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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

- - - - -x
: In the Matter of: :
: LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL
: (Shoreham Nuclear Power Station) : :
- - - - -x

Room 3B46, Third Floor
B Building
Court of Claims
State of New York
Veterans' Memorial Highway
Hauppauge, New York 11787
Tuesday, August 24, 1982

The hearing in the above-entitled matter
convened, pursuant to notice, at 10:38 a.m.

BEFORE:
LAWRENCE BRENNER, Chairman
Administrative Judge
JAMES CARPENTER, Member
Administrative Judge
PETER A. MORRIS, Member
Administrative Judge

1 APPEARANCES:

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C O N T E N T S

1			
2	<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u> <u>REDIRECT</u> <u>RECROSS</u> <u>BOARD</u>
3	Jerry Mauck,		
4	Joseph Baron and		
	John Schmitt (Called)		
5	and		
	John Kreps,		
6	John Rigert and		
	Charles Rossi (Recalled)		
7	By Mr. Earley	9451	
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1 P R O C E E D I N G S

2 JUDGE BRENNER: Good morning.

3 We have a few miscellaneous matters, and then
4 we will turn to the discussion of the dispute on quality
5 assurance, quality control, the documents we did
6 receive, the further filings on that subject yesterday
7 from Suffolk County and LILCO. We received no filing
8 from the staff on that subject, so if there is one, we
9 don't know about it.

10 MR. DEWEY: I don't think there is a filing,
11 and I think that our position will be that we take no
12 position with respect to this dispute.

13 JUDGE BRENNER: I want to announce that at our
14 request a new board is going to be appointed to oversee
15 further narrowing and or settlement of security issues,
16 and if necessary, to hear the litigation of those
17 issues. The chairman of the new board is going to be
18 James A. Laurenson, La-u-r-e-n-s-o-n. The other members
19 of the board will be Judge Jerry Harbour, H-a-r-b-o-u-r,
20 and the third judge will be a man who cannot stay away,
21 no matter how hard he tries, Judge Walter Jordan.

22 This board does wish to thank the parties for
23 the very helpful status report of August 17th on
24 security issues. Obviously, a lot of hard work went
25 into it, and it was very helpful to our decision.

1 Our decision the other day to ask that a new
2 board be appointed is a reflection of our own work load
3 on other issues in this case, and not a reflection of
4 our lack of confidence in further negotiation by the
5 parties. We agree with the parties that further
6 negotiation could well be fruitful, but we were afraid
7 we would begin to do the parties a disservice by our
8 lack of time to focus on the status of issues as they
9 were becoming focused.

10 We would like to inquire for the benefit of
11 the new board primarily whether or not the attorneys now
12 have the excerpts from the Diablo Canyon decision that
13 the Commission said would be turned over. We have a
14 concern as to that, because there was an unexplained lag
15 in the amount of time this board received those excerpts
16 from the data and the cover memorandum transmitting them.

17 Mr. Earley, have you and Mr. Ellis received
18 them?

19 MR. EARLEY: Judge Brenner, we have not
20 received the safeguards portions of the Diablo Canyon
21 opinion that the Commission ordered that we could have
22 access to.

23 JUDGE BRENNER: I am concerned that the
24 parties don't see the time frame constraints that we see
25 on these issues, and I'll tell you why I say that in

1 this instance. There is a cover memorandum dated back
2 on August 4th, transmitting portions of the Diablo
3 Canyon decision containing safeguard information to Mr.
4 Bordenick with a note that these are the portions that
5 would be disclosed subject to non-disclosure agreement
6 being agreed upon by the parties and approved by the
7 board, that this is because of the possible argument
8 that the previous non-disclosure agreements do not apply
9 to Diablo Canyon, and it is noted in passing in the
10 Commission decision, and there seems to have been a
11 great deal of inertia since that transmittal.

12 I suggest you contact Mr. Bordenick and find
13 out what is up. One reason it is most unfortunate is my
14 personal view that if the attorneys had had those
15 excerpts, now that I have read them, if the attorneys
16 had had those excerpts prior to the August 17th status
17 report, it might have made a difference in the status of
18 possible settlement as to the design basis threat by
19 that report.

20 So, hopefully that could be worked out very
21 quickly, and I think it would be very material to your
22 further negotiations, which I know you are planning to
23 proceed with this week, in fact.

24 MR. LANPHER: Judge Brenner, I believe we have
25 copies of that safeguard information. I believe Mr.

1 Mille of our office went over to Mr. Bordenick's office
2 and read the material there, but I am having someone
3 check on that, just so we know what our status is. I
4 don't know what the exact date of that is, but my
5 understanding is, we don't have it in the office.

6 JUDGE BRENNER: I think what was contemplated
7 is that the attorneys, at least, can have access to
8 those documents under the normal provisions that we have
9 already made for safeguards material, subject only to a
10 new agreement, with particular reference to that
11 material being executed and approved by the board. That
12 will be Judge Laurenson and the new board now.

13 There is another pending matter with respect
14 to the Diablo Canyon decision, and that is the question
15 of access to the experts in addition to the attorneys.
16 Judge Laurenson has asked me to request that the parties
17 discuss the matter further and include Pacific Gas and
18 Electric in the discussion, as to whether agreement can
19 be reached for access by those experts to the same
20 portions turned over to the attorneys by the Commission
21 decision or, perhaps, some portions thereof.

22 What the new board is planning is to schedule
23 a settlement conference at some point in September, and
24 it is hoped that there will be the benefit of further
25 discussions by them. I also believe they are going to

1 ask for a prior written status report before that
2 conference. It is possible, I suggest, that you can
3 find, once the attorneys, of course, have seen the
4 portions, you can find portions within those portions
5 that provide whatever information may be necessary for
6 the experts to have without providing any details as to
7 the Diablo Canyon situation which, as I read PG&E's
8 filing, was their primary concern.

9 I did not see a filing from LILCO in response
10 to Suffolk County's request for access by its experts,
11 and if there is one, I missed it.

12 MR. EARLEY: Judge, we don't intend to submit
13 a written filing, although we would support Pacific Gas
14 and Electric's position at this time.

15 JUDGE BRENNER: You would support Pacific Gas
16 and Electric's position?

17 MR. EARLEY: (Nods affirmatively.)

18 JUDGE BRENNER: I should not guess what that
19 position will be. I gather further that you are not
20 going to request access by any LILCO expert.

21 MR. EARLEY: Judge, we don't think it is
22 necessary at this time that our experts have access to
23 that in the conduct of negotiations. We are still
24 optimistic that negotiations will be successful.

25 JUDGE BRENNER: You are not precluding the

1 possibility that if negotiations are not successful, you
2 might want your experts to have access to portions of
3 that decision?

4 MR. EARLEY: That may be a possibility. It is
5 somewhat hard to judge, since we haven't seen all the
6 excerpts, but based on reading the unclassified version
7 of the opinion, we don't see a need for our experts to
8 see it at this time.

9 JUDGE BRENNER: We have nothing else on the
10 subject of security. Our purpose this morning was to
11 make the announcement of the new board, and to make sure
12 that the items we discussed would be active among the
13 parties prior to the new board requesting status reports
14 and scheduling settlement conferences.

15 The next subject is emergency planning. We
16 have received the August 23rd motion to compel documents
17 filed by LILCO against Suffolk County. We would like
18 the parties to let us know by tomorrow morning what
19 schedule they plan to discuss their motion among
20 themselves, and if there is no resolution, when Suffolk
21 County would respond to the motion.

22 Given the schedule of things, we suggest all
23 that should be completed this week or at the beginning
24 of next week at the latest, but let us know tomorrow
25 morning.

1 Also on emergency planning, we have received
2 the joint filing by the county and other intervenors of
3 the restated contentions. We have seen no filing by the
4 staff or LILCO in response, and I would like to inquire
5 as to the status of that.

6 MR. CHRISTMAN: I believe they are due today,
7 Judge, and we will file a response today.

8 MR. BLACK: That same response goes for the
9 staff. We intend to file our response to the revised
10 contentions today.

11 JUDGE BRENNER: We will receive it up here
12 today, here.

13 MR. BLACK: I did not make provisions for
14 that. However, I can get it here tomorrow if the board
15 sees a need for that.

16 JUDGE BRENNER: Yes, all the dates are
17 received dates. We would like it today.

18 MR. BLACK: All right.

19 JUDGE BRENNER: And tomorrow morning, at the
20 latest.

21 We also have received Suffolk County's request
22 to set a testimony filing date on emergency planning of
23 30 days after the staff's final report on their site
24 audit activities with respect to emergency planning or
25 November 1st, whichever is later. We are not prepared

1 to grant that request at this time. That doesn't
2 preclude the possibility that we might not end up with a
3 filing date close to that time. However, it is also
4 clear that the presently scheduled date of September
5 14th is too soon, unnecessarily soon in addition to
6 being too soon.

7 We are prepared to make an interim adjustment
8 which will remain the filing date unless we change it,
9 but we are willing to take a fresh look at it. We would
10 suggest October 12th as the filing date, but we will
11 hear from the other parties on it.

12 MR. CHRISTMAN: Judge, we are planning to
13 respond to the county's motion in our filing today on
14 the contentions, and the draft I have seen of that
15 suggests that we adhere to the September 14th filing
16 date. I haven't had a chance to think about October
17 12th, but we feel that the original date is a good one
18 because we think the necessary information will be
19 available to file testimony on, and we are preparing
20 testimony aimed at that date, and finally, because we
21 think the requirement that the testimony be filed on
22 that date will focus the parties on the issues better
23 than any of the efforts so far have done.

24 JUDGE BRENNER: All right. We will wait until
25 we see your filing, but our present inclination is that

1 September 14th is unnecessarily soon, balancing the fact
2 that we agree with your point that the filing of
3 testimony consists in focusing matters that we expressed
4 our disappointment before with the shifting of that
5 date, and all the other earlier filing dates, as
6 accurately stated in the county's motion, were keyed to
7 that date.

8 We also stated that we would not necessarily
9 make a day for day adjustment once that date shifted,
10 which is why we are not automatically granting the
11 county's request which would, in effect, be a day for
12 day adjustment. We will take another look at the filing
13 date after the interim report is received from the staff
14 at the beginning of September, and also with a closer
15 look at where we are in the schedule of other issues.

16 MR. BLACK: Judge Brenner, on what you just
17 said, does that mean that the board is deferring
18 consideration of the county's motion pending further
19 developments on the interim report?

20 JUDGE BRENNER: Yes and no. We are going to
21 set an interim filing date, probably later than
22 September 14th. We will do that after having the
23 benefit of LILCO's response, since they are planning to
24 include it, and we were prepared to make a decision
25 without hearing much argument, but since -- an interim

1 decision, but since Mr. Christman indicates LIILCO has
2 gone to the effort of responding, we will take the
3 benefit of those views.

4 MR. CHRISTMAN: Yes, Judge. Thank you. The
5 response will be -- the substance of the response on the
6 date will be not much more than what I have just told
7 you. However, I think from the overall filing, the
8 basis for our assertion that filing testimony will
9 better focus the issues may become clear, so perhaps it
10 would be a good idea to look at the whole document.

11 JUDGE BRENNER: All right. We will come back
12 tomorrow morning, and to further answer your question,
13 Mr. Block, whatever date we set will be an interim date,
14 and it will remain the filing date if we don't change
15 it, but we will take another look at it after the
16 staff's interim report, and we will also look at the
17 schedule of the proceeding on other issues. We opined
18 earlier that change in staff date presented a risk of a
19 gap in the hearing, and that is why we were as unhappy
20 as we were when we heard about it. Our reasons at the
21 time, as you know, were not that it was a legal
22 prerequisite, but as a practical matter, in conjunction
23 with our responsibilities for efficiently managing the
24 litigation of this proceeding, we felt that report, we
25 felt the schedule and the substance would be better if

1 that report was out. Whether or not we make an
2 adjustment in that is something we will have to decide.

3 That is all we have on emergency planning for
4 today. We have received the county's letter indicating
5 that it is withdrawing the remainder of its testimony on
6 ATWS Suffolk County 16, and we note that for the
7 record. In light of that, the first matter for
8 litigation will be Suffolk County 27, post-accident
9 monitoring, which we will start on today. That is all
10 we have, except for the discussion of the quality
11 assurance discovery dispute.

12 MR. LANPHER: Judge Brenner, at some point it
13 might be useful if we apprise the board of where we
14 stand on some of the other issues also. Mr. Reveley and
15 I talked before the start of today's session, and at a
16 convenient time we would be prepared to briefly discuss
17 that with the board, so you know what will be coming up
18 or potentially coming up after the 27th. There have
19 been some developments.

20 JUDGE BRENNER: We can do that now, and you
21 reminded me of one thing I omitted. We had been led to
22 believe there was a possibility as to SC-27 that there
23 would be agreement on some of the subparts, and we have
24 heard nothing final as to that.

25 MR. LANPHER: I think there has been

1 agreement. Ms. Letsche and Mr. Earley can talk about
2 that, if you want to do that first.

3 JUDGE BRENNER: Yes, since that will come up
4 first. Nobody tells us.

5 MR. EARLEY: Judge Brenner, we are working
6 right now on putting together the papers on both a
7 partial resolution of a number of the pieces of Suffolk
8 County contentions, SOC-3, and I will give you those
9 numbers. The partial resolution will deal with Parts B,
10 E, F, I, and J, and those parts will be completely
11 resolved. We will also have a stipulation regarding two
12 other pieces of the contention. The first will be just
13 one aspect of Part A, involving fixed radiation
14 monitors, and we are agreeing that that issue will be
15 treated in emergency planning, and with respect to Part
16 K of the contention, BWR thermocouples, we will agree
17 that that issue will be treated as part of an adequate
18 core cooling, since it is related to inadequate core
19 cooling issues.

20 That will leave us with Parts A, B, G, and H
21 to litigate today.

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1 JUDGE CARPENTER: Would you repeat that,
2 please?

3 MR. EARLEY: Parts A, D, G, and H are the
4 pieces that remain for litigation.

5 JUDGE BRENNER: Okay, thank you. We might as
6 well hear as to the status of issues coming up after
7 SC-27.

8 MR. REVELEY: Judge, let me tell you what our
9 basic objective is, and I think it is one that Mr.
10 Lanpher and I share. That is, that before we begin the
11 QA testimony that we resolve all pending issues,
12 including those that have settlements under discussion,
13 either resolve them completely or litigate them, with
14 one exception. That is, inadequate core cooling.

15 As to inadequate core cooling, it is LILCO's
16 understanding that the Staff wants certain information
17 that has not yet been provided by the BWR owners group
18 and by LILCO in turn commenting on the BWR owners group
19 studies. That information is not going to be available
20 until the mid to late September.

21 Therefore, it is our understanding that so far
22 as the Staff is concerned and thus so far as we are
23 concerned it would be preferable to delay ICC, lest we
24 have a loss of contention accident. We were traumatized
25 by the near large break loss of contention accident on

1 SRB's and would rather not have another one.

2 JUDGE BRENNER: You may have a small break on
3 an SC-27, but we will will wait for that.

4 MR. REVELEY: There are some risks to small
5 break ones.

6 ICC is the only issue that we think needs to
7 be deferred. As to the various settlements, a lot of
8 progress has been made over recent weeks, in particular
9 the last two weeks. And it is our view that loose parts
10 monitoring, electrical separation, ALARA, human factors
11 procedures, and human factors simulator will settle in
12 toto, though one can never predict with absolute
13 confidence until the documents are fully written and
14 signed.

15 It remains to be seen whether cracking and
16 materials will have one open item, the open item you are
17 already familiar with. It is possible that human
18 factors equipment will have a couple of items that must
19 be litigated.

20 But to repeat my threshold comment, it is our
21 desire that before we go to QA we clean everything up,
22 we either settle it or we litigate it, with the
23 exception of ICC. If you like, I can go through the
24 numbers in a more systematic fashion than I have.
25 That's part A.

1 Part B, given the size of the QA panels, at
2 least LILCO's, and given the uncertainty of the
3 remaining QA discovery at the moment, Mr. Lanpher and I
4 feel that it would be best to set a date certain for the
5 beginning of the QA testimony, in the same fashion that
6 we set a date certain for the beginning of the 7.B
7 testimony.

8 Our proposal is that we set that date at
9 September the 14th, again ensuring that by September the
10 14th we've finished everything else, though in my
11 judgment we can finish it before September the 14th.
12 Our expectation is that the documents that are still,
13 the QA documents that are still either in the process of
14 being turned over to the County by LILCO or that are the
15 subject of a dispute that you all will resolve this
16 morning, will be produced in the next week. It would be
17 our thought, then, that perhaps the week of September
18 the 7th could be devoted to intense meetings between the
19 parties to stipulate QA facts and narrow and focus the
20 precise QA issues that are to be litigated better than
21 they have been narrowed and focused so far.

22 Mr. Lanpher has then indicated that he thinks
23 the County would be able to complete its
24 cross-examination of LILCO's panel in a couple of weeks,
25 before the September break.

1 Thus, to summarize, before going to QA we want
2 to get rid of everything else except inadequate core
3 cooling. We propose to begin QA on September the 14th
4 with two understandings: the first being that before
5 beginning on the 14th a week will have been spent
6 stipulating and narrowing; and second, that it is the
7 County's current view, though obviously it could not be
8 held to it, that it would be able to finish its
9 cross-examination of LILCO's panel within two weeks
10 before the September break.

11 JUDGE BRENNER: Did you mean that we would not
12 be in hearing the week of the 7th?

13 MR. REVELEY: Unless we were in hearing to
14 clean up other items.

15 JUDGE BRENNER: Let's go through the list of
16 what we are going to complete between now and September
17 --

18 MR. REVELEY: I'll read the numbers and the
19 names: SC-5, loose parts monitoring. We are reminded
20 of the Board's injunction that reasonable people should
21 be able to settle that. The County and the company
22 believe they have reached an agreement, and the
23 company and the Staff are working on a few loose ends
24 that the Staff has. We expect SC-5, loose parts
25 monitoring, to be resolved.

1 SC-31, SOC-19G, which is electrical
2 separation, we anticipate concluding a settlement.
3 Indeed, I believe one has finally been definitively
4 reached.

5 SC-24, SOC-19C and D, cracking of materials,
6 we will either definitively resolve or litigate one
7 discrete issue.

8 SC-26, ALARA, is almost home.

9 SC and SOC-18, human factors equipment, we
10 will largely resolve, but may well have to litigate a
11 few bits and pieces.

12 JUDGE CARPENTER: Would you slow down just a
13 little bit?

14 MR. REVELEY: Sorry. Do I need to go back?

15 JUDGE CARPENTER: Just one, please.

16 MR. REVELEY: SC and SOC-18, human factors
17 equipment, will be largely resolved, but there may well
18 be several issues, discrete issues for litigation.

19 SC-19, which is human factors - procedures,
20 with the water hammer add-on, we believe will be
21 resolved.

22 JUDGE BRENNER: Including?

23 MR. REVELEY: Including water hammer add-on.

24 SC-20, which is human factors simulator, we
25 believe will be resolved.

1 Those are the contentions on which there have
2 already been extensive settlement discussions. And as I
3 indicated, in most instances we think they will be
4 totally resolved and a few we may have to litigate bits
5 and pieces. We would propose to do that before reaching
6 QA.

7 There is another contention on which the
8 company has submitted some material to the County and
9 the County is giving it initial consideration, and that
10 is SC-25, SOC-19A, RPV integrity and testing. Again,
11 that will either be resolved or litigated before
12 reaching QA.

13 Moving on, we come to SC-27, SOC-3,
14 post-accident monitoring, which is the subject of
15 today's hearing. Then we reach SC-21, Mark II. We
16 skip, if the Board approves our suggestion, SC-3, SOC-8,
17 which is ICC. We then reach SC-25, SOC-19A, which is
18 RPV integrity and testing, and at that point we are
19 ready for QA. In my judgment, it will not take three
20 weeks of hearing time to reach September the 14th. But
21 LILCO is willing to begin QA on a date certain,
22 September the 14th, if it is understood that all other
23 contentions will be cleared away before we reach it
24 except ICC, if it is understood that LILCO and the
25 County will sit down with the Staff and make a serious
effort to stipulate facts on which

1 there is no dispute and to narrow the focus of QA in
2 some fashion, and if it is understood that the County
3 will use its best efforts to complete its cross of our
4 panel in a couple of weeks.

5 Indeed, we believe that that week of
6 stipulation and narrowing, assuming there's a week of no
7 hearings in which to do it, could well lessen the amount
8 of time spent in hearings. Indeed, we would be bitterly
9 disappointed if it didn't.

10 MR. LANPHER: If I could interrupt, I think
11 you left out one thing, the supplemental SRV testimony
12 that LILCO filed last week.

13 MR. REVELEY: I did leave that out, but it's
14 my understanding that Mr. Boseman is available for the
15 first three days of this week and then not again until
16 after September the 7th. Does anyone know?

