outweigh the  
19 benefit side of the scale.

20 MR. SALZMAN: Perhaps on the question of  
21 radiological health and safety you may be right, but otherwise  
22 you seem to be cutting against us.

23 MR. LIKE: I don't believe so. You put your finger  
24 on it. You may decide on grounds which are peculiar within  
25 the jurisdiction of the NRC, such as radiological issues and

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1 other issues where there is preemption that the project  
2 shouldn't proceed, even though there is a certification of  
3 need.

4 CHAIRMAN SHARFMAN: On environmental ground, you  
5 would say it would be benefiting. The determination of the  
6 Siting Board.

7 MR. LIKE: Not necessarily. Whenever in that  
8 situation, you would be looking at the state's determination,  
9 looking at the findings of fact that are contained in that  
10 certification and then plugging that in as an input to your  
11 cost-benefit process.

12 CHAIRMAN SHARFMAN: Would you have the right to  
13 challenge it if it were adverse to you?

14 MR. LIKE: The right of judicial review would  
15 pertain to both proceedings.

16 CHAIRMAN SHARFMAN: Would you have the right to  
17 challenge it before us?

18 MR. LIKE: Challenge what?

19 CHAIRMAN SHARFMAN: The determinations of the Siting  
20 Board as to environmental impact.

21 MR. LIKE: Would the determination as to  
22 environmental impact be benefiting on you? On certain matters  
23 they might. On others, they might not. On matters having to  
24 do, for example, with subjects that are within the particular  
25 expertise or competency of the Department of Environmental

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1 Conservation, I would reserve the right to argue that you  
2 would be bound by them. In other areas where there are  
3 safety questions involved, that come within the peculiar  
4 expertise of the NRC, I would say that you would not be  
5 bound by their findings.

6 MR. SALZMAN: Doesn't Calvert Cliffs hold we can't  
7 be bound on NEPA questions?

8 MR. LIKE: We are talking about findings now. You  
9 have an independent duty under NEPA. I would agree with that.  
10 You have an independent duty to do a cost-benefit balancing  
11 judgment using the state's determination and findings as  
12 inputs to that process.

13 CHAIRMAN SHARFMAN: Go ahead. You don't have much  
14 time. Do you have any other points?

15 MR. LIKE: The other point I wish to make is that  
16 the charts we used will indicate after you receive them that we  
17 didn't use any different methodology than the Board below did  
18 in selecting the dates of need. Any concerns or criticisms you  
19 have as to whether or not we distinguish between baseload and  
20 peaking capacity in the evaluation of the excess capacity would  
21 apply equally to the Board table, would apply equally to the  
22 Board timing decisions. What we tried to do with the charts  
23 was to show the inadequacy of the Board's analysis. The  
24 charts are simply a graphical analysis of what we presented in  
25 the brief. Neither the Board nor the parties at any time made

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1 any analysis of whether baseload capacity as distinguished  
2 from peaking capacity was needed.

3 The issue that was addressed was when would excess  
4 capacity be needed of all types. We prepared our charts on  
5 that basis.

6 CHAIRMAN SHARFMAN: That was the basis of the  
7 Licensing Board's decision.

8 MR. LIKE: Yes. We simply attempted to show there  
9 was a misunderstanding of the Board by the Licensing Board.  
10 I have one other point that I wish to make as part of an  
11 update.

12 Mr. Reveley did mention to you that one of the  
13 proceedings on the state level that has still not reached  
14 a conclusion is the generic proceeding on the comparative  
15 economics of coal versus fuel. It may be of interest to the  
16 Board to know that in their initial brief, which was delivered  
17 and served in June 1978, the Public Service Commission staff  
18 reached the conclusion that the economics of coal versus  
19 nuclear in New York State were largely indeterminate and no  
20 confident prediction could be made as to which has the  
21 economic advantage.

22 CHAIRMAN SHARFMAN: I don't think we can base  
23 anything on a brief of that kind.

24 MR. LIKE: I have one comment on the recirculation  
25 question which came up when NRC counsel was arguing. I don't

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1 believe that he has correctly stated the law. The initial  
2 final environmental statement or the final environmental  
3 statement was based upon an application which had no  
4 connection with NYSEG. It was an application by the  
5 lighting company which forecasted peak demand I believe for  
6 the early '80s and was an application asking permission to  
7 build Jamesport to meet the needs of the LILCO service area.

8 The agreement between LILCO and NYSEG was entered  
9 into in February of 1976. That's the 50-50 agreement. That  
10 agreement was never evaluated as part of the EIS process.  
11 Neither have any of the subsequent developments such as the  
12 four-year deferral ever been evaluated as part of the NEPA  
13 process. Where you have a material changing of circumstance  
14 of that nature, we are saying this imposes upon NRC the duty  
15 to file an amended or supplemental statement.

16 That concludes my argument. I have a housekeeping  
17 item I wish to call to your attention. The brief of the  
18 Staff, attention was called to an erroneous citation in our  
19 brief which I would like to correct as an errata. On page 8  
20 of the County's brief, in support of the exceptions we cited  
21 CEQ guideline section 1500.6D2. The proper citation should have been  
22 section 1500.11B, which states in pertinent part as follows:

23 "An agency may at any time supplement or amend a  
24 draft or final environmental statement particularly when  
25 substantial changes are made in the proposed action or

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1 significant new information becomes available concerning  
2 its environmental aspects. In such cases the agency should  
3 consult with the counsel with respect to the possible need  
4 for or desirability of recirculation of the statement for the  
5 appropriate period."

6 I don't believe there ever was any such effort on  
7 the part of the NRC to consult with the CEQ as to whether or  
8 not there should be a supplemental statement.