17 Mr. Irwin is not here. I believe it's after
18 September the 7th. So we could pick up the supplemental
19 SRV's.

20 MR. LANPHER: Just so the list was complete.
21 I didn't mean to represent anything about his
22 availability.

23 MR. REVELEY: If Boseman is back by September
24 the 7th, perhaps we can do that that week if in fact
25 there is any further cross to be heard on it. But Mr.

1 Lanpher is right, I omitted the supplemental SRV
2 information.

3 (Pause.)

4 JUDGE BRENNER: We're still looking at SRV's
5 in terms of the report. We asked for on-record
6 references. We're also still looking at the responses
7 from LILCO and the Staff with respect to unresolved
8 safety issues and open items.

9 At some point very quickly, we'd like to hear
10 responses from the Staff as to the schedule on
11 contentions that we defer. It looks very quickly as if
12 they are going to be lagging items. They are going to
13 be the lagging items. So the sooner we can hear from
14 the Staff on those items, the better, so that we can add
15 that into our thinking, although I recognize implicitly
16 that we're talking about those after QA/QC.

17 MR. REVELEY: Let me make one brief remark on
18 that. Pursuant to the discussions that we had on the
19 record before the break, LILCO is proceeding on the
20 assumption that as to those five items we are not
21 following the normal procedure. We are, rather, all
22 parties, to sit down with the Staff as soon as the Staff
23 has its conclusions in mind. The Staff need not
24 necessarily commit those conclusions to paper before the
25 parties sit down.

1 We will then see if we can't settle them. If
2 we can't settle them, we will file testimony and
3 actually litigate only the precise disputes that
4 remain. To that end, it is my understanding that a
5 meeting will occur on SC-1, remote shutdown panel,
6 tomorrow night. My understanding may be flawed.

7 It was my understanding that an effort was
8 being made to set a meeting with the Staff, the County
9 and LILCO to talk about SC-1 very soon, on the
10 assumption that the Staff had its conclusions in hand.
11 I may be mistaken, but the basic moral of the tale
12 remains.

13 So far as LILCO is concerned, and I think also
14 the Staff, we are working very hard at making the new
15 procedure effective. And while some of these five items
16 may well have to be resolved after QA is completed, we
17 hope that they will not lag very far behind QA.

18 JUDGE BRENNER: All right. We won't set a
19 date for the status report on those items, and an oral
20 report will be acceptable also. But at some point in
21 the next several weeks, when the parties believe a
22 further report will contain meaningful information, we
23 would like to hear about it, and certainly before we
24 break for any time period we will discuss the
25 suggestions.

1 In terms of the sequence of testimony, I don't
2 expect there will be any debate. We have always
3 acceded, or generally acceded, to the parties' views on
4 that. So there should be no problem in taking the
5 inadequate core cooling contention out of the sequence
6 as you have indicated.

7 I do want to discuss with the Board members
8 the possible break the week of September 7th,
9 recognizing that that depends on the pace of
10 litigation. And I willt tell you out loud what I want
11 to discuss with them. So the parties can think about it
12 also, and perhaps we will all discuss it together in the
13 next day or so.

14 I have no doubt that at times a break in the
15 proceeding has made litigation more efficient. As you
16 have stated, we have seen this. So there is no dispute
17 as to that. What I want to consider and I want the
18 parties to consider is, if the pace of the proceeding is
19 such that we complete everything prior to the week of
20 September 7th, that perhaps we can start QA on September
21 7th and have the QA negotiations occur the week before,
22 while the hearing is going on to some extent, or maybe
23 we can adjust by not meeting for a day rather than a
24 whole week.

25 And I'll tell you what I have in mind. We're

1 beginning to become concerned we were going to have to
2 cause a further break in the hearing sometime in
3 October, unrelated to the pace of this proceeding
4 because of our work in Limerick. And I thin both
5 proceedings would be much better served by having, if
6 there's going to be room for a week break, by having
7 that week break when we can use it in the Limerick
8 proceeding rather than in September, that early in
9 September.

10 I just don't know if we will complete that
11 Limerick hearing in that one week, and it would
12 therefore be very advantageous to Judge Morris and
13 myself to be able to have an additional week's break in
14 October. We're not going to do it unless absolutely
15 required, and since we're not going to know until the
16 last minute, that is the end of the week in Limerick, we
17 had planned to come back here and then perhaps have to
18 break this proceeding after only a couple of weeks and
19 go back to Limerick, perhaps after only a week.

20 So if you can consider how you might assist us
21 in that effort.

22 MR. REVELEY: Judge, was that the possible
23 swing second week?

24 JUDGE BRENNER: No, I'm talking about a
25 possible third week. Limerick proceeding is going to

1 take place, if things proceed as scheduled, the week of
2 October 4th through October 8th.

3 MR. REVELEY: We're already looking, then,
4 definitively to a two-week break?

5 JUDGE BRENNER: Definitively, unless the
6 schedule for Limerick unexpectedly changes. It is still
7 on schedule. If Limerick did not complete that week, I
8 am beginning to become pessimistic based on occurrences
9 --

10 (Board conferring.)

11 JUDGE BRENNER: We anticipated that it would
12 be nice if a break in this proceeding could occur
13 between the safety issues and the emergency planning
14 issues, of a week or two. And these are the balls that
15 we have been juggling. I don't know if we can put
16 everything together. But in view of that possibility
17 that we might have yet another break, you might be
18 well-advised not to want to artificially schedule a
19 break in September, on September 7th.

20 MR. LANPHER: Judge Brenner, when Mr. Reveley
21 and I talked about this before -- and I'm sure we'll
22 talk about it again in light of your comments -- I would
23 like to emphasize it was not, well, it's a break from
24 the hearing process, it was not a break from the effort
25 to move what is potentially a very cumbersome part of

1 this litigation along.

2 We've got mountains of material, and it was in
3 that context that we tried, and also the large number of
4 witnesses, that we thought scheduling a particular date
5 would be useful and giving enough time so we could, once
6 all the documents are reviewed and that sort of thing,
7 sit down and say, we don't have a dispute here, we can
8 stipulate these facts and argue the significance of
9 them.

10 So it was in that context that we were trying
11 to pick that 14th date. One of the things I also
12 suggested to Mr. Reveley, it would be useful if we could
13 finish, it seems to me at least, the LILCO portion of
14 the testimony prior to that September 27 break, or
15 whatever that date is. And I raise the possibility that
16 we might change our scheduling in one regard, and that
17 is that, while starting the QA on a Tuesday, that 14th,
18 the following Monday perhaps consider holding a hearing
19 also on that date. That was just a possibility.

20 JUDGE BRENNER: Well, we understand you're not
21 going to be resting during that week, and assumed that
22 you would be doing what you just said you would be doing
23 during that week. I just didn't want to say, okay,
24 fine, we'll take a break that week, and then three weeks
25 later let you know that all the hearing time you thought

1 you were going to have in October will not be there.

2 I alluded to this perhaps so briefly in
3 passing on the record that nobody picked it up, but once
4 we get into October we were concerned about the
5 scheduling problems with Limerick. Suffice it to say we
6 have a very closed view on the priorities of the two
7 cases, and if Limerick was something we felt could be
8 deferred we would have done so.

9 I don't want to go into the issues here, but
10 there is a question as to the immediacy of the case,
11 notwithstanding the length of time before the facility
12 would be ready for possible issuance of an operating
13 license. It is that we are deciding whether
14 construction should proceed on certain portions of the
15 facility, and our view of the issues could result in a
16 stay of that construction.

17 We want to litigate everything we possibly can
18 by making full use of the time between now and the end
19 of September for that reason. But if we cannot work it
20 out and if the parties strongly believe that we should
21 break that week, we will do it.

22 You are unlikely to convince us to be in
23 hearing Monday, September 20th, because we need that day
24 in the office, primarily for this case, as it turns out
25 Monday after Monday. But that's the week we are

1 receiving testimony. Yes, that's the week we are
2 receiving testimony on trial breaks in Limerick, on that
3 day. In fact, we scheduled it on that day thinking we
4 would be there.

5 Well, it's complicated, as it always is
6 whenever we discuss scheduling. We'll think about it
7 and we ask you to think about it.

8 MR. LANPHER: Judge Brenner, if I could add
9 something more, not on the 14th or not schedule, but in
10 terms of the status of some of these issues. With
11 respect to electrical separation, I think we can be more
12 emphatic. We have a complete sign-off. We just have to
13 get the final draft typed, with one typo, and I think
14 everyone has agreed to sign off on that. I would expect
15 that that will be delivered today or tomorrow.

16 SC-9 also; I'm not sure that it has been
17 served, but that is a complete signoff also.

18 JUDGE BRENNER: Yes, we have it. I did not
19 bring of it this morning because we want to discuss it
20 as a Board, to decide whether we have any questions.

21 MR. LANPHER: With respect to SC-24, Mr.
22 Flanagan is going to be delivering to Mr. Bridenbaugh
23 later today, or maybe it's already occurred, some
24 information which the County requested as to the one
25 remaining item, and Mr. Bridenbaugh hopefully will have

1 an opportunity to review that promptly, and we maybe can
2 have a further information for the Board on that later
3 this week.

4 JUDGE BRENNER: Okay, thank you. I'm glad now
5 that we discussed these matters this morning. We still
6 have to come back to it as a follow-up to this
7 discussion.

8 Perhaps you could talk about this among
9 yourselves and there could be a compromise that if we
10 finish all the other issues prior to the week of
11 September 7th we would give you additional time for
12 meetings that week, but also begin to litigate some
13 matters on QA/QC. I don't know if that would work out.

14 From our own point of view, a selfish point of
15 view, it would be best to set the QA/QC testimony for
16 the date certain of September 7, and for the discussions
17 to take place prior to that time. Then you come back
18 and tell us the constraints with that type of schedule,
19 and then if as a result of doing that there were some of
20 these little items that were not litigated we would hold
21 those for after, such as materials cracking.

22 All right, I believe we are ready to discuss
23 Suffolk County's request for documents related to the
24 quality assurance/quality control testimony of LILCO.

25 (Pause.)

1 We welcome Mr. Dynner to beautiful downtown
2 Hauppauge and to the proceeding. I do want to thank the
3 parties, primarily but perhaps not exclusively Mr.
4 Christman and Mr. Dynner, for all their hard work in a
5 short period of time. We think the hard work in that
6 short period was justified by the exigencies of the
7 schedule, and we hope that you agree. Once we saw the
8 dispute in the papers, we got on the phone in a
9 conference call right away with a view towards resolving
10 it in this time frame.

11 So a lot of work has gone into helping to
12 focus the issues much better today than they were at the
13 time of the conference call for us, and we appreciate
14 that.

15 (Pause.)

16 I thought one way we could approach this is to
17 work from the revised subpoena, recognizing that the
18 deletions noted there by Suffolk County may or may not
19 be applicable in light of the fact that the deletions
20 were made on the basis of an understanding, of an
21 understanding which was changed -- not changed, but
22 which was, in LILCO's further response, noted to be a
23 subject of full resolution, which did not take place.
24 So we've tried to adjust to that in working with the
25 different documents, but we will get the status in the

1 record at this point.

2 It might be helpful, and I would suggest if
3 the parties have no objection, to simply bind in both
4 final filings with the attachments. That would be
5 Suffolk County's memorandum supporting application for
6 issuance of subpoena, with the attachments, dated August
7 23rd; and, also dated August 23rd, LILCO's revised
8 position on Suffolk County application for subpoena
9 duces tecum for QA documents. And if counsel could give
10 the reporter one copy of each of those.

11 (The documents referred to follow:)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

MEMORANDUM SUPPORTING APPLICATION FOR
ISSUANCE OF SUBPOENA

This Memorandum is filed pursuant to the Board's request during the conference telephone call on August 18, 1982 with counsel for LILCO and Suffolk County. The Board suggested that counsel, by telephone or in meetings, attempt informally to reach agreement on supplying the documents set forth in the Subpoena Duces Tecum ("Subpoena") requested by the County's Application for Issuance of Subpoena, dated August 13, 1982 ("Application"). Those documents as to which no agreement could be reached were to be noted to the Board on Monday, August 23, 1982; oral argument on the Application is to be held on Tuesday, August 24, 1982.

Counsel for Suffolk County was asked to comment upon (1) whether the documents listed in the Subpoena could be narrowed and stated with greater particularity, and (2) why such documents were not requested during the discovery period for the QA/QC contentions of Suffolk County. An oppor-

tunity was given to both parties to state in writing their further arguments in support of or in opposition to the Application.

I. The Subpoena Has Been Revised and Narrowed.

In response to the concerns expressed by the Board, Suffolk County has prepared the revised subpoena attached hereto as Attachment 1 ("Revised Subpoena"), which narrows and reduces the categories of documents and states with more particularity the documents which are required to prepare for the cross-examination of LILCO's witnesses. A copy of the Revised Subpoena was telecopied to counsel for LILCO under cover of letter dated August 20, 1982 (Attachment 2 hereto). Those documents which LILCO has voluntarily agreed to furnish Suffolk County in a timely manner are indicated as deleted from the Revised Subpoena. The bases for these agreements are shown in the letter dated August 20, 1982 from LILCO's counsel (Attachment 3, with paragraphs renumbered to conform to those of the Revised Subpoena) and in the memorandum attached as Attachment 4. The Revised Subpoena supersedes the Subpoena, and all reference in the Application to the Subpoena shall be deemed to reference the Revised Subpoena.

II. Why the Documents Listed in the Subpoena Were Not Requested During Discovery

The documents listed in Part A of the Subpoena are referred to in LILCO's letter dated June 21, 1982 (SNRC-716), which responds to the SALP report forwarded to LILCO on May 19, 1982. Clearly the documents in paragraphs 1, 2, and 4, and some of those listed in

paragraph 3, of the Revised Subpoena did not exist during discovery, since their reference dates in SNRC-716 are after discovery closed. Accordingly, such documents could not have been requested during discovery.

Further, since discovery had been closed by the time the referenced letters were written, Suffolk County could not have then known the importance attached by LILCO to any quarterly and monthly surveillances (referred to in paragraph 3 of the Revised Subpoena) which existed at the time of discovery. SNRC-716 indicates that if such surveillances did then exist, they may not have been effective to prevent the discrepancies noted. For these reasons, the results of such surveillances, which did not seem significant during discovery, now appear to be important. Because the documents listed in Part A of the Revised Subpoena are cited by LILCO in an attempt to answer NRC Staff concerns, they impact directly upon the QA/QC issue and are plainly relevant. Relevancy is the only test for the issuance of a subpoena under 10 C.F.R. § 2.720.

The documents listed in Part B of the Subpoena are either specifically referred to in written testimony of witnesses for LILCO dated June 29, 1982 ("LILCO Testimony"), or are referred to and relied upon by implication in the LILCO Testimony. Suffolk County could not

have known during discovery that LILCO witnesses would refer and rely upon these documents in their testimony. Suffolk County cannot adequately prepare to cross-examine the witnesses for LILCO without examining the documents that are cited, directly or by implication, as supporting the conclusions in written testimony. Such documents are clearly relevant.

The foregoing information should not be regarded as affecting Suffolk County's legal position, discussed in Part IV of this Memorandum, that the right to subpoena documents after discovery is not affected by the fact that such documents were not requested during discovery.

III. The Subpoena of Documents Is Particularly Appropriate Here

As noted above, the documents listed in Part B of the Revised Subpoena may be viewed as falling into two main categories: specifically referenced documents; and some documents which are not expressly mentioned, but which may be inferred by the testimony to exist and to be relied upon. An example of this second category is paragraph 5 of the Revised Subpoena, which requests the latest documents identifying individuals in the LILCO QA Department, their resumes, job descriptions, and documents describing their training, and any training manuals used by LILCO for that training.

Pages 5 to 7 of the LILCO Testimony refer to the number of individuals in the LILCO QA Department and contain broad

but impressive statements about their "165 man-years of experience in engineering and quality assurance" and their being "provided with whatever training may be warranted"

Clearly there must be documents regarding these matters. Such documents are necessary to permit counsel for Suffolk County to prepare for cross-examination, and no doubt would be required by LILCO witnesses to respond to questions. However, waiting until during cross-examination to request production of such documents or to learn, if such is the case, that the witnesses have no personal knowledge of the details concerning these matters, would delay the hearing or result in less efficient cross-examination than would otherwise be possible.

Indeed, the present situation falls squarely within the principles of the Clinton case, Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), Docket Nos. 50-461 and 50-462, ALAB-340, 4 NRC 27 (1976). However, Suffolk County's Application attempts to avoid the factual situation that resulted in the denial of the subpoena in that case. In Clinton, as in this case, a party (the intervenors) sought to subpoena documents relied upon by a witness for the utility. The intervenors had not requested the documents and other materials during discovery, or even after having received the witness's written testimony. The subpoena was sought only after the witness was unable to answer questions during cross-examination without the documents.

Clinton held that a subpoena for production of documents after the close of discovery may not be denied on the grounds that the party seeking issuance of the subpoena did not request the documents during discovery. Nevertheless, the Appeal Board upheld the denial of the intervenors' request for documents because (i) since the request was not made until during the hearing and after cross-examination, granting the request would delay the hearing; and (ii) this delay should not be countenanced because the material requested "was far more extensive than necessary to provide answers to the questions" the witness was unable to answer, and "the particular information bearing upon such answers would have been of too little potential worth to justify holding up the evidentiary hearing to await its receipt and analysis." Clinton, at page 33.

The subpoena of the documents in Parts A and B of the Revised Subpoena is intended to avoid any delay of the hearing. Because the written testimony of LILCO's witnesses refers either directly or by implication to the documents listed in Part B of the Revised Subpoena, counsel for Suffolk County knows now that preparation of effective cross-examination of those witnesses will require analysis of those documents. Denial of Suffolk County's Application as to any document would force counsel to request that document during the hearing, thereby causing a delay and creating grounds

for denial of the request. Accordingly, the subpoena of the documents in the Revised Subpoena is particularly appropriate, since it would eliminate delay of the hearing and an unfair burden of risk on Suffolk County.

IV. LILCO's Arguments Against the Issuance of the Subpoena Are Without Merit

On August 17, 1982, LILCO filed a Motion for Protective Order Or, In The Alternative, To Quash Subpoena ("Motion"). The Motion first attempts to transmute Suffolk County's effort to obtain documents, referred to by LILCO and its witnesses, for trial preparation, into a discovery request. This approach fundamentally misconceives the current posture of the quality assurance portion of this proceeding. Discovery has, of course, been terminated, and therefore the methods of discovery authorized by the Commission's Rules of Practice (i.e., 10 C.F.R. § 2.740) are now inappropriate. A subpoena is the proper method for obtaining documents after discovery. Accordingly, the Application of Suffolk County must be judged by the standards applicable to a subpoena, and not by discovery standards.

A. A Subpoena is the Proper Procedure for Production of the Requested Documents

LILCO's basic argument is that Suffolk County can only obtain documents under the discovery rules, 10 C.F.R.

§2.740 et seq., but that because the time for discovery has ended, Suffolk County is not entitled to production of any documents. This position is not only contrary to the purposes of the discovery and pre-hearing preparation process, but also seriously misinterprets the subpoena rule, 10 C.F.R. § 2.720.

In the first place, Clinton completely refutes LILCO's argument that Suffolk County may only obtain production of documents through discovery procedures. See discussion of Clinton at pages 5-6 above. Indeed, LILCO's Motion itself cites Clinton for the proposition that

a subpoena for the production of documents at trial may not be denied simply because the requesting party had not earlier sought the same document during discovery. Motion, at page 9.

A footnote at page 9 of the LILCO Motion then argues that the principles of Clinton are inapplicable to Suffolk County because, under the facts of Clinton, the subpoena denial was upheld "where the request for documents was 'extensive' ... and would have caused delay." This footnote is misleading and incorrect, because it fails to disclose that in Clinton, (i) the delay would result not because the documents requested were "extensive", but because they were not requested until after cross-examination

during the hearing, and (ii) the request for documents was not rejected because it was "extensive", but rather the delay was not countenanced because the documents ^{1/} were more extensive than necessary to answer cross-examination questions. Clinton, at page 33. See Also discussion of Clinton at page 6 above.

Second, there is no basis for LILCO's assertion that a subpoena for the production of documents is only appropriate for use against non-parties. Section 2.720 is a broad right, stating that "[o]n application of any party, the designated presiding officer ... will issue subpoenas requiring ... the production of evidence." 10 C.F.R. §2.720(a). By its terms, it imposes no limit either on the time when a subpoena may be requested or to whom it may be directed. ^{2/}

^{1/} The "documents" included "source checks, data checks, computer programs and documentation" on which computer models were based. Clinton, at page 34.

^{2/} LILCO cites Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683 (1979), to support its argument. But that case merely states that a subpoena for discovery purposes may appropriately be directed at a non-party, who is not subject to the discovery rules. It is thus of no relevance to the present case, in which a party is seeking to subpoena documents, some of which did not exist during discovery, from another party after the close of discovery for the purpose of preparing for cross-examination at trial.

The requested subpoena is the appropriate means for obtaining information during this post-discovery, pre-hearing phase of this proceeding. It will permit Suffolk County to obtain documents necessary for cross-examining LILCO's witnesses and prevent delay after the hearing has begun.

B. Suffolk County is Entitled to a Subpoena for the Requested Documents

1. The "General Relevance" Requirement Is Clearly Satisfied In This Case

Under the Commission rule governing issuance of subpoenas, 10 C.F.R. §2.720, the requesting party need only show the "general relevance" of the desired documents to issues in the proceeding. In practice, this requirement is satisfied, and the subpoena should be issued, unless "the evidence sought can have no possible bearing upon the issues." Commonwealth Edison Company, (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 462 (1974) ("Zion") (emphasis added), quoting Hercules Powder Co. v. Rohm & Haas Co., 3 F.R.D. 302, 304 (D. Del. 1943).

The documents sought by Suffolk County unquestionably bear upon the issues in this proceeding. The documents referenced in Part A of the Revised Subpoena all relate to LILCO's responses to QA concerns of the NRC Staff regarding the Shoreham plant. The documents listed in Part B

of the Revised Subpoena are all referenced, directly or by implication, to support testimony presented by witnesses for LILCO.

2. LILCO Has Failed To Show That
The Application Is Unreasonable

Given the relevance of the documents listed in the Revised Subpoena, it may be quashed only if it is "unreasonable." 10 C.F.R. §2.720(f)(1). To quash the Subpoena, LILCO must bear "a particularly heavy burden." Zion, at page 463. "Absent such a substantial showing, a motion to quash should be denied." Id.

LILCO has only argued that the subpoena is unreasonable because it provides too little time in which to produce the desired documents. Motion at pages 6-7. That position is in reality only an argument that the production is burdensome, and LILCO has conceded that "Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), ALAB-550, 9 NRC 683 (1979) ["Stanislaus"] ... makes it fairly difficult to have a subpoena quashed on the ground of burdensomeness." Motion at page 9. LILCO's reading of Stanislaus is correct.

The Appeal Board found the requested subpoena broad in scope, but appropriate to the issues being litigated. It found that compliance costs as high as \$400,000 would be reasonable and suggested that in any case the subpoenaed party would have to prove its costs. Likewise,

that party would have to establish that compliance would "unduly disrupt or seriously hinder its normal operation." Id. at page 697. (Emphasis in original). That the document production would entail significant employee time and expense would not make the request unduly burdensome. Id. LILCO has not attempted to show in what manner the subpoena would be an undue burden to it.

Likewise, even a subpoena broad in scope will not for that reason be found unduly burdensome and thus unreasonable. In Zion it was argued that "the broad and sweeping categories of 'all' documents specified in the subpoena are unreasonable on their face." Id. at page 470. LILCO has made essentially the same argument. The Appeal Board rejected that argument in Zion:

The intervenor asserts that the "all documents" formulation is a "necessary technique where the lawyer requesting documents does not know what documents the person has." We agree, at least in the situation where, as here, the formulation is further limited by a reasonably defined subject matter category. The requested documents, viewed in the context of the intervenors' contention, were sufficiently defined so as to be ascertainable. Id.

The "all documents" formulation, to the extent used in the original Subpoena, was similarly reasonably defined. Contrary to the assertion that Suffolk County requested "all documents relevant" to a subject (Motion at page 2), the Subpoena only used a formulation of "all documents

constituting, describing, or commenting upon" a reference in the LILCO Testimony. In any case, the Revised Subpoena has been further narrowed and particularized, and is a fortiori reasonable in scope.^{3/}

C. The Relief Sought by LILCO is Inappropriate

As has been established above, LILCO is not entitled to have the Revised Subpoena quashed. There is no basis for the Board to treat the Application as a discovery motion under 10 C.F.R. §2.740, and the two alternative "protective orders" sought by LILCO (Motion at page 10) are unwarranted and unsupported by the Board's prior decisions.

The first alternative requiring Suffolk County to provide detailed justifications concerning the precise need for the documents and their "significant probative value" would place restrictions on the issuance of subpoenas not found in 10 C.F.R. §2.720, which provides that a party has a right to subpoena documents if they are relevant. In any case, Parts II and III of this Memorandum explain why Suffolk County requires the production of documents. LILCO's comment that paragraphs 19 and 20 of the Subpoena show that Suffolk County is on a "fishing

^{3/} Even if the Board were to find some document categories too broad, quashing the subpoena would be inappropriate; rather the Board should take "steps to narrow the request to documents relevant to the particular contention under consideration." Zion at page 471.

expedition" is erroneous; demands for every 30th or 20th of a specified group of documents relied upon in the LILCO Testimony are intended to reduce, not increase, the number of documents required by producing an unbiased sampling.

LILCO's second proposed alternative is also unwarranted and should be rejected. LILCO requests that it not be required to produce the documents in Part B of the Subpoena until September 27, which could well be after the QA/QC hearings begin. LILCO gives no reason why it cannot produce the documents promptly. Clearly this "alternative" request would either deprive Suffolk County of the opportunity to use the documents in preparation for cross-examination, or require that the hearing be delayed.

V. Conclusion

For the foregoing reasons, Suffolk County's Application for Issuance of Subpoena should be granted and LILCO's Motion for Protective Order, or, in the Alternative, to Quash Subpoena should be denied.

Respectfully submitted,

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August 23, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)

LONG ISLAND LIGHTING COMPANY)
)

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

) Docket No. 50-322 (O.L.)
)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Memorandum Supporting Application For Issuance of Subpoena" was sent on August 23, 1982 by first class mail, except where otherwise noted, to the following:

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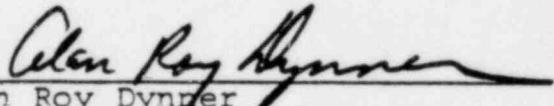
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DATE: 8/23/82


Alan Roy Dynner
KIRKPATRICK, LOCKHART, HILL,
CHRISTOPHER & PHILLIPS
1900 M Street, N.W., 8th Floor
Washington, D.C. 20036

3. The results of LILCO's Operating QA quarterly surveillances of the Startup Manuals and the results of the monthly surveillances of the "program," referred to in SNRC-716, p. 5, ¶ 1.
4. The latest status report of open items that have not been closed by the NRC's I&E review, as well as any documents describing the current status of open items, as referred to in SNRC-716, p. 5, ¶ 2.

PART B

Documents referred to in testimony of witnesses for LILCO, dated June 29, 1982 ("LILCO Testimony").

5. The latest (i) documents identifying the individuals in the LILCO QA Department, referred to at pages 5 and 6 of the LILCO Testimony, (ii) resumes describing the background, experience and qualifications of each such individual, (iii) job descriptions describing the position, duties, and responsibilities of each such individual, (iv) documents which describe the training provided to each of the LILCO QA personnel, referred to at page 6 of the LILCO Testimony, and (v) the training manuals or similar documents, if any, prepared or used by LILCO in training QA personnel.
6. The documents stated in paragraph 5 above for each of the eight LILCO personnel and fifteen contract personnel constituting the "Operational Quality Assurance organization" referred to at page 7 of the LILCO Testimony, who is not an individual in the QA Department referred to at page 6 of the LILCO Testimony.
7. Any documents prepared by LILCO: (i) identifying "items and services not considered 'safety-related'," referred to at page 15 of the LILCO Testimony, (ii) setting forth the quality assurance/quality control standards applicable to such items and services, and (iii) identifying and/or commenting upon "the overall function or purpose to be performed" by each such item or service, or rating the relative "importance" of each.
8. Audit reports showing the results of the following Stone and Webster Engineering Corporation ("SWEC") audits referred to at page 25 of the LILCO Testimony, and not previously provided to Suffolk County: (i) quarterly audits of construction site activities

~~(SWEC field QC activities and construction activities)
(ii) annual audits of site contractors' activities,
(iii) annual audits of ASME III activities, and (iv)
annual program audits.~~

9. Audit reports showing the results of Stone and Webster Engineering Assurance Division's: ~~(i) quarterly audits of the Shoreham Project activities, (ii) semi-annual audits of the Site Engineering Office, and (iii) audits of other organizations performing engineering services, as referred to at pages 28 and 29 of the LILCO Testimony, and not previously provided to Suffolk County.~~
10. ~~Audit reports issued during the period General Electric Company ("GE") was procuring, designing or fabricating equipment for the Shoreham project and relevant to the Shoreham project, showing the results of (i) internal QA audits conducted by GE NEBO division-level organizations, and (ii) internal QA audits conducted by NEP & QAO of department-level GE NEBO organizations, all as referred to at page 30 of the LILCO Testimony.~~
11. ~~Those portions of the monthly reports to LILCO management containing "highlights of the QA program," and all quarterly reports of LILCO audit programs provided to the Vice Presidents of Engineering and of Nuclear and responsible department managers, in all cases only with respect to the Shoreham project, all as referred to at page 31 of the LILCO Testimony.~~
12. ~~The documents, if any, by which "specific items" have been "promptly brought to the attention of corporate management by the Quality Assurance Manager," regarding the Shoreham project, as referred to at pages 31 to 32 of the LILCO Testimony.~~
13. ~~The documents relied upon to support the contention at page 41 of the LILCO Testimony that "Shoreham's performance is better than other BWR plants," including documents prepared in the review conducted by the LILCO QA Department Manager.~~
14. ~~Documents describing the results, interim and/or final, of the audit by Torrey Pines Technology, referred to at pages 57 to 58 of the LILCO Testimony, including descriptions of the scope of the audit, methodology, reporting, and all internal and other reports, memoranda, and correspondence.~~

15. The documents by which the "58 potentially significant concerns" were reported to Engineering Assurance, as referred to at page 65 of the LILCO Testimony, all "Problem Reports" referred to at pages 65 and 66 of the LILCO Testimony, the documents which show the results of investigations undertaken as a result of such Problem Reports, and the documents by which "corrective/preventive action" was taken with respect to such Problem Reports.
16. The latest available index in the "up-to-date indexes of design documents" referred to in paragraph (d) at page 88 of the LILCO Testimony.
17. ~~The "specific Project procedures" implementing the design review and overall management direction," of LILCO, referred to in paragraph (3) at pages 93 to 94 of the LILCO Testimony.~~
18. ~~The LILCO "Corporate Quality Assurance Program" referred to at page 94 of the LILCO Testimony.~~
19. The ~~first and the last available~~ "Notes of Conference" of the over 850 project meetings, referred to at page 96 of the LILCO Testimony, and every 50th Note of Conference chronologically issued between the first and the last.
20. Documents describing the "program of 'packaging'" and the procedures followed in connection with the program, ~~documents identifying the number and nature of the "overall scoping documents," and, if different, the "Change Control Forms (CCF's)," the first and the last and every 20th scoping documents and CCF's chronologically, and the "reviews" of the corresponding CCF's, all as~~ referred to in paragraph (a) at page 101 of the LILCO Testimony.
21. ~~The original form of the "Checklist for Design Document Review," referred to in paragraph (3) at page 109 of the LILCO Testimony, all revisions of such form, identified by year of issue, and documents describing procedures or stating instructions for completing the Checklist.~~
22. Documents identifying the "QA personnel who are specifically trained for this task," referred to at page 110 of the LILCO Testimony, resumes describing the background, experience, and qualifications of each of such personnel, and documents describing the specific training given to each of such personnel for the task referred to.

23. Audit reports showing the results of the 53 audits referred to at page 117 of the LILCO Testimony, and not previously provided to Suffolk County.
24. Audit reports showing the results of the 48 audits conducted by NEP & QAO of the design control program applied to the Shoreham plant, as referred to in paragraph (b) at page 120 of the LILCO Testimony.
25. Audit reports showing the results of the 39 audits conducted by NREO of the design control program applicable to the Shoreham plant, as referred to in paragraph (d) at page 120 of the LILCO Testimony.
26. The analysis of the evaluations of results of customer audits over a 5-year period purporting to demonstrate that "there are no uniquely recurring deficiency areas," as referred to at page 121 of the LILCO Testimony.
27. The "checklist developed from a comprehensive survey," as referred to in paragraph a at page 122 of the LILCO Testimony.
28. All "Configuration Discrepancy Reports" with respect to the Shoreham plant, as referred to at page 123 of the LILCO Testimony.
29. The "issued procedures and instructions" referred to at page 127 of the LILCO Testimony, ~~any reports, summaries, or minutes of the engineering and design meetings~~ referred to at page 127 of the LILCO Testimony and not previously supplied to Suffolk County, the "final stress analysis evaluations" brought before the Shoreham Options Review Committee ("SORC"), and all reports, summaries or minutes of SORC meetings, all as referred to at page 127 of the LILCO Testimony.
30. Documents describing the "program . . . to assure that by the time of fuel load or shortly thereafter, the configuration of the plant will be accurately reflected by drawings," as referred to in paragraph (c) at page 127 of the LILCO Testimony, and the latest schedule for the completion of the program and/or progress reports describing portions of the program which have been completed.
31. Documents describing the results, interim and/or final, of the independent design review being performed by Teledyne Engineering Services, referred to at page 129 of the LILCO Testimony, including all internal and other reports (other than the Initial Status Report (TR-5633-2) dated July 9, 1982), all Reviewer

Report Forms, Request for Information Forms and responses thereto, Project Manager Resolution Forms, and Internal Committee Resolution Forms (all such forms as identified in § 3.8.2 of EP-1-017 of Teledyne in said Initial Status Report), and all documents concerning "open items" and their disposition.

32. The documents relied upon to support the assertion at page 148 of the LILCO Testimony that "about 250,000 manhours were expended by SWEC alone in the performance of procurement quality tasks for Shoreham," including the calculations utilized, and documents identifying the items or the class of items of equipment as to which such time or portion thereof was expended.
33. The latest: (i) documents identifying the "eighty QA personnel" of Courter and Company referred to at page 152 of the LILCO Testimony, (ii) resumes describing the background, experience and qualifications of each of such personnel, and (iii) job descriptions describing the position, duties, and responsibilities of each.
34. Documents constituting and/or containing schedules of the "Indoctrination Sessions" and of the "Tool Box Sessions" referred to in paragraph c. at page 158 of the LILCO Testimony, and documents describing the number of such sessions, where presented, how long each lasted, and/or the content thereof.
35. Documents showing "trends which were established and analyzed in order to maintain the uniform concrete strengths specified," as referred to at page 160 of the LILCO Testimony.
36. Documents showing "trends" resulting from the evaluation of N&D's by SWEC, referred to at page 166 of the LILCO Testimony, documents describing and/or commenting upon any "significant trends or abnormal quality" determined by an analysis of an independent sampling of N&D's referred to at pages 166 to 167 of the LILCO Testimony, and the "analysis" which purports to indicate that "the Shoreham N&D's are consistent with other sites' N&D's for similar activities," as referred to at page 167 of the LILCO Testimony.
37. Audit reports showing the results of the "thirty-seven audits of site activities" referred to at page 169 of the LILCO Testimony, not previously provided to Suffolk County, all documents describing "attributes" which were "noted as unsatisfactory during these audits."

~~referred to at page 169 of the LILCO Testimony, and all responses by LILCO to the reports noting such unsatisfactory attributes.~~

38. ~~The documented results of the "about 725 welding and mechanical surveillances and over 450 electrical and instrumentational surveillances" referred to at page 176 of the LILCO Testimony, and all documents describing corrective action taken for "discrepant conditions identified" by such surveillances.~~
39. All stop work orders issued by LILCO QA personnel, as referred to at page 177 of the LILCO Testimony.
40. The three most recent "computerized monthly reports . . . listing all outstanding E&DCRs that require verification," as referred to at pages 180 to 181 of the LILCO Testimony.
41. The three most recent reports issued in connection with the "LILCO/SWEC As-Built Piping Program" referred to at page 181 of the LILCO Testimony, unless already provided to Suffolk County.
42. The three most recent reports issued in connection with the "Conduit Qualification and Inspection Program" referred to in paragraph (1) at page 185 of the LILCO Testimony, unless already provided to Suffolk County.
43. The three most recent reports issued in connection with the "Conduit Support As-Built Program" referred to in paragraph (2) at page 185 of the LILCO Testimony, unless already provided to Suffolk County.
44. The three most recent reports issued in connection with the "Cable Tray Support Analysis Program" referred to in paragraph (3) at page 187 of the LILCO Testimony, unless already provided to Suffolk County.
45. The three most recent reports issued in connection with the "Final 'A' Release Program" referred to in paragraph d. at page 188 of the LILCO Testimony, unless already provided to Suffolk County.
46. The analyses of "safety-related non-compliance reports" and documents showing the "trends" resulting from such analyses, all as referred to at page 241 of the LILCO Testimony.

47. ~~The survey of "QA/QC manpower at operating single unit BWR's with comparable commitments to quality activities," as referred to in paragraph 10 at page 242 of the LILCO Testimony.~~

If you oppose this subpoena, you may move to quash or modify in accordance with 10 C.F.R. Section 2.720(f).

LAWRENCE J. BRENNER
Presiding Judge

August , 1982

ATTACHMENT 2

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 462-7000
CABLE: HIPHI
TELEX 440909 HIPH UI
WRITER'S DIRECT DIAL NUMBER
202/452-7044

August 20, 1982

IN PITTSBURGH
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
1500 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 356-6600

(BY TELECOPIER)

James N. Christman, Esq.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

Re: QA/QC Issues and Application
for Subpoena

Dear Mr. Christman:

During the telephone conference call with the Atomic Safety and Licensing Board on Wednesday, August 18, the Board suggested that you and I discuss on the telephone or meet in person in an effort to agree to the documents listed in the Subpoena subject to the Application for Issuance of Subpoena dated August 13, 1982, which LILCO might agree to provide voluntarily. At that time, I said that I would be available to speak with you on the telephone at any time other than 4 p.m. on Wednesday and that I was at your disposal to meet with you. You telephoned me at 3:30 p.m. on Wednesday and we had a short conversation during which you indicated that LILCO might be prepared to voluntarily produce the documents listed in paragraph 1 of the Subpoena. We then reviewed and I explained and narrowed the scope of the documents identified in paragraphs 2 through 11 of the Subpoena. You stated that you would have to check with LILCO personnel as to whether you would be willing to provide those documents. At the close of our conversation, you said that you would telephone me on Thursday, August 19, to further discuss the production of documents.

On Thursday I attempted to reach you by telephone at around noon at your office, but I was informed that you were on Long Island; your secretary could not tell my secretary how you could be reached. At 5 p.m. on Thursday you telephoned me to say that LILCO will provide many of the documents in the Subpoena, and you would be telecopying me a list of these documents sometime today, Friday, August 20. You indicated to me that you did not have the list available and did not wish to discuss it on the telephone prior to your telecopying it to me. I asked that you provide not only the list of the documents you would be furnishing, but also the dates by which the documents would be made available.

James N. Christman, Esq.
August 20, 1982
Page 2

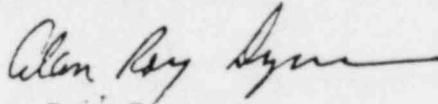
It is now 2 p.m. on Friday and I have not yet received your list of documents. Accordingly, time is now getting very short for the resolution of these matters prior to the Monday, August 23, noon filing time for disputed documents as ordered by the Board. As I mentioned to you in our telephone conversation yesterday, I have prepared a revised Subpoena Duces Tecum which, in response to concerns of the Board, narrows and more precisely particularizes the documents which are sought by Suffolk County. I am enclosing herewith a copy of the revised Subpoena.

I hope that we will receive by this evening the list of documents which LILCO is prepared to produce voluntarily. I will be prepared to discuss these documents on the telephone at any time this weekend. As you know, my home telephone number is (301) 983-0121. To the extent the documents which LILCO is prepared to provide voluntarily are consistent with the documents requested by the enclosed Subpoena, and will be provided in a timely manner, I will indicate our agreement by deleting the appropriate documents from the revised Subpoena.

Accordingly, it is my intention to file by noon on Monday, August 23, with the Board the revised Subpoena, edited as aforesaid, together with the memorandum which the Board requested from Suffolk County.

I urge you to contact me at your earliest convenience so that we can resolve the outstanding matters without needless recourse to the Board.

Very truly yours,



Alan Roy Dynner

ARD/dk
Enclosure

ATTACHMENT 3

HUNTON & WILLIAMS

707 EAST MAIN STREET P.O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

August 20, 1982

1919 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 19230
WASHINGTON, D.C. 20036
202-223-8650

FILE NO.

DIRECT DIAL NO. 804 788-

B B & T BUILDING
P.O. BOX 108
RALEIGH, NORTH CAROLINA 27602
919-828-9371

VIRGINIA BANK TOWER
P.O. BOX 3689
NORFOLK, VIRGINIA 23514
804-625-5501

BY TELECOPIER

Alan R. Dynner, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036

QA Documents Subpoena

Dear Alan:

In response to your subpoena with the list of 49 document categories, here is what LILCO is willing to produce, if producing them will fully satisfy your request for documents. The numbers below correspond to the numbered document categories in your subpoena.