9 CHAIRMAN SHARFMAN: Thank you, Mr. Like.  
10 The League of Women Voters?

11 MS. BACHRACH: We believe Mr. Reveley stated that  
12 the Siting Board was waiting until after election to site.  
13 Actually, that Board was to meet on October 24, but they  
14 postponed that meeting because a new member was to sit and  
15 asked for additional time to familiarize herself with the  
16 record. Contrary to the Staff and Applicant, the League has  
17 no axe to grind and no position to defend when it entered  
18 these proceedings. Requirement of contentions forced us to  
19 appear to take sides. As to the attitude of the Applicant  
20 that any criticism or questioning was tantamount to opposition,  
21 the fact that the regulations have altered their requirements  
22 recently didn't affect us.

23 In its memorandum and order CLI 75-1 of January 27,  
24 1975, which was the Northern States Power Company Prairie  
25 Island Nuclear Generating Plant Units 1 and 2, ALAB-252, the

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1 Commission said "We wish to underscore the fundamental  
2 importance of meaningful public participation in our  
3 adjudicatory process. Such participation performed in the  
4 public interest is a vital ingredient in establishing public  
5 confidence in the sound discharge of the important duties  
6 which have been entrusted to us."

7 As for League, our confidence in the adjudicatory  
8 process until now as exemplified by the Jamesport procedure  
9 has been badly shaken. Thank you.

10 CHAIRMAN SHARFMAN: Well, are there any other loose  
11 ends that any counsel can think of? Ms. Tiedke?

12 MS. TIEDKE: You asked me where in my brief there  
13 was a list of the record of my request regarding the Glazer --

14 CHAIRMAN SHARFMAN: Very good. Thank you very much.

15 MS. TIEDKE: Page 52 and 53 in our brief on  
16 exceptions.

17 CHAIRMAN SHARFMAN: Does that say where in the  
18 record you made the request?

19 MS. TIEDKE: They were made as motions. This lists  
20 the motions.

21 CHAIRMAN SHARFMAN: It tells when the motions were  
22 made.

23 MS. TIEDKE: Yes. The dates.

24 CHAIRMAN SHARFMAN: Were they denied orally or in a  
25 written decision?

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1 MS. TIEDKE: Written. The dates are in here.

2 CHAIRMAN SHARFMAN: Thank you very much.

3 MS. TIEDKE: One other thing. Mr. Olmstead mentioned  
4 adopting into his own brief a certain legal document. I forgot  
5 the number of it. Would it be possible for me to do that for  
6 the League with the Glazer report?

7 CHAIRMAN SHARFMAN: No, I'm afraid not.

8 MS. TIEDKE: Because it's not a legal document?

9 CHAIRMAN SHARFMAN: Either a document is in the  
10 record as a piece of evidence or it's not. In view of the  
11 fact that you don't have the agreement of all parties, which  
12 wouldn't be binding on us in any event but it would be  
13 persuasive, in view of that, what we have before us is the  
14 question of whether or not the Licensing Board erred in  
15 refusing or denying your motion to bring that into the record.  
16 That is the only question we have before us. That is the  
17 only way it can be dealt with. You can't get in through the  
18 back door by just attaching things to your brief. The brief  
19 is not part of the record, either. It's merely argument.

20 MS. TIEDKE: Is the PID part of the record?

21 MR. SALZMAN: That's the decision. It's based on  
22 the record. The record is the facts presented.

23 CHAIRMAN SHARFMAN: The evidence, it's the record.

24 MR. LIKE: Mr. Chairman, I'm sorry, I found another  
25 loose end, if I may.

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1 CHAIRMAN SHARFMAN: Have we finished with you,  
2 Ms. Tiedke?

3 MR. JOHNSON: It may be a misunderstanding. I think  
4 the two items Mr. Olmstead referred to were court or Appeal  
5 Board decisions. They may be relied upon for legal questions  
6 but not for any evidence.

7 MR. SALZMAN: Let me suggest you have a problem of  
8 judge and jury here. The jury is the tryer of the facts.  
9 The facts must be presented to the Licensing Board. What the  
10 Licensing Board does with it is its decision. It's not part  
11 of the record, itself. It's like the jury verdict, guilty  
12 or not. But guilty or not is based upon the testimony of the  
13 witnesses that came before the jury. That in essence is  
14 the record.

15 CHAIRMAN SHARFMAN: We are speaking of the  
16 evidentiary record. Of course, it's before us on appeal  
17 because we are reviewing it, but it's not part of the  
18 evidentiary record.

19 MR. SALZMAN: We don't hear evidence on our own  
20 here.

21 CHAIRMAN SHARFMAN: Usually not.

22 MR. LIKE: During the course of oral argument I cited  
23 several federal reports and I would like to place the  
24 citations identifying those reports in the record. The  
25 so-called Lewis report is the risk assessment review group

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1 report to the U.S. NRC, NUREG-CR-0400, September 1978.

2 I also referred to federal policy statement with  
3 regard to high level waste disposal and the document I have  
4 in mind, two documents, one is draft environmental impact  
5 statement, storage of spent power reactor fuel, DOE/EIS-015-D  
6 August 1978. And U.S. Department of Energy report of task  
7 force for review of nuclear waste management, DOE/ER-004/D,  
8 February 1973 draft.

9 CHAIRMAN SHARFMAN: Thank you. That seems to be  
10 all we have today. I want to thank the parties for their  
11 participation and for their briefs. Once we receive Mr. Like's  
12 charts and any responses to them, the case will stand  
13 submitted.

14 That's all for today. Thank you.

15 (Whereupon, at 4:00 p.m., the hearing was adjourned.)  
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