PART A

1. LILCO will make available all the SPCR reports that have been issued, which means those covering the six systems you referred to. (Other systems are in various stages of review, and final reports have not been issued.)
2. LILCO will make available the tables showing the results of the containment isolation valve survey.
3. LILCO will make available the most recent quarterly surveillance report of the Startup Manuals and the most recent monthly surveillance report on the plant panels.
4. LILCO will generate a computer print-out showing which I&E items are still "open." (This will include those of the 219 that remain open, plus other open items that have been added to the list subsequent to the 219.) LILCO will also make available a graph that shows the number of open items over time.

HUNTON & WILLIAMS

Alan R. Dynner, Esq.
August 20, 1982
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PART B

5. LILCO will make available the summary page of training records, which gives name, training, and qualifications.
6. Same response as for no. 5 above.
7. We do not propose to produce these documents. Items and services that are not safety-related are, obviously, everything in the plant that is not safety-related. What you are asking for is the specifications for every toilet, locker, etc. Since, as we said in our testimony, non-safety-related items are controlled in accordance with the importance of their overall functions or purpose, no single document can tell you how this is done.
8. The audit reports were provided on March 31, 1982. The County has copies.
9. (i) Already provided on March 31.
(ii) Already provided on March 31.
(iii) We don't propose to produce these audit reports. They may include information about other Stone & Webster clients, and it would take a time-consuming review to find out. Also, this request, like many of the 49, could as well have been made in March or April.
10. These are GE documents. I'm still checking on their availability, but I anticipate that they are proprietary to GE and cannot be produced.
11. LILCO will make available the monthly and quarterly reports.
12. No documents exist. The reports are oral.
13. The document (a lengthy computer print-out) that supports the statement on page 41 of the testimony is an NRC document ("Power Reactor Summary for Deviations/ Severities for [year]") and is available in the NRC's public document room.
14. I'm still checking on this.

HUNTON & WILLIAMS

Alan R. Dynner, Esq.
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Page 3

15. These are Stone & Webster proprietary documents and may, therefore, present problems. The documents reveal technical details and information about plants other than Shoreham, and for that reason Stone & Webster will object to their being made public.
16. We propose not to produce this. There are multiple indexes, and we question the relevance of their contents to the QA contentions.
17. LILCO will make available the procedures.
18. You already have this one. It's one of the attachments to the LILCO testimony.
19. We do not propose to produce "all" the documents, since this request has all the appearance of a fishing expedition. If you insist, LILCO can make available the first and last sets of notes so you can verify that there really were 850 meetings, since that is the gist of the testimony.
20. LILCO will make available the CCF's (which are the same as the "scoping documents").
21. The County already has the latest revision of the checklist form; it is included in a procedure (QAP 3.1) that was provided the County in March.
22. This is the same information asked for in nos. 5 and 6 above.
23. The County has already been provided 51 of the 53. LILCO will make available the other two, if you wish.
24. These are GE documents, and I believe they are proprietary. I will verify that for you.
25. Same as 24.
26. Same as 24 and 25.
27. LILCO will make available the checklists.
28. This is the same information as no. 1 above.

HUNTON & WILLIAMS

Alan R. Dynner, Esq.
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Page 4

- ~~29. This is the same information as no. 1 above.~~
29. ~~20.~~ LILCO will make available the recommendations from the SORC meetings.
30. ~~21.~~ LILCO will make available the drawing update reports.
31. ~~22.~~ You've indicated that you already have the Initial Status Report, and we cannot provide the other documents. Teledyne reports are given to LILCO at the same time they're given to the NRC.
32. ~~23.~~ We do not propose to produce these. You're asking for thousands of personnel time cards, and that seems to us unnecessary. It would require extensive analysis to give you the type of breakdown you want, and in fact LILCO might have to examine over a dozen types of documents. It would take months to do this analysis.
33. ~~24.~~ We do not propose to produce these. You are asking for hundreds of pages of personnel records. What is more, this request (like others of the 49) could as well have been made during the discovery period in March and April.
34. ~~25.~~ We do not propose to produce these. The documents are many and scattered.
35. ~~26.~~ LILCO will make available the computer print-out that constitutes the analysis of trends.
36. ~~27.~~ I'm still checking on these; I will know more on Monday.
37. ~~28.~~ The County has already received the 37 audit reports.
38. ~~29.~~ LILCO will make available the welding and mechanical surveillance reports and the electrical and instrumentational surveillance reports.
39. ~~40.~~ LILCO will make available the stop work orders.
40. ~~41.~~ The County has already been provided all but the one most recent monthly report. LILCO will make that one report available.
41. ~~42.~~ LILCO will make available the three reports.

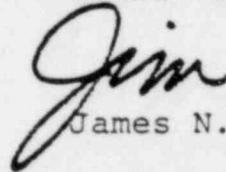
HUNTON & WILLIAMS

Alan R. Dynner, Esq.
August 20, 1982
Page 5

- ~~42.43.~~ LILCO will make available the three reports.
- ~~43.44.~~ LILCO will make available the three reports.
- ~~44.45.~~ LILCO will make available the three reports.
- ~~45.46.~~ No such reports exist. LILCO doesn't issue reports on the Final A Release Program.
- ~~47.~~ ~~LILCO will make available the design drawings of the record storage facilities.~~
- ~~46.48.~~ I'm still checking on this.
- ~~47.49.~~ LILCO will provide the survey of QA/QC manpower at other BWR's.

LILCO can make the documents available at the trailer at the Shoreham plant where discovery was conducted this past spring and can do so on August 31, 1982. I should think that the arrangements for copying documents and paying for the copies would be the same as for the earlier discovery.

Yours very truly,



James N. Christman

MEMORANDUM

August 23, 1982

From: Alan Roy Dynner

Re: Suffolk County: Revised Subpoena of Documents from LILCO

This memorandum summarizes the discussions between Jim Christman and me last Friday evening, Saturday and Sunday, concerning the Revised Subpoena and Jim's letter of August 20, 1982. All paragraph numbers refer to the Revised Subpoena.

The following documents do not exist: Paragraphs 7, 12 and "final stress analysis evaluations" referred to in Paragraph 29.

The following are the bases (other than, or in addition to, as stated in Jim's letter) on which demands for documents were deleted:

1. PCRs for other than 6 systems will be provided when completed.
3. All reports will be provided.
4. The computer printout references NRC documents in the possession of Suffolk County, by which particular open items can be identified.
- 5,6. Summary pages, detailed enough to show matters in clauses (i) through (iv) will be provided. LILCO has no training manuals, referenced in clause (v), but training materials will be provided.

10, 24, 25, 26. GE will make these documents available in San Jose, Cal., if proprietary agreement is signed and they are used only if in camera proceeding.

13. The LILCO "review" will be provided.

14. LILCO has no internal Torrey Pines documents, but will provide the program plan/scoping document and all reports in its possession.

20. The "reviews" are oral except for a document that only indicates if the CCF was approved or not.

21. Previous checklist forms will be provided. There are no documents describing procedures or instructions other than in manuals already provided to Suffolk County.

23. The two audit reports will be provided.

28. All completed reports are attached to PCRs referred to in paragraph 1. The only other reports have not yet been reviewed by LILCO.

29. Minutes of E&D meetings will be provided if they exist. The SORC recommendations to be provided are the only reports, summaries or minutes of SORC meetings.

30. All documents will be provided. If there is a schedule for completion, it is in the form of written goals.

31. LILCO has none of the documents except the interim report and service procurement order between LILCO and Teledyne.

32. A summary showing the calculation will be provided. There are no documents showing the items or class of equipment on which time was expended.

37. The "attributes" noted as unsatisfactory are shown in the audit reports.

46. These documents will be provided.

1 JUDGE BRENNER: We're going to try to resolve
2 this as we go along. I don't know whether we will be
3 successful or not. We have read the papers and thought
4 about it last week to some extent and a lot more
5 intensively yesterday and today.

6 Where does Part A stand? I don't know if
7 anyone can tell us, either counsel.

8 MR. CHRISTMAN: I would suggest that request
9 number one just be dealt with under number 28, which is
10 essentially the same thing.

11 Item number 2, which is containment isolation
12 valves, we had offered, if it would help produce a full
13 settlement, to provide what I'm told is essentially the
14 information the County wants, which is tables showing
15 the results of the containment isolation valve survey.
16 However, in the absence of full settlement we don't
17 really believe that this is appropriate for production.

18 The relationship to the testimony is tenuous.
19 This is just something that is mentioned in a letter
20 that the County is interested in.

21 Number 3, surveillance of startup manuals and
22 monthly surveillances of plant panels. We had offered
23 to give them the most recent of those reports, but that
24 didn't result in any kind of settlement at all.

25 Finally, on the open I&E items, we had offered

1 to give them a printout showing the status of the open
2 ones, the 219-plus others. But again, in the absence of
3 settlement we tend to think that the status of I&E items
4 is really -- has sufficiently little probative value
5 that we really shouldn't be ordered to produce that.

6 JUDGE BRENNER: Well, you note in your latest
7 motion that the County has not connected this to the
8 testimony. However, I think their argument as to the
9 first four items is not, at least not solely, if at all,
10 in connection to the testimony, but rather in connection
11 to the June 21st, 1982, letter on the systematic
12 assessment of license performance inquiry from the
13 Staff, the letter from LILCO designated as NRC-716; and
14 further, that the reason they are requesting it now is
15 the County's interest was stimulated, to put it gently,
16 by the reliance of LILCO in that letter to the Staff,
17 and putting aside whether the request should have been
18 made earlier than it was --

19 MR. CHRISTMAN: Well, we are on much weaker
20 ground on that particular one.

21 JUDGE BRENNER: Yes, because they came in
22 earlier. But I don't want to get into that as to any of
23 them, whether some request could have been three or four
24 weeks earlier. Some of them could. We will say that.

25 They appear pertinent to quality assurance

1 matters. Are you arguing, Mr. Christman, that they
2 could have requested it earlier or that they are not
3 relevant, or not -- not sufficiently probative loses its
4 force in an argument if they could not have requested it
5 earlier.

6 MR. CHRISTMAN: Probative to what we were
7 talking about in our testimony, I think, since we
8 discussed this testimony.

9 JUDGE BRENNER: What is the argument you put?
10 Rather than being tied to probative value in the
11 testimony, it's only for use as cross-examination, but
12 instead being permissible discovery which could not
13 reasonably have been asked earlier?

14 MR. CHRISTMAN: That is good cause for late
15 discovery.

16 JUDGE BRENNER: I'm asking you what you think
17 of the good cause.

18 MR. CHRISTMAN: The SALP report, of course, is
19 an NRC review based upon the record. It's not an
20 independent, brand-new type of assessment. It is an
21 assessment of the assessments of the past.

22 So these sorts of issues it seems to me could
23 have been gone into a long time ago. Now, to the extent
24 that this is a precise Licensee or Applicant response to
25 a particular SALP finding that is based on the record, I

1 can't -- I have not been able to establish, frankly,
2 whether the County should have known about this thing
3 earlier or not. I don't know.

4 JUDGE BRENNER: Well, let's ask Mr. Dynner why
5 the County could not have requested these documents as
6 part of the regular discovery period.

7 MR. DYNNER: Yes, Judge Brenner. I think an
8 examination of the letter, SNRC-716, will demonstrate
9 that items 1, 2, part of 3 and 4 were not in existence
10 at the time prior to the close of discovery.

11 The reference to paragraph 1 is the plant
12 configuration reports, which are referenced in the LILCO
13 letter, as are the other items that we have requested in
14 response to NRC Staff's concerns. The plant
15 configuration reports, as stated in this letter, say as
16 follows, and I am quoting from page 2, paragraph 2: "A
17 presentation on the overall program" -- that is this
18 plant configuration review program -- "was given to NRC
19 Region I personnel in April 1982. Completion of this
20 program is scheduled prior to fuel load. Thus far" --
21 that is to say June 21, 1982 -- "six systems have been
22 reviewed and no significant findings have resulted. The
23 FSAR will be updated as appropriate in accordance with
24 these findings."

25 Well, as we understood this paragraph there

1 was a meeting held in April, which I believe is after
2 the close of discovery, and these particular reports
3 were therefore generated subsequent to that time and
4 could not have therefore been subject to discovery while
5 that process was under way.

6 Paragraph 2 of the revised subpoena refers to
7 page 3, paragraph 5, of the letter. And this is the
8 field survey of the location of containment isolation
9 valves. That also, you will recall, as other NR items
10 in this June 21st letter, are the response of LILCO to
11 NRC concerns evidenced from the May SALP report, which I
12 might point out therefore was issued subsequent to the
13 discovery period.

14 And that particular paragraph refers to the
15 fact that: "LILCO has instituted a field survey of all
16 containment isolation valves for the purpose of
17 reviewing their location. The results of this survey
18 will be forwarded to the NRC resident inspector in
19 June."

20 That indicated to us that that field survey
21 had not, certainly not been completed during the
22 discovery period, and it was going to be available some
23 time in June.

24 Paragraph 3 of the revised subpoena refers to
25 page 5, paragraph 1. This is the reference to the

1 quarterly surveillances and monthly surveillances. In
2 that case, both of those surveillances are referred to
3 in response to concerns evidenced by the NRC Staff in
4 the May SALP after the discovery.

5 It's not clear whether there were and to what
6 extent there were monthly and quarterly surveillances
7 that occurred during the discovery period. To the
8 extent that there were such surveillances, there was no
9 way that Suffolk County could possibly have known that
10 the LILCO would attach any real significance to those
11 surveillances.

12 This letter is responding, as I read it, in
13 that paragraph to NRC Staff concerns with the updating
14 of startup manuals by saying, we surveil this process,
15 it is responding to concerns of the NRC Staff evidenced
16 in the SALP report. As to the listed leads and jumper
17 problems, by saying that, in addition to other things,
18 we also have a monthly surveillance program to assure
19 proper implementation.

20 And it seems clear to us, at least, that to
21 some extent these surveillances occurred after
22 discovery, may have occurred before discovery, are
23 clearly relevant to the issues of QA raised in the SALP
24 report and/or LILCO's responses to that.

25 And finally, the last issue, which is the

1 status report. There is specific mention in this letter
2 -- the reference is page 5, paragraph 2 -- that: "A
3 recent review as of May 24, 1982, of the status of NRC
4 open items indicates that 219 items have not been closed
5 by NRC Inspection and Enforcement."

6 Okay. May, obviously, again, after the
7 discovery period had closed. It seems to us that 219
8 items is an extraordinary number of open items to have
9 occurred and be present at this late date. That says
10 something potentially extremely significant about the QA
11 program.

12 In our discussions with LILCO counsel, I told
13 them that we would like that. Mr. Lanpher's letter of
14 July 26th said we wanted the 219 items. I said we would
15 take their latest status report of the open items.

16 I might point out in addition to the Board
17 that there is a memorandum attached as attachment 4 to
18 our submission, which goes into a little bit more
19 depth. It is an elaboration, an explanation of Mr.
20 Christman's letter to me which sets forth the list of
21 documents that LILCO was then willing to present, and it
22 explains the basis for the discussions that we held.
23 And you will note that item 1, we said we would like the
24 six reports that have now been completed and we would
25 like the additional reports as they are completed,

1 because those are relevant and highly germane reports
2 that will be becoming available, presumably, as we go.

3 Item 2 was the field survey. Again, this
4 item, for example, was the result of a narrowing in the
5 revised subpoena, where we had initially asked for all
6 kinds of documents related to, but we narrowed that down
7 to the survey alone. And Mr. Christman offered that
8 document during our discussions.

9 Item 3. During our discussions, as noted in
10 attachment 4, I asked, are there loads of these
11 quarterly and monthly reports? How many are there? We
12 don't want to go back 15 years. And when I was told
13 that there aren't too many of them, I asked for all of
14 them. And there was at that point a tentative agreement
15 to provide them.

16 And item 4 was going to be provided to us --
17 That is the status report -- under our interim
18 agreement, I will call it, in the form of computer
19 printout references, which Mr. Christman assured me
20 would be readable enough for us to ascertain the content
21 of the status report.

22 In mentioning, I should add that, these
23 discussions -- I don't want to say that I'm holding Mr.
24 Christman to anything that was said during the
25 discussions. He has obviously the full right to change

1 his position, and he apprised me on the telephone that
2 he intended to change his position during these
3 proceedings as to some items.

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1 JUDGE BRENNER: Well, in fairness to him, we
2 have all gone through this. It is not a change in the
3 position. It was a tentative agreement. If there had
4 been a full settlement -- in the absence of a full
5 settlement, they might not offer the same deal, so to
6 speak.

7 MR. CHRISTMAN: Judge, I skipped Item 1
8 before, saying that --

9 JUDGE BRENNER: They are going to get Item 1
10 anyway, under the agreement for Item 28, is that
11 correct?

12 MR. CHRISTMAN: Yes, that's right, with
13 respect to the issued reports and their attachments.

14 JUDGE BRENNER: I didn't hear you.

15 MR. CHRISTMAN: Yes, they are going to get the
16 issued SPC, all report with the attachments.

17 MR. DYNNER: Excuse me. May I see the
18 clarification of that?

19 Item 38, Paragraph 28 is the configuration
20 discrepancy reports. As I understand it, these
21 configuration discrepancy reports are attached to the
22 plant configuration reports referenced in Paragraph 1
23 and therefore are attachments to it and not the reports
24 themselves.

25 I just wanted to get a clarification as to

1 whether LILCO is prepared to give us the plant
2 configuration reports referenced in Paragraph 1 to which
3 the applicable configuration discrepancy reports
4 referenced in Paragraph 28 will be attached.

5 MR. CHRISTMAN: Under 28, he is getting the
6 reports and the attachments for the six systems.

7 MR. DYNNER: Fine.

8 JUDGE BRENNER: Plant configuration reports.

9 MR. CHRISTMAN: Yes.

10 JUDGE BRENNER: All right, Item 1 is
11 resolved.

12 All right, give us a moment on these items.

13 (Board conferring.)

14 JUDGE BRENNER: All right. We are going to
15 direct that Items 2, 3, and 4 be provided to the county
16 with the understanding, which I will confirm right now
17 from Mr. Christman, that Mr. Dynner's statement as to
18 Item 3 is correct; that is, all the reports will not be
19 very burdensome as distinguished from just asking for
20 the newest ones.

21 MR. CHRISTMAN: Yes, sir. There are in the
22 neighborhood I think, perhaps, of twelve monthly
23 reports, I don't know how many quarterly reports, but
24 presumably not too many more than that.

25 JUDGE BRENNER: All right. We are directing

1 that they be turned over, as we are applying the general
2 rule of relevance to discovery on these four, given the
3 focus in the filing by LILCO with the Staff. It may be
4 that some subparts of these items could have been
5 available towards the tail end of the discovery period,
6 but certainly not the updates, and the renewed focus, we
7 think, given the fact that there are updates, is
8 justification for turning them over.

9 We will discuss at the end of all this when we
10 see what is involved.

11 MR. CHRISTMAN: That's what I was going to
12 ask.

13 JUDGE BRENNER: Items 5 and 6 are still in
14 dispute, notwithstanding the additional deletion in the
15 subpoena, is that correct?

16 MR. CHRISTMAN: Yes.

17 JUDGE BRENNER: Mr. Christman, on these I
18 think we understand your argument that these are not
19 particular documents referenced in the testimony, and
20 the questions can be asked on cross examination.

21 Accepting those arguments by LILCO for the
22 sake of argument at this time, since they are going to
23 ask the questions anyway if we deny the discovery, would
24 it not be more efficient to turn over the qualifications
25 now, and we would not apply that test ever on a test for

1 qualifications. We are going to get to some others
2 later, but these are the qualifications directly of the
3 LILCO personnel.

4 MR. CHRISTMAN: Judge, those can be produced
5 without an undue amount of difficulty.

6 JUDGE BRENNER: If they exist. If they don't
7 exist --

8 MR. CHRISTMAN: There are summary pages of
9 training records. There are some job descriptions and
10 there are no training manuals as the professionals
11 understand training manuals, but there are training
12 materials that they use in the training programs.

13 The scope of the training materials is the one
14 I understand the least. The others certainly can be
15 provided.

16 I think it is simply that a lot of these
17 individually, you know, can be produced without undue
18 burdensomeness. It is more the fact that cumulatively
19 and at this late date, it seems unusual and perhaps
20 unreasonable to us to order a wholesale -- to ask for a
21 wholesale production of documents. But certainly on
22 this one they can be produced.

23 JUDGE BRENNER: Let's leave the documents
24 which describe the training provided aside for the
25 moment because that is of a bit of a different stripe

1 than the other requests on those parts. But as to the
2 others, these would be the types of things that would be
3 inquired into in the testimony anyway.

4 Do you have the same problem with those that
5 remain, that is, the resumes giving their qualifications
6 and also the job descriptions and the identity of the
7 individuals?

8 MR. CHRISTMAN: Well, it is a question whether
9 we can -- is the question whether it wouldn't be just as
10 wise to go ahead and produce the documents?

11 JUDGE BRENNER: Yes.

12 MR. CHRISTMAN: We think that they could ask
13 the question on cross examination and elicit the
14 information that way, and I suppose we would prefer to
15 have the burden on them rather than the burden on me to
16 produce documents. That is really the gist of the
17 argument.

18 JUDGE BRENNER: I am thinking of the burden,
19 as we are sitting here listening to this, and you, too.

20 MR. CHRISTMAN: I am pretty much in the
21 business of giving you what you want. If you think that
22 this would be useful and help the progress of these
23 hearings, we can produce these things; the training
24 materials apart, which are more of a problem.

25 JUDGE BRENNER: All right.

1 Let's direct that the first three subparts be
2 turned over as to the request 5 and 6. 6, as you know,
3 references the subparts of 5.

4 As to the last subpart, Mr. Dynner, that
5 certainly is something that could have been inquired
6 into on discovery. That is general training. And also
7 understand that if you are not given anything on it, you
8 might have a right, depending on the pertinence at the
9 time, to inquire into it on cross examination, and
10 without the possible compromise suggested at one point,
11 recognizing that that was only subject to full
12 settlement, if there is an existing summary page.

13 Is that right, that a summary page of the
14 training received exists?

15 MR. CHRISTMAN: Yes, that's right. The
16 summary page we are talking about lists, as I understand
17 it, the name, the professional qualifications, and the
18 training the person has received. It is not, in fact,
19 the only thing behind the summary page, a certification
20 that the person has taken the various courses and that
21 sort of thing so that one document will cover those
22 three things. The additional document we would have to
23 produce would be the job descriptions, of which there
24 are, you know, which tend to be generic, for a QA
25 engineer, for instance, and we can produce that as a

1 separate document

2 But you are right, the summary page does tell
3 what courses, what training the person has had.

4 JUDGE BRENNER: We are inclined to go that
5 far, that is, the job descriptions and this summary page
6 of training but not require LILCO at this late date to
7 pull together all documents that might exist that might
8 describe the training.

9 MR. DYNNER: Yes. Judge Brenner, I will say
10 right now that as far as I am concerned, the discussions
11 that I had with LILCO's counsel were intended for my
12 part, rather than to be tradeoffs, but to narrow down
13 further to the extent that we could and get the essence
14 of the documents that we needed. So I am prepared to
15 live by, with respect to this item, as Attachment 4
16 states, the summary pages detailed enough to show the
17 matters requested in Clauses 1 through 4, plus the
18 training materials. And in general I will take the
19 position that whatever I agree to during our discussions
20 insofar as narrowing down the documents even beyond the
21 revised subpoena, I will live with now.

22 JUDGE BRENNER: We will order that they be
23 turned over as I described it. Whether or not they are
24 detailed enough to meet your needs will be a matter for
25 your own view.

1 MR. CHRISTMAN: That is sort of the problem I
2 had, but with that understanding, I think that should
3 not be a problem.

4 JUDGE BRENNER: All right.

5 In directing that these be turned over, Mr.
6 Dynner, I want you to know that certainly these things
7 could have been requested earlier. We are keeping an
8 eye towards the efficiency of the hearing to come and
9 not solely ruling on the basis of whether it was okay
10 for the County to wait three to five months before
11 asking for these things.

12 There is some background to this that I won't
13 go into in detail, and you weren't here at the time, but
14 there is a very close question as to whether the
15 discovery during the early Spring should have been
16 allowed, given the lack of diligent discovery by the
17 County for the year prior, and that discovery was
18 allowed on a close call, and now in turn we are relating
19 to it.

20 I want you to know we have not forgotten about
21 it, but we were also interested in the efficiency of the
22 hearings to come on some of these rulings.

23 I have a note that 7 is resolved, is that
24 correct?

25 MR. CHRISTMAN: I think so, resolved with the

1 understanding that there is no document or small groups
2 of documents that will give the County the kind of
3 information it needs. One might produce millions of
4 specifications for various kinds of equipment, but we
5 can't think of anything else to do that would satisfy
6 the County.

7 JUDGE BRENNER: The answer is the documents
8 don't exist as requested?

9 MR. CHRISTMAN: Yes.

10 JUDGE BRENNER: I have a note that Item 8 is
11 resolved. The reason I am checking these notes is I am
12 not sure how careful I was.

13 MR. CHRISTMAN: Item 8 is indeed resolved
14 because the documents were already provided in the
15 past.

16 JUDGE BRENNER: Mr. Dynner, if at any time you
17 disagree or want to add, jump right in.

18 All right, Item 9 is still open in part. At
19 least it was at the time of the weekend filings.

20 MR. CHRISTMAN: Yes, and I owe you some
21 information on that one.

22 If it is correct the Items 9-1 and -- well,
23 9-1 and 9-2 are resolved on the grounds that the
24 documents requested were already provided I guess in the
25 discovery in this spring. Item 3 is unresolved, but I

1 have checked with Stone and Webster and have some
2 additional information.

3 This is asking for audits by Stone and Webster
4 of other organizations, outside organizations providing
5 engineering services as contrasted with, say,
6 equipment. In the discovery that took place in March,
7 the County had access to procedures that described this
8 process. In particular, they had access to Stone and
9 Webster Project QA Program Manual, Section 1, in which a
10 particular section, which I think is numbered 2.1.3,
11 tells us that the engineering assurances at Stone and
12 Webster controls this engineering procurement process.
13 They have access to EAP 4.1 and 7.1 which describe
14 engineering assurances involvement in this activity in
15 some detail.

16 Moreover, in a fairly lengthy letter to Harold
17 Denton of April 19 which all the parties have had for a
18 long time, Enclosure A, page A-8, this same sort of
19 information is provided, and indeed, I suspect that the
20 Denton letter was the source of the testimony.

21 In short, the knowledge that Stone and Webster
22 audits these organizations that perform engineering
23 services has been known for a long, long time, and
24 indeed, a certain amount of detail was provided on the
25 program.

1 This is one of those where it seems to be very,
2 very late to be coming in and asking for the audits.

3 Others, as shown by 9-1 and 9-2, other audits
4 in this category were requested and provided in the
5 spring, and this third item seems merely an effort to
6 supplement an oversight made earlier.

7 JUDGE BRENNER: Mr. Dynner, this does appear
8 to be late for the reasons discussed, and I will add
9 that we looked at the testimony to see if there was a
10 particular audit focused on for a direct substantive
11 reason which might have given rise to an argument that
12 yes, you had a lot of discovery on the audits, that now
13 that you see the sharp focus of a particular audit being
14 used for a particular point, you want to take another
15 look. But that is not the case.

16 Pages 28 and 29 of the testimony refer to the
17 audits as part of the overall program description.

18 So isn't this late discovery?

19 (Counsel for Suffolk County conferring.)

20 MR. DYNNER: Yes, Judge Brenner. What we have
21 done here is to say -- is to respond and try to get the
22 information concerning this statement that they normally
23 provide audits of other organizations. It was an
24 attempt on the basis of what they say they normally do,
25 not always and not never, to get some kind of a concept

1 of what they were talking about in the testimony.

2 We would prepared to narrow that further,
3 certainly to delete the information that doesn't bear on
4 LILCO and say that what we are asking for is only what
5 is related to Shoreham.

6 I think that what is going to occur as we go
7 through these discussions is that with regard to what we
8 could or could not have done during discovery, A, I
9 won't repeat our legal arguments because they are in the
10 memorandum and I don't want to bore everyone, but aside
11 from that, their basic approach was to take some 247
12 pages of testimony and try to boil it down into what
13 were areas that even though we may have had an
14 opportunity to get documents previously, are now
15 referenced and appear to be relied upon. And I think
16 that explains a bit about why we went for this
17 particular issue.

18 The normal performance and looking for a
19 handle on that in terms of seeing what they were
20 actually doing, while it appears now is referenced in
21 the testimony to be of some significance, may not have
22 been so significant when we had the opportunity to go
23 through the mass of material that we did go through in
24 discovery.

25 JUDGE BRENNER: Yes. I attempted to give some

1 deference to that possible argument in my remarks, but
2 looking at pages 28 and 29 of the testimony, you don't
3 have that kind of sudden, sharp focus now, and Stone and
4 Webster audits were well focused on during the
5 discovery. It is not as if this was some background
6 subject. It was very prominent during the early
7 discovery.

8 You also anticipated in your remarks, Mr.
9 Dynner, one of my other questions, is what use you would
10 make of it on cross examination, and that is what their
11 normal procedure is, and it seems to me that that can be
12 accomplished by cross examination without resort to
13 details in the audits.

14 In the absence of any indication that a
15 witness is lying in stating that audits were made, the
16 fact is not the detail of the audit but whether or not
17 audits are performed, and you can test the frequency and
18 application of the audits on cross examination.

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1 MR. DYNNER: Without belaboring the point, if
2 I can differentiate the issue of whether or not we could
3 have gotten the document earlier from the issue of why
4 we want it now. It seems to us that there is in this
5 statement and in many of the statements in the testimony
6 implicit that, whatever the document referred to, it is
7 a meaningful document.

8 To say that one normally performs all these
9 audits is to at least imply that the audits are in
10 themselves meaningful and not simply a cursory or
11 summary kind of audit. And for that reason alone, apart
12 from the other reasons that we have attributed to this
13 request, we felt it would be useful to see the audits in
14 order to determine what was in them.

15 We would be prepared, if it would be
16 burdensome, to get some kind of a random sampling of
17 these audits, so we could just get an idea of what they
18 look like and whether they have the content that is
19 implied by the testimony.

20 JUDGE BRENNER: We've got some inkling from
21 the prior discovery that these audits are fairly
22 extensive in general. I don't know about these in
23 particular.

24 Mr. Christman, can you comment on this?

25 MR. CHRISTMAN: I have not looked at the

1 procedures that they examined, but the gist of my
2 remarks was that they had access to the procedures by
3 which the audits are done and they looked at both, and
4 that should have told them quite a bit.

5 As for their other point, the fact that we
6 mentioned a program of some sort in our testimony means
7 that it entitles them to look through all of the
8 underlying documents. This is a programmatic type of
9 testimony. We have testified about dozens and dozens
10 and dozens of programs, and of course we think that
11 those programs are good ones. Some of them are
12 significant programs.

13 But it does not therefore follow that one or
14 two weeks before the hearing it is appropriate to delve
15 into all of the underlying results of those programs to
16 try to find that way whether the programs are good or
17 not. That argument on a QA issue, which I think may be
18 different from all the other types of issues that we
19 deal with in these proceedings, that type of argument on
20 a QA issue would enable you to have discovery on
21 anything, anytime.

22 I think that is probably all I would want to
23 say about that.

24 JUDGE BRENNEK: With respect to the documents
25 which you delineated at the outset of your remarks were

1 available for inspection in March, are they still
2 available in that form, or have they been returned back
3 to their sources? At that time, as you may know, there
4 was a very large task of pulling the documents out from
5 their normal place of repose and putting them together
6 in a discovery access type arrangement.

7 MR. CHRISTMAN: Right. The question is
8 whether these happen to be among those that the County
9 chose to copy and carry away, rather than just ones that
10 they chose not to?

11 JUDGE BRENNER: No. The question is whether
12 you still have them where they are reasonably
13 accessible. Not all the documents that might fit within
14 the request, but the particular examples you gave.

15 MR. CHRISTMAN: That I do not know, but they
16 could be made available on site by the 31st of this
17 month.

18 JUDGE BRENNER: All right. Give us a moment.
19 (Board conferring.)

20 JUDGE BRENNER: We are going to deny the
21 request on the basis that it could have been made
22 earlier and nothing in the testimony gives rise to a new
23 focus. And the test we are applying is, as I endeavored
24 to state, is not whether theoretically the documents
25 existed earlier and therefore should have been looked

1 at. We might accept an argument that, even though the
2 documents existed earlier, now you see the use in the
3 testimony, there is a renewed focus and therefore a
4 reason for asking for the documents.

5 And in fact, as the parties know, where there
6 were particular documents referenced in the testimony
7 LILCO has agreed to turn those over regardless of
8 whether they existed earlier or not. But the documents
9 here are not of that nature. Rather, there is a program
10 being described. And if we accept the argument that the
11 reference to the program gives access to all the
12 underlying audits in this case of the documents in other
13 cases, notwithstanding whether they could have been
14 requested earlier, then there is no point in having a
15 discovery period, because almost all QA documents could
16 be requested for the first time now under that
17 argument.

18 That is a formal ruling. However, I make the
19 observation that strategically the parties on their own
20 may want to consider whether it would be more efficient
21 to wait for some questions on cross-examination as part
22 of their discussions, possibly narrowing the litigation,
23 and whether it might assist that process to allow the
24 County to take another look at the documents they
25 earlier looked at. But that is up to the strategy of

1 the parties.

2 We also, of course, note that County's
3 narrowmind that they're talking about on the audits, that
4 would apply to organizations performing work on
5 Shoreham.

6 I should indicate that, due to the exigency of
7 the Board being up here, you're not going to get a
8 written ruling. You have probably inferred that by
9 now. So if you have questions at the end as to our
10 ruling, we will go over it at some point. But unless
11 you have questions as we go through it, these will be
12 the rulings.

13 Item 10. I'm not sure of the status on that.
14 I have a note that it's resolved subject to a
15 non-disclosure agreement. But since it involves a party
16 other than LILCO I should double-check.

17 MR. CHRISTMAN: Our position on this, Judge,
18 is that -- and I ought to lump all of the GE ones, and
19 there are four of them -- 10, plus 24, 25, and 26 -- we
20 had a conference call on Friday and talked to GE and
21 they said they were reluctantly willing to make these
22 things available in California, that there are quite a
23 lot of them, that they are proprietary to GE, but that
24 reluctantly, given the lateness in the process, they
25 could make them available under a proprietary agreement,

1 with the understanding that they would be insisting or
2 arguing strenuously for in camera hearings should these
3 documents become the subject of hearings.

4 Mr. Dynner -- the additional information was
5 that there were, even after narrowing, quite a large
6 number of these documents out in San Jose. Mr. Dynner
7 was going to check and see if he could narrow that
8 down. Because of the time pressures, that did not get
9 done.

10 But our position is, when we filed this
11 document yesterday morning, is that applying the new
12 focus test we find it inconceivable that the filing of
13 this testimony apprised the County that GE had a quality
14 assurance role in this power plant. I see no
15 justification for opening discovery against GE at this
16 point.

17 I must say, this seems to be one of the more
18 extreme of the requests.

19 JUDGE BRENNER: I take it your argument is the
20 same as to the Stone & Webster documents, that the GE
21 audits -- this is a program description and a reference
22 to the number of audits, and certainly General Electric
23 audits were fair game for discovery earlier, and there's
24 no particular focus on a particular audit with respect
25 to a particular item at pages 30 or 120?

1 MR. CHRISTMAN: That's right. And in
2 addition, number 10, the gist of the testimony they are
3 citing was cited in this letter to Harold Denton from
4 LILCO, April 19th, enclosure C, page C-5, which all the
5 parties have had since April.

6 JUDGE BRENNER: All right. I'll tell you why
7 I'm still not sure of what your position is, Mr.
8 Christman. I understand that GE will make them
9 available reluctantly. But, you know, it's more a
10 matter of pique. Not pique, but it's a matter of how
11 they feel about it.

12 But I still need LILCO's position on whether
13 you will assert a legal argument or, also reluctantly,
14 agree to make them available if the categories can be
15 narrowed. I don't know whether you had some meaningful
16 exchange on the possible grounds for narrowing.

17 MR. CHRISTMAN: No, we have not had any
18 feedback on what kind of narrowing might take place.

19 JUDGE BRENNER: Aside from the proprietary
20 problem, what is the burden involved? Pulling them all
21 together?

22 MR. CHRISTMAN: That is for me. The burden is
23 to GE. The proprietary problem I think is a serious
24 one. We think, as far as burdensomeness, it is merely
25 the problem of dealing with the discovery, which seems

1 to be a fairly large magnitude, in which we will be
2 involved. It's a significant burden one week before the
3 hearing, or two weeks.

4 JUDGE BRENNER: Are you objecting to the
5 request?

6 MR. CHRISTMAN: I feel obligated to object to
7 this one, yes.

8 JUDGE BRENNER: Maybe I was lecturing you. I
9 didn't mean to. I just didn't know what "reluctantly"
10 meant.

11 MR. CHRISTMAN: Yes. I would like to avoid
12 bringing these disputes to the Board as much as I
13 possibly can. But I think this is a fairly extreme one,
14 and I think it is going to be burdensome on everybody,
15 not only GE but on LILCO, LILCO's counsel. And this
16 late in the game I think it is not a proper request for
17 discovery.

18 JUDGE BRENNER: Mr. Dynner, the County here is
19 asking for a large category of GE audits which could
20 have been requested earlier. Unless you can point to
21 something I don't see at those pages of the testimony --
22 I want to tell you candidly that I have not read the
23 entire testimony. What I have done is focus on the
24 referenced pages. So if there is something I should
25 know elsewhere in the testimony that is very pertinent

1 to what I am saying, feel free to point that out.

2 But as to the particular excerpts of the
3 testimony, again it is a description of the number of
4 audits, not a focus on particular audits. These GE
5 audits, from what I can tell from here, were available
6 earlier. If there are updated, it's not clear from
7 anything I have seen.

8 Is there something in particular? What are
9 you looking for in terms of assisting your
10 cross-examination?

11 MR. DYNNER: I think again I'm going to have
12 to say that, first of all, I referenced not only page
13 30, but as I understand from my conversation in a
14 conference call with Mr. Firestone of GE and Mr.
15 Christman, the documents listed in paragraph 10 overlap
16 with the documents which are requested in paragraphs 24
17 and 25. So there's a reference to page 20.

18 JUDGE BRENNER: 20 and 121. Yes, I looked at
19 those also.

20 MR. DYNNER: That's correct. It seems to us
21 that, again, these are documents that are specifically
22 referred to. And as we read the testimony, they go
23 beyond just saying GE conducts audits. It purports on
24 pages, the bottom of page 19 and page 20, to describe
25 and summarize the audit results, and then does it in a

1 manner which so far as I can see is so vague as to cry
2 out for cross-examination about what this was all
3 about. So that it does seem to us to be very relevant.

4 Now, as to the other two matters, let me say
5 this. First of all, the issue of whether or not it is
6 burdensome. My impression of the discussion with Mr.
7 Firestone that we had was that initially he said,
8 looking at our original subpoena, he said, this is, I
9 think, four, five or six file drawers full of material.
10 I pointed out to him that in the revised subpoena we had
11 narrowed it down and only asked for the actual audit
12 reports in 10, 24 and 25.

13 And with what seemed to me at least to be a
14 sigh of relief, he said: Well, that's not so bad,
15 that's about one and a half file drawers; can we narrow
16 that down further? And I said I would check.

17 I told Mr. Christman before the hearing this
18 morning that, after checking with our experts, they felt
19 that we could not narrow it down further in terms of the
20 kind of documents, what this might show about the
21 functions and results of the audits. So I don't think
22 that this would be very burdensome to GE. They have
23 said that they will make these documents available to us
24 on site in San Jose, California. We have someone that
25 is prepared to go there.

1 They have talked about proprietary
2 agreements. We have indicated that that is okay with
3 us. To the extent that we have to cross-examine the GE
4 witness concerning these documents, the issue of
5 proprietary or non-proprietary will arise at any rate.
6 And it seems to us that this is neither burdensome nor
7 outrageous to ask in the context of the particular
8 testimony.

9 MR. CHRISTMAN: Judge, that's essentially
10 right about the conversation with Firestone, except that
11 I have in my notes that Mr. Firestone started out
12 talking about four file cabinets, and those are four
13 six-drawer file cabinets. So when he said with a sigh
14 of relief, well, now we are only talking about, and I
15 think it was one and a half or two, he's not talking
16 about drawers; he is talking about six-drawer cabinets.

17 JUDGE BRENNER: Of course, to some extent if
18 they are already in the segregated drawers within the
19 subject area, then the burden is on the County to look
20 through it. And that's why I'm wondering whether you
21 have to pull it together, you or GE, as opposed to it
22 already being together.

23 MR. CHRISTMAN: I don't know whether Mr.
24 Firestone meant they had already been assembled in the
25 cabinets or whether he was using that as a measure of

1 volume, to tell you the truth.

2 JUDGE BRENNER: One reason we have been
3 talking about burden as much as we have is that I think
4 counsel realizes not that burden per se would be an
5 objection to timely discovery, but the fact that audits
6 could have been requested and in fact were extensively
7 to a large extent -- not necessarily these audits, but
8 audits were requested during the discovery period. And
9 the testimony, despite your phrase, Mr. Dynner, does not
10 reference particular documents or particular audits.
11 They reference the number of audits. That is different
12 from an audit of January 11, 1982, which states the
13 following, as a reason for the sharper focus, now.

14 Give us a moment on these.

15 (Board conferring.)

16 JUDGE BRENNER: All right. We're going to
17 deny these requests -- that is, 10, 24, 25, and 26 --
18 essentially for the reasons discussed with respect to
19 the Stone & Webster audits and the previous item. That
20 is, these audits could have been requested earlier
21 during discovery. There is nothing in the testimony
22 that particularly focuses sharp interest on a particular
23 audit.

24 However, our observation as to the strategic
25 advantages of the parties to discuss things applies

1 here. In addition, we do not know if there are new
2 audits among those described, and certainly if there are
3 new audits that did not exist during the discovery
4 period, that fall within the description requested in
5 those items, those should be made available.

6 MR. DYNNER: Judge Brenner, could I just ask a
7 clarification? Items 10, 24, and 25 do reference audit
8 reports. Item 26 asks for the analysis which is
9 referred to on page 121. The testimony states: "An
10 analysis of these evaluations demonstrates there are no
11 uniquely recurring deficiency areas."

12 I just wondered whether you would consider
13 that. This is not an audit report, but rather an
14 analysis.

15 JUDGE BRENNER: We were going to take a break
16 in a moment anyway. We will discuss that point among
17 the Board.

18 Mr. Christman, do you think that sufficiently
19 different? Maybe I should ask Mr. Dynner. I don't see
20 where it's sufficiently different with respect to the
21 point as to whether it could have been requested earlier
22 during the discovery period.

23 MR. CHRISTMAN: I think, given the absence of
24 interest in the GE documents during discovery, it really
25 doesn't make any difference.

1 MR. DYNNER: Well, I think our response is
2 that we don't know when this analysis was done, whether
3 it was done before or during discovery or after
4 discovery. We don't know what the assumptions of the
5 analysis were.

6 All we have here is a bare conclusion and, as
7 in other areas, we certainly will feel that we are
8 obligated to cross-examine the witness about statements
9 like this, and it would be terribly helpful, I think, to
10 the Board and to us to, where we can and where a
11 document does exist, not be caught with a witness on the
12 stand being cross-examined and say, yes, there was an
13 analysis, and the questions are what does it say and he
14 says, well, it's two or three pages long, I don't
15 remember what the assumptions were and I don't remember
16 what it said.

17 It's really, a lot of what we are doing in our
18 subpoena request is trying to find and get a handle on
19 documents, get a hold of them now, and use them for
20 cross-examination, so that we don't run into this
21 situation of finding a witness that can't answer proper
22 and relevant questions with respect to his testimony
23 without referring to documents that neither he has nor
24 we have seen.

25 MR. CHRISTMAN: Judge, you know my response

1 would be that it's perfectly appropriate for Mr. Dynner
2 to cross-examine on this testimony, that it's in
3 nobody's interest to say, I don't know, and be
4 unprepared. And I think that you have suggested that
5 during the negotiations and attempts to narrow somehow
6 the scope of this issue that we should keep that in
7 mind, and we certainly will.

8 Indeed, we have offered or suggested ways that
9 the scope of the issue might be narrowed, and we
10 certainly intend to pursue some narrowing.

11 JUDGE BRENNER: Let me ask you this -- I'm
12 sorry, I thought you were finished.

13 MR. CHRISTMAN: Go ahead.

14 JUDGE BRENNER: Is this one analysis and one
15 report, as opposed to the large series of things that
16 the actual audit reports would involve?

17 MR. CHRISTMAN: Let me just read it quickly
18 and see if I know.

19 JUDGE BRENNER: I am suggesting that Mr.
20 Dynner has refocused my attention to this item, that
21 this in effect might be useful, a useful summary index
22 type item with respect to the audits and the other
23 requests. And even though it could have been requested
24 earlier, it's not very burdensome and might help
25 efficiency.

1 MR. CHRISTMAN: The short answer is I don't
2 know what that document looks like, document or
3 documents.

4 JUDGE BRENNER: If you could find that out,
5 that would be helpful. I am not saying that it would be
6 essential to our result.

7 We could also leave our ruling as it stands,
8 with the admonition that if it is not very burdensome we
9 strongly suggest that that type item might assist
10 efficiency, but maybe it would be cleaner to more
11 definitively deal with it by the Board if you can give
12 us that information at some point soon.

13 MR. CHRISTMAN: I will give it as soon as I
14 can. Perhaps I can do that at the break, if we have a
15 break.

16 JUDGE BRENNER: We didn't want you to be
17 required to do it at the break, but whenever you can.

18 MR. CHRISTMAN: I may not be able to. People
19 are in California and so on. But I will try.

20 JUDGE BRENNER: All right. Let's break for
21 lunch now. We had hoped to finish this this morning,
22 but we're not going to. We will break until 1:30.

23 (Whereupon, at 12:17 p.m., the hearing in the
24 above-entitled matter was recessed, to reconvene at 1:30
25 p.m. the same day.)

AFTERNOON SESSION

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(1:30 p.m.)

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JUDGE BRENNER: All right, we're ready to continue.

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Is there a further report on item 26, Mr. Christman? Were you able to contact them?

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MR. CHRISTMAN: Yes, sir. The analysis referred to is a series of such analyses going back to about June 1976. There is no information that is Shoreham-specific in those documents. What GE apparently does is tabulate and look at all of the items that its customers have brought to it, deviations of some kind, and then looks at these from time to time, makes little checklists and says, in this particular area so many customers have raised issues.

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And it then does an analysis of those customer reactions to their product. That is why it is a fairly small number of documents. But it is an analysis. I guess it is done periodically.

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JUDGE BRENNER: Okay. So to summarize, there is a written analysis, as opposed to a witness going through all the evaluations, and there are several written analyses?

MR. CHRISTMAN: Yes.

There is, by the way, one that, since the

1 discovery period which -- I guess it was dated July 20,
2 as a matter of fact, last month --

3 JUDGE BRENNER: All right. Why don't we
4 further strengthen our strong recommendation and direct
5 that it be turned over. We are doing it with an eye
6 towards efficiency. It does not mean that we found your
7 legal arguments as to why you did not have to turn them
8 over to be lacking. In fact, if you look at our rulings
9 on 24 and 25, we in effect found to the contrary.

10 MR. CHRISTMAN: Judge, I trust it's understood
11 that that is still a proprietary GE document and needs
12 to be protected.

13 JUDGE BRENNER: Yes. Let me state it this
14 way. We are not ruling that it's proprietary. We don't
15 know. GE is entitled to assert that, and the parties in
16 the past in this case have had no trouble entering into
17 an agreement without necessarily conceding the point.
18 And I trust that will be done here.

19 MR. CHRISTMAN: Fine, thank you.

20 JUDGE BRENNER: I have a note that the next
21 several items are resolved, 11 through 14.

22 MR. CHRISTMAN: That is correct. 11 is
23 resolved because we agreed to provide it. 12 is
24 resolved, 13 is resolved. 14 I think is resolved.
25 We're going to supply the program plan and all reports

1 issued to LILCO to date.

2 MR. DYNNER: Can I get a clarification on
3 that? The question that I have is, LILCO says they will
4 give us the scoping document and all reports issued to
5 LILCO to date. My question is whether there are any
6 documents other than those that are mentioned in LILCO's
7 possession from Torry Pines.

8 Mr. Christman and I discussed this, but I'm
9 not clear on whether he represented to me that that's
10 all that LILCO has from Torry Pines.

11 JUDGE BRENNER: I saw a reference somewhere, I
12 thought. I can't find it.

13 MR. CHRISTMAN: My understanding is that
14 that's right, that's all we have.

15 JUDGE BRENNER: Maybe I am confusing two
16 items. I don't see the reference.

17 MR. CHRISTMAN: Teledyne and Torry Pines are
18 easy to confuse.

19 JUDGE BRENNER: Thank you. That's exactly the
20 confusion I had. You had a statement elsewhere that the
21 Staff received it at the same time as you do, and that
22 is with respect to the Teledyne.

23 MR. CHRISTMAN: That's right.

24 JUDGE BRENNER: I'm glad to hear they are easy
25 to confuse. That will be my excuse.

1 MR. CHRISTMAN: They both start with "T".

2 JUDGE BRENNER: All right. It seems to the
3 Board that that resolves the problem with Mr. Dynner
4 with that response.

5 Item 15, you were going to see if you could
6 check the status with Stone & Webster by today, Mr.
7 Christman.

8 MR. CHRISTMAN: Yes, I did owe you some
9 information on that. These are proprietary Stone &
10 Webster documents. They have commercial value to them.
11 I guess -- and I have the following information about
12 whether or not these really should have been asked for
13 early on, which we believe they should have been if the
14 County is interested.

15 In the discovery that took place in March, the
16 County was given access to the Stone & Webster project
17 QA manual, which said that Stone & Webster engineering
18 assurance has the responsibility for administering this
19 problem report system. Section 16 in paragraph 2.4
20 gives Stone & Webster engineering assurance
21 responsibility for this system.

22 Quality standard QS-16.1 describes the
23 system. And perhaps most revealing of all, something
24 called EAT-16.1 describes this program in considerable
25 detail. All of these things the County had access to

1 during the previous discovery. We believe that they can
2 cross-examine on this matter without digging into all
3 the specific documents that are the background for the
4 statement.

5 I might add that only three of these reports
6 addressing the new focus issues, only three of these
7 reports, were used in preparing the testimony. And we
8 recognize the problem. This was a programmatic
9 statement and there were underlying documents. And the
10 way we tried to solve that was to take the three which
11 were used in preparation of the testimony and summarize
12 them, and they are summarized on pages 66 through 70.

13 So in general, I would say that we did not use
14 this vast number of -- this large number of problem
15 reports in preparing the testimony. And, number two, if
16 the County had been interested in these, they could very
17 well have looked at them or asked for them in the
18 spring.

19 JUDGE BRENNER: Mr. Dynner, putting aside for
20 now the three particular reports that are summarized
21 starting at page 67 -- I forget the phrase they use, but
22 they are representative samples, something to that
23 effect. The request for the other documents that
24 appears to be the same as the request for the audits we
25 dealt with this morning, that is a general discussion

1 that all these audits have taken place in the
2 testimony. Nothing in particular is focused on and
3 these could have been the subject of earlier discovery
4 requests. In fact, they in part were made available, or
5 at least available in references.

6 MR. DYNNER: Well, I think in answer to the
7 first question about whether they could have been or
8 were made available, what was indicated is that there
9 was the program description of program in a manual,
10 there was no way, unless we were going to copy
11 everything that was made available, that we could have
12 known that testimony from LILCO's witnesses was going to
13 refer to 58 potentially significant concerns and to
14 particular problem reports.

15 I mean, this is in response to -- and what we
16 are looking for is response to statements made in the
17 testimony. Unless we were to copy everything that was
18 made available to us, which we saw no point in doing, we
19 didn't know until now what LILCO was going to be relying
20 upon.

21 Secondly, I think that if the Board will
22 address itself to the pages, particularly page 65, that
23 these are qualitative statements being made and not
24 quantitative statements. The sentence which introduces,
25 at the bottom of page 65, the paragraph dealing with the

1 subject matter is: "The system has been used to good
2 advantage by the Shoreham project."

3 That is, they're not just saying that there
4 are 58 concerns or X number of reports, but that this
5 system has been used to good advantage, i.e., that it
6 has effectively accomplished an important QA objective.
7 And it may go on to get quite specific in terms of 17 of
8 the 58 potentially significant concerns. How do we
9 know, until we have seen the document, whether we agree
10 that it is potentially significant or not?

11 It goes on and talks about the particular
12 problem reports that were issued. Then the particular
13 167 problem reports by which the project determined --
14 again, qualitative determination being made -- that the
15 problem existed or could potentially exist. Unless we
16 see those documents, I don't see how we can have a
17 witness establish the criteria by which it made those
18 judgments.

19 And finally, it says it took appropriate
20 corrective, preventive action. "Appropriate" is a
21 qualitative word. We can't possibly -- and I don't
22 believe that a witness would be able to possibly tell us
23 what the action was without reference to the specific
24 documents.

25 And finally, the examples which are given are

1 asserted to be representative. And unless we can see
2 for ourselves what the qualitative product is that is
3 referred to on these pages, there is no way, of course,
4 that we can determine whether or not these are truly
5 representative or are examples which are shaded in one
6 way or another.

7 JUDGE BRENNER: Mr. Christman, are these
8 separate reports, or is there a summary of these reports
9 available which was used more directly in the
10 preparation of the testimony?

11 MR. CHRISTMAN: I know of no summary. The
12 three particular -- they are separate reports. The
13 three particular ones would have been used.

14 (Board conferring.)

15 MR. CHRISTMAN: Judge, I stand corrected on
16 one point. Each of these is not a document. It's sort
17 of like a package.

18 JUDGE BRENNER: Each of the 58?

19 MR. CHRISTMAN: Each of the 167 problem
20 reports cited on page 66 is a cover sheet, with all sort
21 of backup materials.

22 (Board conferring.)

23 JUDGE BRENNER: We're going to deny the
24 request for all these documents. These are items that
25 should have and could have been the focus of discovery

1 during the discovery period. The argument that the
2 County did not know that LILCO would state that 17 or
3 any number of these were problem concerns which would be
4 deemed potentially significant, which were then tracked,
5 does not give the County right to new discovery at this
6 point.

7 The whole purpose of discovery was to allow
8 the County to identify all examples that it thought it
9 had. The fact that LILCO now comes forward and says
10 that it too has examples of problem concerns does not
11 assist the County for new discovery.

12 The main import of the testimony on this point
13 appears to be the way the Stone & Webster tracking
14 system works. That is, it collects these problems from
15 all these different sources and follows up on them and
16 disseminates them. That is a matter that can be probed,
17 but the way to probe it is not to go into each and every
18 item.

19 We will, on a close call, but because they are
20 referred to more particularly, require turning over the
21 documents pertinent to the three items referred to. And
22 I guess what we're talking about is the particular
23 report. Maybe I'm a little confused by your last
24 comment, Mr. Christman.

25 In other words, starting on page 66 there is a

1 problem report and then a report number. Is it not that
2 report that discusses the item?

3 MR. CHRISTMAN: That report surely has the
4 information that we have discussed here. That would be
5 the thing to turn over.

6 JUDGE BRENNER: All right, that will be our
7 ruling. The particular reports referenced as to those
8 three items.

9 JUDGE MORRIS: Are these also proprietary, Mr.
10 Christman?

11 MR. CHRISTMAN: Probably so. We will have to
12 try to take care of that.

13 Let me add, it might be possible, at least
14 with two of the three, the only proprietary problem
15 might be the names of other Stone & Webster clients. I
16 take it it would probably be okay to white out that
17 other client information.

18 JUDGE BRENNER: Why don't you start out with
19 that proposition and then indicate to the County the
20 nature of that which is deleted and see if there is a
21 further problem.

22 MR. CHRISTMAN: Surely. I don't think there
23 will be, because we had discussions earlier on the phone
24 and Mr. Dynner suggested that they really weren't trying
25 to get at other client information.

1 JUDGE BRENNER: Item 16 is still in dispute, I
2 take it?

3 MR. CHRISTMAN: Yes. I have a little bit of
4 new information. I didn't promise it, but I sought it
5 out anyway last night. Once again, in March the County
6 was given access to a procedure called EAP-6.1, which
7 says that you must maintain indexes of design documents,
8 an index or indices. I don't think this is a very
9 important request.

10 In the first place, we had trouble knowing
11 what is the most recent index of design documents. I
12 take it these are simply lists of design documents by
13 which one can tell what is the latest version of a
14 drawing. It seems to me that the probative value of
15 producing one of these is very small.

16 JUDGE BRENNER: I was confused and I guess I
17 still am.

18 MR. CHRISTMAN: Judge, we're just having
19 trouble knowing -- there are lots of these indices. We
20 could produce one as an example, I suppose.

21 JUDGE BRENNER: It is not correct that there
22 is a central index that is updated?

23 MR. CHRISTMAN: No, there is not one big
24 index, I'm certain. And if there were, I would imagine
25 it would be extremely long.

1 JUDGE BRENNER: What are they, separate
2 indices for each component?

3 MR. CHRISTMAN: Specification index, for
4 instance, an index of drawings, index of calculations.
5 All the various engineering entities, like calculations,
6 certifications, and so on, that we have discussed in the
7 testimony.

8 JUDGE BRENNER: Mr. Dynner?

9 MR. CHRISTMAN: Different types of design
10 documents.

11 JUDGE BRENNER: Mr. Dynner, it sounds like
12 hardly a way to get at the truth or non-truth of the
13 statement in the testimony that they keep up to date
14 indices of design documents to say, give me all the
15 indices. I mean, I agree that's one way to do it, but
16 it doesn't seem like a good way to do it.

17 MR. DYNNER: Well, if I can reply again, I
18 think this is an issue that is a qualitative one. The
19 statement is made on page 86 of the testimony that
20 "Internal design interfaces are controlled by the
21 following methods." That's a statement that this is the
22 way internal design interfaces are controlled.

23 And then on 88: "Up to date indices of design
24 documents, so that one can readily identify the latest
25 issue of documents." Now, from what has been said so

1 far all I can tell is that we have asked, of course, for
2 the latest available index. Well, if they don't know
3 which is the latest available index, how can they know
4 what's the latest issue of documents which are being
5 controlled internally, the design interfaces which are
6 being controlled internally by these documents?

7 Now, I can have the witness -- or can
8 cross-examine the witness and say, what does the index
9 look like, what does it consist of, how is it done. I
10 can spend a good deal of time on that. It seemed to us
11 that a shortcut in preparation for cross-examination and
12 hopefully to shorten the length of cross-examination on
13 issues like this would be for us to be supplied with the
14 latest available indices.

15 If there are many of them, we would certainly
16 be happy to narrow the request, and we have thought
17 about this, to systems, including for example the core
18 spray system, the recirculation cooling system, the
19 reactor protective system, HPCI and RCIC, and the
20 residual heat removal system, which would give us a
21 sampling of how design indexes work and if they in fact
22 readily identify the latest issue of documents.

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1 JUDGE BRENNER: It sounds like all the safety
2 systems to me.

3 MR. CHRISTMAN: I am told they aren't indexed
4 that way. We are obviously getting over my head as to
5 how this system works. But from the sound of it, what
6 they are suggesting is not possible, certainly not
7 feasible.

8 JUDGE BRENNER: All right. The request is
9 seeking too much at this date, and could be denied
10 wholly, particularly given the probative value.
11 Further, we are not discussing this in the most
12 efficient light. I don't feel personally capable of
13 discussing this item any further. I just don't have a
14 good handle on the nature of the material with respect
15 to this item.

16 Rather than denying it wholly at this point,
17 although if it comes down to that we are prepared to do
18 it, why don't you discuss it and see if you can pick
19 some very limited examples, not going to showing that
20 each, however they are catalogued, portion has an index,
21 but rather going to the fact that these, so that the
22 county will get a handle on what these indices look
23 like, if that can be worked out.

24 JUDGE MORRIS: Mr. Christman, am I correct
25 that your problem is not identifying the latest one, but

1 simply what index is being addressed?

2 MR. CHRISTMAN: Let me ask. Just a second.

3 (Whereupon, counsel for LILCO conferred.)

4 MR. CHRISTMAN: I think my understanding was
5 correct. These are lists of documents, and whenever a
6 drawing changes, the listing for that drawing on the
7 index is changed to show that there has been an update.
8 That way, you can find out if you got the latest version
9 of the drawing by going to the index. So, these things
10 are living documents that keep being updated all the
11 time, and if you go to one index in this department and
12 one over here, you know, you don't know if today this
13 one has not been updated whereas this one was only
14 updated yesterday. The form of the request was
15 extremely difficult to deal with, I think, but you have
16 said to discuss it.

17 JUDGE BRENNER: I think the form of the
18 request problem is explained, not solved, but
19 explained. I think the county had the same problem I
20 had. They envisioned one large index. That is what I
21 was confused by, LILCO not being able to state which is
22 the most up to date. You have explained that now. I
23 guess my direction is, we are not going to order that
24 all these indices be turned over, because the request is
25 late. There is nothing particular in the testimony

1 focusing on it, and it is overly broad. However, we
2 think the process of cross examination can be made more
3 efficient by letting the county understand what one or a
4 very limited number of these look like, so that the
5 cross examiner has this in mind. Of course, we have
6 been discussing the efficiency of cross examination in
7 connection with this request. That is not to say that
8 the result of our denying the request is that the cross
9 examiner will be permitted to ask for all of this
10 information item by item. So there are times when we
11 are not terribly intimidated when that is raised as a
12 possible alternative, Mr. Dynner.

13 I have a note that 17 and 18 are resolved.

14 MR. CHRISTMAN: That is correct, because Item
15 17 we have agreed to provide, and Number 18 was already
16 attached to the LILCO testimony.

17 JUDGE BRENNER: Item 19 is still in dispute
18 with respect to the notes of conference referenced at
19 Page 96, I guess it is, of the testimony. Mr. Dynner,
20 you are going to have to do some fast talking to
21 convince us that you are entitled to even a large
22 selection of notes of conference in terms of the use of
23 the testimony that is stating there have been 850
24 project meetings at this date.

25 MR. DYNNER: I think my fast talking is slowed

1 to a very slow pace after lunch.

2 JUDGE BRENNER: Do you want to find out if
3 they sat around and talked about the weather, or whether
4 there was some meaning to these 850 meetings, I take it?

5 MR. DYNNER: I think that the statement and
6 the testimony is that these meetings were to assure
7 satisfactory design follow-through. There is a
8 statement that the expertise was available at those
9 meetings, that they are formally documented, and it
10 seemed to us that to ask for one out of -- to ask for a
11 2 percent sampling, which is every 50th document, which
12 is a total of about 16 documents, in order to ascertain
13 whether in fact this is what was discussed at the
14 meeting, did it discuss plant design, is not an overly
15 burdensome request.

16 JUDGE BRENNER: This seems to be an
17 interesting balance, a relatively low burden as against
18 relatively little probative value.

19 MR. DYNNER: I think with respect to probative
20 value, as I read the testimony, statements are being
21 made which contain qualitative conclusions about what
22 the QA program of LILCO and others is, and it seems to
23 me that the probative value of stated and specified
24 evidence that supports and is relied on to support the
25 testimony does have probative value because if a witness

1 is on the stand, I can say, what was discussed. The
2 witness may remember. I doubt if the witness will
3 remember what was discussed at 850 meetings that are
4 referenced, or very many of them, if the witness was
5 present.

6 The documents therefore would enable the
7 witness to recall this area, as well as to shortcut our
8 cross examination, although I want to say I am not
9 trying to at all intimidate the board or use any
10 threats. Obviously, the board controls cross
11 examination. I am just trying to indicate that these
12 are areas that I feel that the testimony calls out to be
13 explored, and this kind of documentation would assist us
14 in that regard.

15 JUDGE BRENNER: I didn't mean to suggest that
16 you were trying to intimidate us. Your alternatives
17 were couched reasonably as your possible attempted
18 course of action on cross. We understood that. Well,
19 Mr. Christman, before we have to sit down and decide
20 whether we should give these to the county, if you
21 pursue the objection, is my inference correct that it is
22 not very hard to pull out representative examples, or is
23 it hard because of the specification of every 50th?

24 MR. CHRISTMAN: I doubt that it is very hard.
25 I think the burden is large only in comparison to the

1 probative value.

2 (Whereupon, the board conferred.)

3 JUDGE BRENNER: All right. Why don't you give
4 them a selective sampling of approximately every 50th?
5 If they count wrong, I don't want to hear that they
6 didn't comply with the request.

7 MR. CHRISTMAN: I take it you understand that
8 we can't make our own choice of which ones to produce?

9 JUDGE BRENNER: That is correct also.

10 MR. CHRISTMAN: I sort of thought that was
11 your meaning.

12 JUDGE BRENNER: Unless you want to spend some
13 hours having your witness explain why he selected those
14 instead of others and so on and so forth. Incidentally,
15 asking that things like this be turned over does not
16 mean that we seek the permissible approach to cross
17 examination is then to ask the witness about each of the
18 examples of the conference as opposed to the witness
19 generally characterizing the nature of the conference.
20 However, this way, when the witness describes the nature
21 of the conference, you won't be surprised. You will
22 have been able to form your own views from the
23 examples. You see there, you did some fast talking.

24 Item 20, I have a note that LILCO is still
25 discussing it with Stone and Webster as to portions not

1 resolved, but portions of this request are resolved.

2 MR. CHRISTMAN: Yes, sir. We agreed to give
3 the CCF. That is a fairly large number of documents. I
4 think in retrospect that probably -- this request for
5 the CCF's doesn't meet the fresh focus test at all, for
6 the reason that if one looks at the letter to Harold
7 Denton of April 19th, Enclosure B, Page B-6, Item F.1,
8 one will find the same language that the county is
9 citing in our testimony, with the exception that three
10 -- have been changed to -- in the course of writing the
11 testimony.

12 I suspect that was my contribution to the
13 testimony, but I agreed to do that in this pleading as
14 opposed to the negotiations, so I think we will do that.

15 As for the others, the reviews, which I
16 understand to be cover sheets which simply approve or
17 disapprove the CCF's, there seems to be no point in
18 producing all of those. If they are already attached to
19 the CCF's, I would not propose to remove them, of
20 course. We would leave them on there. But if they are
21 separate it seems to me that that is not necessary. It
22 shouldn't be necessary to produce those.

23 The Stone and Webster procedure can be -- I
24 believe those can be produced without too much trouble.

25 JUDGE BRENNER: I am not sure I understand

1 this program of packaging.

2 MR. CHRISTMAN: It is the CCF, the Change
3 Control Form Program.

4 JUDGE BRENNER: All right, and so that is what
5 you just said you would turn over.

6 MR. CHRISTMAN: We are turning over the CCF's
7 themselves. This is a case where we are talking about a
8 large number of basic documents. Our testimony is about
9 this program for using these documents. I just think
10 probably that one slipped through, and I said I would
11 produce it, so we will.

12 JUDGE BRENNER: All right, but you are not
13 agreeing to producing -- what about the reviews?

14 MR. CHRISTMAN: Well, these reviews are the
15 cover sheets which approve or disapprove. My offer was,
16 if they are already attached to the CCF's and are in
17 place, we certainly would not want to go through and
18 take them off. But if they are in some separate place,
19 I just don't think they offer the county very much
20 probative value. So I guess I would propose to produce
21 the CCF's and the Stone and Webster procedure if it was
22 not already produced in the past. That I am still
23 unsure about, but if it wasn't produced before, we will
24 produce that, but not the cover sheets if they are in a
25 different location or something like that.

1 (Whereupon, the board conferred.)

2 JUDGE BRENNER: Mr. Dynner, that sounds
3 reasonable. In fact, in one possible regard, more than
4 reasonable, recognizing that you may not be getting
5 these reviews. We will just leave it as is, and to the
6 extent the question becomes important as to what do you
7 do with these forms, you can follow that up on cross
8 examination.

9 MR. DYNNER: Can I just ask, for
10 clarification, is LILCO going to make available the
11 first two lines there, that is, a description of the
12 program procedures?

13 MR. CHRISTMAN: What describes the program is
14 the procedures, and I said that if that was not already
15 put out in the spring, I believe we can produce that.

16 MR. DYNNER: Fine.

17 JUDGE BRENNER: What if it was? Maybe I
18 shouldn't create problems where the county has not
19 raised any, but just to make sure we don't have to come
20 back, what if it was put out in the spring and I don't
21 remember what it says, but it would assist them in
22 understanding the Change Control Forms if they could get
23 another look at it?

24 MR. CHRISTMAN: We will produce it.

25 JUDGE BRENNER: It is difficult, because I

1 don't have a handle for what the documents look like. I
2 don't know if you need it to understand the document or
3 not. That is why I raise that point.

4 MR. CHRISTMAN: The problem for the last four
5 days is having a lawyer go back and forth between the
6 other side and the people who really know what the
7 documents mean and where they are, what they look like
8 and so on. That has been a recurring problem.

9 JUDGE BRENNER: As I recall, in the spring,
10 when called on a conference call without my fellow board
11 members, I weaseled out of making a discovery ruling by
12 claiming a lack of competence to determine whether a
13 described item was an audit or something other than an
14 audit.

15 So, I understand your difficulty. Twenty-one,
16 I am not sure if there is a dispute or not. The
17 question is, I guess, with respect to outdated earlier
18 versions of the same checklist. Is there still a
19 dispute? I guess I should ask the county.

20 MR. DYNNER: In earlier discussions, and I
21 don't know whether -- Okay, there is a dispute, I guess,
22 on the outdated earlier versions. Our purpose in asking
23 for the earlier versions was that it is likely, although
24 we are not sure, that the earlier versions of the
25 checklist that were used in the design and construction

1 period are not necessarily the latest or current
2 checklist form that is now being used, so we thought it
3 would be helpful to see what was actually used.

4 MR. CHRISTMAN: Judge, I guess for whatever it
5 is worth my objection is that they received the
6 procedure of which the checklist is a part along with
7 the checklist in the spring discovery, and it seems to
8 me that if they wanted earlier versions of the
9 checklist, that would have been a good time to have
10 asked for it.

11 JUDGE BRENNER: Even accepting that, in
12 looking at the testimony on 109 to 100, it might be
13 appropriate to have some limited probing on cross
14 examination as to what was checked. I am not talking
15 about an item by item ad infinitum, but in order to know
16 what was checked, they will either have to have present
17 knowledge of that checklist or have to ask the witness
18 to state what was checked item by item.

19 So, accepting the fact that they should have
20 by now had the earlier version of the checklist if they
21 were interested now that they see it again in your
22 testimony, they would be entitled to ask about it, and I
23 am suggesting it would be better for them to have the
24 checklist to do it.

25 MR. CHRISTMAN: At your suggestion, we will

1 produce the checklist, those earlier versions.

2 JUDGE BRENNER: I am envisioning that we are
3 not talking about a lot of documents on this one.

4 MR. CHRISTMAN: I share that vision. I hope I
5 am right.

6 JUDGE BRENNER: All right. With the
7 checklist, I don't want to spend very much, if any,
8 record time straightening out which checklists were used
9 when. The parties should do that before the questioning
10 begins. If we are talking about an extensive amount of
11 documents with respect to this checklist, some of which
12 would be less useful in terms of efficiency than others,
13 I am sure that counsel for the county and LILCO can take
14 another look together and have the county's needs met
15 for an efficient cross examination without just pulling
16 out papers that will have little value.

17 Item 22, I have a note that that is resolved.

18 MR. CHRISTMAN: Yes, just because it is
19 overlapped by one of the earlier ones. Number 5, as a
20 matter of fact, covers that.

21 JUDGE BRENNER: I have a note that Item 23 is
22 resolved.

23 MR. CHRISTMAN: That is correct, because they
24 already had 51 of the 53 audit reports, and we will
25 provide the other two.

1 JUDGE BRENNER: We have discussed 24, 25, and
2 26. I have a note that Item 27 is resolved.

3 MR. CHRISTMAN: Yes, it is. We are providing
4 that.

5 JUDGE BRENNER: Is Item 28 resolved now, in
6 light of our prior discussion? Oh, I guess it was --

7 MR. CHRISTMAN: Yes, I understood we are
8 producing -- I always forget which acronym refers to
9 which. The configuration discrepancy reports, the
10 reports with the attachments, both, for the six -- for
11 which the reports have been issued. The attachments are
12 part of the reports, it seems to me.

13 JUDGE BRENNER: As we discussed with respect
14 to Request Number 1.

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1 MR. CHRISTMAN: Yes.

2 JUDGE BRENNER: Okay. So we screwed up the
3 terminology. You are giving them the more inclusive
4 one, which will include the other report.

5 MR. CHRISTMAN: Yes.

6 JUDGE BRENNER: Item 29 I believe LILCO was
7 still discussing with Stone & Webster. These were the
8 -- .

9 MR. CHRISTMAN: Yes, particularly with respect
10 to the procedures, and that procedure is a
11 site-specific, Shoreham-specific procedure, and
12 therefore is not proprietary to Stone & Webster. So
13 that particular problem is not a problem. Thanks to --

14 JUDGE BRENNER: I should have broken this down
15 further.

16 MR. CHRISTMAN: Yes, there are four items.
17 There are procedures, minutes of engineering and design
18 meetings, the stress analysis evaluations, and minutes
19 of the SORC meetings. Given the nature of the testimony
20 -- well, let me take the minutes of the engineering and
21 design meetings. Let me give you some information.

22 There is no reference to the minutes of those
23 meetings in the testimony. Once again, we have
24 reference to meetings that are held. These are working
25 meetings and they might not be well documented, although

1 at one point in the negotiations I offered to produce
2 whatever minutes of those meetings might exist, and I
3 really don't know what ones do exist.

4 This is one of those cases where in the time
5 available it's hard to get a handle on what it is that
6 exists there. The stress analysis evaluations are oral,
7 because an engineer comes in and makes his presentation
8 and the committee -- he makes it orally to the
9 committee. They don't have a document that they
10 review. They review his recommendation, really.

11 Minutes of the SORC -- so there's no documents
12 there. Minutes of the SORC meetings are in the form of
13 recommendations. There is no secretary there to take
14 formal minutes of the meetings. What you have is, after
15 reviewing the oral presentations of the engineers, the
16 SORC committee comes out with what are called
17 recommendations.

18 We offered to produce those at one time. My
19 feeling is, given the nature of the testimony at this
20 point, that none of these have a very high probative
21 value under the fresh focus.

22 This may be a case where I'm not sure that I
23 can establish that they knew about these in advance. If
24 that is the case and I can't establish that it isn't, it
25 might be appropriate to produce the procedures and the

1 recommendations, whereas going and seeing what kind of
2 minutes -- and they probably won't be very thorough
3 minutes of the meetings -- would probably be not very
4 productive.

5 JUDGE BRENNER: Mr. Dynner, looking at both
6 efficiency and what you might want to do on behalf of
7 the County for cross-examination, and the probable
8 nature of minutes of meetings of this type to the extent
9 that they exist -- and I am assuming for now that there
10 are some written minutes in existence -- it seems
11 reasonable to proceed as Mr. Christman indicated,
12 turning over the recommendations and also you would get
13 the procedures and instructions.

14 Evaluations, as we now are told, are oral.
15 And if you need to know the general nature of these
16 types of meetings, just ask the witnesses on
17 cross-examination, as opposed to meeting by meeting, a
18 blow by blow description of everything they talked
19 about. And we will leave it at that.

20 I should make it clear that we're discussing
21 this in the context of the referenced testimony at page
22 127 and looking at the discussion of the meetings
23 there.

24 As to all these rulings, it is without
25 prejudice, and I will use this one as an example, to

1 where once you are probing a particular quality
2 assurance deficiency, as distinguished from the overall
3 program, and a witness says, oh, we discussed that at
4 the engineering working group meeting on September 11,
5 1979, and you hear that for the first time or find that
6 somewhere else in the testimony. You then want to focus
7 on any minutes that exist of that particular meeting,
8 and I'm sure everyone recognizes that would be a
9 particularly different matter, and our ruling would be
10 different. That would pass the sharpened focus test.

11 (Pause.)

12 Item 30 relates to the drawing update
13 program.

14 MR. CHRISTMAN: There is still a dispute,
15 Judge. I don't have much information on this one.
16 There is a project, procedure. You know, it's generally
17 the procedure which describes the program. That sets
18 the outlines, explains how the program is conducted, and
19 that seems to fulfil what the County wants.

20 Someone brought up that might have already
21 been made available to the County. I suppose we can
22 make that available again or for the first time. Well,
23 we can make that available. The schedule is that this
24 is to be done by fuel loading. There is no other
25 schedule. There are something called goals for the

1 various tasks, which I believe would take a search. I'm
2 a little hazy on this, but I think it would take a
3 search to find those. They are not a formal schedule.

4 It seems to me it would offer very little
5 probative value, if at all, since the schedule is by
6 fuel load. On progress reports, our position is that
7 they don't pass the -- well, they aren't referenced in
8 the testimony, in any event. I doubt the necessity of
9 probing into all of the progress reports on this
10 program.

11 JUDGE BRENNER: Well, I have a recollection --
12 and maybe this is incorrect -- that one of the points of
13 the County's prior discovery was at least the program,
14 and in fact particular drawings with respect to
15 particular systems of the drawing update program, and
16 the goal of coordinating the as-built situation on
17 drawings.

18 MR. CHRISTMAN: I wouldn't be at all
19 surprised. My intelligence on this one is just
20 sketchy.

21 JUDGE BRENNER: I recall at least one item
22 where the drawings would take up large numbers of tables
23 and notwithstanding that we ordered that they be turned
24 over. These weren't all drawings. These were to
25 particular systems. I think it was that same ruling on

1 another item when I expressed my incompetence to figure
2 out whether a described item was an audit or not.

3 MR. CHRISTMAN: I see.

4 JUDGE BRENNER: These should have been the
5 subject of prior discovery. You would get the procedure
6 now, or possibly again, as indicated by LILCO. I'm not
7 sure what you'd do with the other items in terms of the
8 testimony.

9 MR. DYNNER: Judge, it is my understanding or
10 impression of the testimony -- and this begins on page
11 122 -- that these are additional programs that LILCO has
12 instituted, and that they are rather recent programs, at
13 the top of page 22. Are there any other programs which
14 seem to follow the standard program? And at least that
15 is the impression that we had, that these were all --
16 certainly, the plant configuration review program is
17 fairly recent, as we saw from the letter to the NRC.

18 Fuel loading. This particular statement at
19 the bottom of page 27 is not that the program will
20 assure that the plant will be accurately reflected by
21 drawings by the time of fuel load, but rather by the
22 time of fuel load or shortly thereafter. It raises all
23 kinds of interesting questions about whether there is
24 compliance with criteria number 3, Appendix B, and other
25 criteria.

1 And it seemed to us that this was a
2 particularly apt request, to see what the -- whether
3 there was anything that describes the program. And I
4 believe that in our discussions, I believe that there
5 was a statement that there would be drawing update
6 reports, which was in our initial discussions with
7 LILCO, which we said would be satisfactory. The drawing
8 update reports and the statement of goals, which was, as
9 far as I could tell, a semantic distinction being made
10 on the use of the word "schedule."

11 JUDGE BRENNER: Mr. Christman, is the
12 statement of goals similar to the schedule form? That
13 is, a list of target dates?

14 MR. CHRISTMAN: To be honest with you, the
15 people I talked to were a little bit hazy about what
16 form that was. I think it's not a very important
17 document, so I just don't know.

18 This was over the weekend. They didn't have
19 access to the documents at the time when we talked about
20 it. That's the problem.

21 JUDGE BRENNER: Well, here again we have a
22 situation where a program is put in the testimony and
23 then the request, although semantically more palatable
24 now by deleting the word "all", nevertheless is still
25 the same request for all documents. It says documents

1 and then it has the description.

2 MR. DYNNER: I just wanted to clarify that
3 what I agreed to in order to further narrow that -- A, I
4 omitted "all documents" because I didn't want everything
5 that told what this is, just documents that would
6 effectively describe it; and B, that in my conversation
7 with counsel for LILCO, I further said that it was
8 acceptable to me to get the drawing update report which
9 he referred to in his letter to me.

10 MR. CHRISTMAN: I have to say that it seems to
11 me, on the scheduling thing, it's easy to ask the
12 witnesses if they are going to be done by fuel load or
13 not, and on the drawing update report. That is just a
14 lot of basic documents, and I just don't -- it's not
15 very well-focused, it seems to me.

16 JUDGE BRENNER: You are not talking about an
17 existing report?

18 MR. CHRISTMAN: I must be. Let me look at my
19 letter.

20 (Pause.)

21 MR. CHRISTMAN: Yes, I think there is
22 something called a drawing update report, and I just
23 don't know very much about it.

24 JUDGE BRENNER: I envision that such a report
25 would be a listing of which drawings had gone through

1 this program or perhaps which drawings had not, or
2 both. All right, there is some probative value in
3 knowing whether particular areas of the plant will not
4 have completed this program until after fuel load.
5 Suffolk County counsel is correct that the testimony
6 does not say by fuel load. It says "or shortly
7 thereafter." That point is omitted in your summary of
8 the testimony.

9 As stated, the request is too broad. Let's
10 see if we can identify particular documents, rather than
11 leaving it to LILCO to pull together all these
12 documents. We've got a document update report. Let's
13 get the goals, by which I am envisioning a reasonably
14 concise schedule-type report, as opposed to having to
15 cull a goal out from each and every system drawing
16 section of a plan.

17 So if that impression is wrong, that's not
18 what we have in mind. We have in mind an existing
19 summary of the goals.

20 MR. CHRISTMAN: Okay.

21 JUDGE BRENNER: And also, that which LILCO has
22 already agreed to supply, the procedure. And we will
23 leave it at those three items, three types of items.
24 There could be some sub-items.

25 I have a note that 31 -- this is the one

1 involving the Teledyne report that is resolved.

2 MR. CHRISTMAN: Yes, I think so. They have
3 everything, essentially everything that we have.

4 JUDGE BRENNER: 32, the short answer is that
5 there are no such documents; is that correct, other than
6 the raw timecard-type documents?

7 MR. CHRISTMAN: Well, there are two parts.
8 The second part, where they wanted us to break down the
9 number of man-hours spent on systems, equipment items or
10 what have you, parts of the project, that is
11 impossible. It can't be done. There is no such
12 document.

13 Now, the first part is different. That is,
14 they want something between the basic timecards and the
15 number 250,000. The point is, someone had to go through
16 and add up cards somewhere and they probably didn't add
17 it up and put it into the testimony. Didn't they take
18 it from some other intermediate document? There is
19 something called a Stone & Webster monthly project
20 man-hour report, dated this past July for the division
21 in question, and that gives a more recent, slightly more
22 recent basis for the number of man-hours.

23 It seems to me that that provides the
24 information.

25 JUDGE BRENNER: Okay. I guess I was sloppy in

1 my reading. I just didn't recall that report.

2 MR. CHRISTMAN: We had the benefit of a number
3 of discussions where it became clear that there were two
4 parts. So if you would like, I think I can produce the
5 Stone & Webster monthly project man-hour report, the
6 most recent one. I think that's the right one to
7 produce. It's dated July 19, 1982.

8 JUDGE BRENNER: With that report, it sounds
9 like the answer is that that's the only document that
10 meets the request.

11 MR. CHRISTMAN: I think it is.

12 MR. DYNNER: Can I ask a question?

13 JUDGE BRENNER: Surely.

14 MR. DYNNER: On Appendix 4, which is my
15 statement about the bases for discussions with Mr.
16 Christman, he had referred to a summary showing the
17 calculation. And my question is whether the monthly
18 report is what was used in determining the 250,000
19 man-hours.

20 What I was concerned about is, is there a
21 summary, either that they added up all the timecards
22 during this long period of time or whether somebody made
23 some assumptions, that is to say, X number of man-hours
24 per month, taking one month as an example, and then
25 multiplying that by the number of months? That's the

1 kind of thing I was trying to get at in my discussions.
2 One monthly report, in other words, if that's all there
3 is, fine. But if there was a document that said, we
4 used the most recent monthly report and multiplied by X,
5 that would be helpful.

6 JUDGE BRENNER: It seems to me an easy way to
7 resolve this consistent with the discussions that are
8 going to take place on this issue and consistent with
9 the type of approach we've taken on all issues in this
10 proceeding, is to get the report as described by Mr.
11 Christman and then, in addition to that, for LILCO
12 informally to give you an explanation of how they
13 reached the calculation they did, not to necessarily
14 justify it in black and white by pulling out the time
15 cards, but just to explain how they arrived at that
16 number, for the reasons you indicated.

17 MR. CHRISTMAN: We will do that.

18 JUDGE BRENNER: Item 33, regarding the A.D.
19 Courter & Company, C-o-u-r-t-e-r & Company, personnel,
20 resumes and so on. I take it that's still in dispute?

21 MR. CHRISTMAN: Yes, that's in dispute. They
22 focused on Courter quite a bit in discovery in the
23 spring and it can't have occurred to them now that they
24 wanted to explore the qualifications of those people as
25 well.

1 What's more, this is more burdensome than
2 producing the training records of LILCO's own people.
3 This one is one that really ought to be denied.

4 JUDGE BRENNER: This doesn't look like new
5 information, Mr. Dynner, or even newly focused, for
6 LILCO to take advantage of the fact that they had this
7 company and this company's personnel doing the work that
8 they indicated. This was known. .

9 MR. DYNNER: I'm not sure I can talk fast
10 enough on this one.

11 The purpose, obviously, was to try to see
12 whether in fact the 80 people are all "QA personnel" or
13 whether there are some high school students on the
14 project that had part-time jobs. I suppose that, given
15 the test you are applying, I had better ask some
16 questions about this on cross-examination and be
17 satisfied with that.

18 JUDGE BRENNER: Okay, we will leave it at
19 that. In case you want a ruling, we will direct that it
20 not be turned over, so you will not take it to have been
21 conceded.

22 MR. DYNNER: Thank you.

23 JUDGE BRENNER: It's also not going to be real
24 probative if they had, you know, 77 good people and 3
25 people whose qualifications you would think would need

1 improvement, unless they were the only three who did all
2 the work.

3 Now, if you establish the general makeup of
4 these people, that would be something else. And that
5 would be more efficiently done, even from your point of
6 view, on cross-examination than slogging through the 80
7 resumes.

8 (Pause.)

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1 JUDGE BRENNER: Item 34, I take it, is still
2 in dispute with respect to the tool box sections and
3 indoctrination sections.

4 MR. CHRISTMAN: Yes, sir. It was hard to get
5 a handle on this. It was these materials and schedules
6 that would have been used in these types of training
7 sessions. There must have been an awful lot of these
8 sessions, and the information he asked for, I think it
9 is scattered around. I couldn't get very good
10 information about them, but it is out there.

11 I also think that given the information in the
12 testimony, which is that the training sessions are held,
13 this is going awfully far into detail, given the essence
14 of that testimony.

15 JUDGE BRENNER: Are there any general
16 procedures that would apply to these sessions?

17 MR. CHRISTMAN: None that I know of.

18 I am afraid the answer is this is one of those
19 that we would have had to go out and investigate, and we
20 didn't have time to investigate it. I suppose the
21 objection has to be burdensomeness, because in my efforts
22 over the weekend and on Friday, Thursday, whenever this
23 all started, it is one of those cases where we come in
24 here with 47 categories, some of the categories are hard
25 to get a handle on. I have to go out, as you do when

1 you do document production, and find out what is there.
2 I just havent' been able to do that yet.

3 JUDGE BRENNER: We are not looking at
4 burdensomeness solely as an excuse in the abstract. It
5 is burdensomeness as part of the calculus as to whether
6 things could have been requested earlier, and also the
7 probative value of the use of this item in the
8 testimony.

9 MR. CHRISTMAN: Well, I suppose they could
10 have asked at any time for what kind of training is
11 done, training materials are used of people on the
12 site.

13 MR. DYNNER: I have a feeling if I had done
14 that we would have heard the words "fishing expedition"
15 used.

16 MR. CHRISTMAN: Well, I doubt it if it had
17 been used during discovery. I think you might hear it
18 if it wee asked this week.

19 JUDGE BRENNER: All right, let's let it pass.
20 I'll let you talk to each other because it has been
21 productive up until the last exchange.

22 MR. DYNNER: I certainly didn't mean anything
23 other than a humorous comment.

24 JUDGE BRENNER: I took it that way. Anybody
25 reading the cold transcript might not have seen that,

1 but you have corrected it. We will give this a moment.

2 (Board conferring.)

3 JUDGE BRENNER: Given the nature of the
4 sessions as we understand it from limited excerpts and
5 the testimony concededly, these documents would have a
6 low probative value. You are talking about the ad hoc
7 further instruction and indoctrination sessions, not a
8 formalized classroom type training class where there
9 should be a lesson plan and so on in existence.

10 And given that low probative value and the
11 fact that the subject could have been inquired into
12 earlier, we will deny the request. You can go into it
13 to some extent on cross examination, of course, finding
14 out what type of sessions were held and the nature of
15 it.

16 So the request is denied.

17 I have a note that 35 is resolved, since LILCO
18 would make the computer printout available that
19 constitutes that analysis.

20 MR. CHRISTMAN: That's correct.

21 JUDGE BRENNER: 36 is going to be discussed
22 with Stone and Webster.

23 MR. CHRISTMAN: Yes, and I have a little bit
24 of information on that.

25 There are two separate parts to this. The

1 first is a statement that N&Ds are evaluated by Stone
2 and Webster periodically for trends. Okay. That
3 program is analyzing for trends, I believe, was
4 referenced in the Project QA Program manual which would
5 have been available to the County in the springtime and
6 consists of the documents referenced in that Project QA
7 Program, our eight semi-annual reviews of N&Ds.

8 JUDGE BRENNER: I missed something. You are
9 saying these documents would have been in the manual?

10 MR. CHRISTMAN: No, no, just the reference to
11 the program for analyzing trends. The N&Ds, the eight
12 semi-annual reviews of N&Ds would not have been laid out
13 on the table at that time I don't think. I am sure they
14 wouldn't have. So that's the first part of it.

15 And the second part of it is this independent
16 sample. Well, this is just one memorandum. It is a
17 work product doctrine, document because it was prepared
18 right before this testimony was written. The
19 independent sample is simply -- it was chosen by the
20 County, the County's people who came into discovery.
21 They apparently took away copies of certain of the
22 N&Ds. The people who were writing this testimony took
23 their example, took the N&Ds that those folks had taken
24 away with them and analyzed those for trends. What is
25 what we are talking about. It is a three-page

1 memorandum with some attachments, and it seems to me
2 that it is a classic work product, legal work product in
3 the sense that it was prepared solely for the purpose of
4 drafting this testimony for use at the hearing, first.

5 And number two, it isn't the type of thing
6 that the County could only get by getting this document
7 because it is, after all, the sample chosen by his own
8 people and simply subjected to an analysis for trends.

9 And it further seems to me that, you know, if
10 the County wants to cross examine on this trend analysis
11 when we are on the stand, they are perfectly entitled to
12 do that, and it is unlikely -- it is highly unlikely
13 that the witnesses are going to say they don't know what
14 he is talking about because it is only this one
15 memorandum.

16 So I guess I claim work product doctrine on
17 that one, and on the first one the objection is that
18 this program of analyzing trends was referenced in a QA
19 Program manual that the County had available to it last
20 spring, and the County has been interested in trends all
21 along. It seems to me that they could have very well
22 asked for the analysis of trends back in the spring.

23 MR. DYNNER: If I can respond for a moment
24 with respect to the work product doctrine, unless
25 counsel is suggesting that the analysis was prepared by

1 counsel or for counsel as opposed to by someone else for
2 purposes of this testimony, I don't see where the work
3 product doctrine has anything to do with this analysis.
4 It seems to me what we have here is a statement which
5 Counsel for LILCO has now told us a little bit about how
6 the documents which are stated and relied upon in the
7 testimony were generated. That hardly helps us in terms
8 of obtaining the documents that are specifically relied
9 upon, seeing what this analysis looks like, determining
10 whether it was a valid analysis or not.

11 It seems to me this is a prime situation in
12 which specific documents are referred to and relied upon
13 to come to certain conclusions. There is no way that we
14 could have had this analysis. It was not available,
15 from what counsel said, during discovery.

16 Clearly it would be of great use to us in
17 developing the cross examination as well as, I think, to
18 the Board and everyone else, if we found out what the
19 specific documents are and got a chance to see them that
20 are being relied upon and referred to here.

21 MR. CHRISTMAN: Maybe I didn't make myself --

22 JUDGE BRENNER: You can address that.

23 MR. CHRISTMAN: The documents, he is using
24 that in plural. There is just one memorandum, although
25 it does have attachments. The documents that are

1 analyzed are the N&Ds that the County's own people
2 selected to take away with them. So they have the basic
3 documents. There is no question about that.

4 JUDGE BRENNER: I was going to ask about that
5 same point.

6 Given the explanation, Mr. Dynner, I am trying
7 to identify what document or documents would now be the
8 subject of the request.

9 It seems to me, notwithstanding the way 36 is
10 phrased, the key phrase that triggered the request -- I
11 guess I am asking for your view -- was the "independent
12 sample" phrase.

13 MR. DYNNER: Well, as we broke this down, we
14 did not ask for the N&Ds. The first part of that
15 sentence asked for documents showing the trends
16 resulting from the evaluation of N&Ds. That is the
17 first sentence there which is N&Ds are evaluated
18 periodically for trends, which indicates that certain
19 N&Ds -- and we don't know which ones, whether it is all
20 of them or part of them -- are evaluated, and that there
21 is some kind of something that shows what the trends are
22 as a result of that evaluation. It then says, in
23 addition -- and that is part one that we asked for.

24 It then says, in addition, an independent
25 sample has been taken and analyzed to determine if

1 significant trends or abnormal quality occurred.

2 Now, I take it on rereading this, because the
3 next sentence says "this analysis," that the documents
4 that are referred to in paragraph 36 of the revised
5 subpoena asking for documents describing or coming upon
6 the significant trends or abnormal quality determined by
7 an analysis, would in fact be part of the analysis that
8 is referred to in the next sentence. So I think that
9 collapses parts 2 and 3 of paragraph 36.

10 In other words, what we have asked for is, A,
11 the first point, the results of the trends that are
12 evaluated, and B, which follows in addition, the
13 specific analysis that is referred to that we now learn
14 is in fact in a written document.

15 It seems to me that it would be entirely
16 inappropriate, unfair and counterproductive to ask that
17 now that the County has been orally informed that the
18 N&D reports used in making this analysis were the same
19 ones that we happened to take on discovery, that we do
20 our own analysis. It is not our analysis which is at
21 issue here, it is the analysis that has been done by
22 LILCO, and is specifically referred to in the
23 testimony.

24 JUDGE BRENNER: All right, let's break it down
25 into the parts. Your last statement, I take it, goes

1 only to the independent sample part.

2 MR. DYNNER: That's right.

3 JUDGE BRENNER: As to the first part, the
4 evaluation, periodic evaluation of the N&D reports, why
5 is that not something the county could have requested
6 earlier during the discovery period? There was quite a
7 bit of focus on nonconformance type reports. I don't
8 recall if they were these N&D reports particularly, but
9 obviously one of the obvious focuses of the QA concern
10 is what did the various reports, by whatever name, by
11 the various organizations, show nonconformances deal
12 with?

13 MR. DYNNER: I think that we could have gotten
14 the N&Ds and in fact did get some of the N&Ds. Here we
15 are being referred, as I read this, we are being told
16 that Stone and Webster periodically evaluates N&Ds -- I
17 don't know whether it is all N&Ds, part of the N&Ds or
18 what -- for trends. That indicates that there is some
19 kind of an evaluation which we could not have known
20 about. We were told that it exists here and that it is
21 done periodically.

22 MR. CHRISTMAN: My point was it was referenced
23 in the Project QA Program manual. There is nothing new
24 about this program, and it has been around for a long
25 time. It was in some of the documents that the County

1 looked at in the spring.

2 JUDGE BRENNER: What are we talking about, Mr.
3 Christman, in terms of the periodic trend analyses?

4 MR. CHRISTMAN: Eight semi-annual reviews of
5 N&Ds.

6 JUDGE BRENNER: All right.

7 As to the independent sample -- and I
8 understand your statement that it was prepared for the
9 testimony --

10 MR. CHRISTMAN: I can clarify, if you like.
11 It was not prepared by any lawyer at all. It was
12 prepared by the witnesses or I guess someone who worked
13 for some of the witnesses, right before he wrote the
14 testimony, to help him prepare the testimony. It was in
15 response to the County's contentions which talk a lot
16 about trends. So it was really in response to something
17 that the County was asserting, and it was solely for the
18 purpose of preparing testimony for the hearing.

19 JUDGE BRENNER: I must confess I didn't take a
20 fresh look at work product law because I didn't know it
21 was going to come up today. I do have a recollection
22 that it does not apply exclusively to work of counsel,
23 but I don't recall the outer bounds of it.

24 MR. CHRISTMAN: I am on no better grounds than
25 you are. I recollect the same thing. Insurance

1 companies' investigators, for instance, it does not have
2 to be a lawyer. That would be the attorney-client
3 privilege. We aren't claiming that, of course.

4 JUDGE BRENNER: Well, if you are real serious
5 about the privilege, I'll have to take a look at the law.

6 Let's talk about it. There may be other
7 grounds that would be responsive.

8 (Board conferring.).

9 JUDGE BRENNER: Okay, we are going to require
10 that the items identified be turned over subject to one
11 caveat: if LILCO wants to assert the work product
12 privilege, they should give us a brief brief on it. We
13 will take a look at the privilege. Bear in mind that
14 the information -- bear in mind your own assessment of
15 the likelihood of the information becoming available at
16 the hearing anyway, even if you were successful in
17 asserting such a privilege.

18 I don't think you are correct, Mr. Dynner, in
19 your statement that if it was not prepared by the
20 attorney, that work product does not apply, but I do not
21 recall the outer bounds of the doctrine as to when you
22 have material that was prepared solely for a litigation
23 because it might well apply even though not prepared by
24 an attorney.

25 MR. DYNNER: I didn't mean to indicate the

1 limits of the work product doctrine. There are other
2 possibilities within that doctrine, and what I was
3 trying to do was to invite counsel for LILCO to
4 demonstrate that there was something other than that.

5 JUDGE BRENNER: Okay.

6 As to the semi-annual analyses of the trends,
7 this comes closer to being newly focused in the
8 testimony. On a close call, and largely because it will
9 be more efficient for the County, and therefore for the
10 record to have that along with the N&D reports than it
11 has -- in fact, probably more efficient to have had that
12 instead of the N&D reports. The fact that there is a
13 reference to it in the manual would not have been
14 sufficient focus. However, on the other hand, we don't
15 accept Suffolk County's argument very fully that if it
16 was in the testimony they would not have known to
17 request it. It is fairly common in the QA area that
18 when you have these large, raw documents, whether they
19 be QA reports or nonconformance reports or N&D reports,
20 that there are indices and analysis of open items that
21 are commonly requested. I am not sure that they were
22 not requested here. It would have been a logical
23 request.

24 But they are being turned over now.

25 MR. CHRISTMAN: I take it if I need to file a

1 brief -- and I think it will be brief -- I take it we
2 can talk about a date, that we get to the date problem
3 at the end.

4 JUDGE BRENNER: Yes, I will accept your
5 suggestion. It would be in your interest to have it
6 sooner rather than later.

7 I wanted to emphasize that the brief
8 requirement is not meant to be burdensome, to discourage
9 an objection. It is because we don't know the answer if
10 you want to assert it.

11 MR. CHRISTMAN: That's quite all right,
12 Judge. I was planning on doing some research on work
13 product doctrine in connection with emergency planning
14 anyway.

15 JUDGE BRENNER: Well, I'm sorry to hear that
16 because I didn't want it to be too easy, either, in the
17 sense that take a practical look, too. If you think
18 that the information is going to come out at the
19 hearing, you may succeed on your argument but have it
20 come out anyway.

21 MR. CHRISTMAN: Now that we have whetted the
22 County's appetite, I expect that it will come out.

23 JUDGE BRENNER: Item 37, at least part of it,
24 and perhaps all of it, is still in dispute. The 37
25 audit reports have been provided, correct?

1 MR. CHRISTMAN: That is correct. In short,
2 part 1 of the audit reports, that is not in dispute.
3 That has been provided. Our position on what they are
4 really asking for is the follow-ups, what is the
5 response to the audit findings, and this is one of the
6 cases where we think that the present request for the
7 follow-up to the audit reports that they had last spring
8 is just unjustifiable. They were given the 37 audit
9 reports in March. They had the audits feature. They
10 didn't ask for the follow-ups or what the QA people call
11 the full file responsive to the audit findings. They
12 have experts doing the searching, and I am told that
13 anybody would have known that there are follow-ups, that
14 it would have been the most obvious thing in the world
15 to have asked for the follow-ups to the audit reports
16 once they asked for the audit reports. They didn't do
17 that, and therefore there is really no excuse for having
18 to reproduce the second half of the package at this
19 point. That's really the position.

20 We have provided half of it. On the other
21 half, we think that that is a clear case of something
22 that should have been asked for earlier.

23 JUDGE BRENNER: The testimony, as I read it --
24 well, let me back up. Where is the reference to the
25 follow-up to the audit reports in the testimony? I am

1 not saying there has to be one, but if there is, I want
2 to know where. Or is it that the County is keying the
3 request --

4 MR. DYNNER: There was no specific reference,
5 but the reason we asked for that here was because of
6 the implication that Appendix B is in fact being
7 carried out, and in Order 2, under the corrective action
8 criteria. One would therefore expect that there would
9 be follow-up documentation.

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1 MR. LANPHER: Judge Brenner, I am not trying
2 to gang up on Mr. Christman, but a number of times there
3 has been reference to the earlier discovery period back
4 in March and April.

5 JUDGE BRENNER: I think I have been most
6 guilty of those references, not Mr. Christman.

7 MR. LANPHER: Well, in this last case, and
8 it's not a quote, but he said it would have been obvious
9 to anyone going through the documents that were provided
10 in, I think it was, early April. My recollection is the
11 2nd to the 9th of April, or something. We did have
12 experts at the site.

13 JUDGE BRENNER: I think there was even a
14 little extension or two as to some items after that.
15 But go ahead.

16 MR. LANPHER: The fact of the matter is, there
17 was extraordinarily little time to review the materials,
18 and the implication is left that there was time to
19 review the materials at the site, decide what to take
20 and what further materials to ask.

21 We specifically asked in early April for an
22 extension of time beyond -- I forget the exact date. We
23 had a prehearing conference on the 13th and 14th, I
24 believe, of April. We asked for an extension of time to
25 have additional ability to review the QA materials that

1 were provided. LILCO opposed that and you sustained
2 that position.

3 I just want to make clear the County's view
4 that it was not a simple matter of reviewing things and
5 identifying obvious follow-ups and asking for them.
6 There was not sufficient time in that discovery phase in
7 early April to do that.

8 MR. CHRISTMAN: Well, in that case what we're
9 doing is rearguing the failure or the request for an
10 extension of time. And I would not think that you would
11 want to reconsider that now.

12 MR. LANPHER: That is not at all what we are
13 doing here. I think the implication of what LILCO's
14 counsel has been saying, that it was a simple matter to
15 obviously identify things during that time period --
16 taking the time period that was granted that we had, it
17 was not a simple matter in our view.

18 JUDGE BRENNER: I'm not sure this is what Mr.
19 Christman meant, but what I will say is that it was a
20 simple matter to ask for follow-ups to audit reports, in
21 the sense that anybody who knows anything about QA knows
22 there are such follow-ups. If you are arguing that the
23 follow-ups were there but you didn't have time to read
24 them, that's a different matter.

25 It doesn't pay to get into it too

1 extensively. There is the further background that those
2 discovery periods were not fully justified in the
3 Board's mind at the time, but we permitted them to the
4 extent that we did anyway, over and above the previous
5 discovery that we thought should have taken place.

6 The point we are at today is, if we think the
7 discovery could have been asked earlier and we are
8 inclined to think that follow-up reports to these audits
9 could have been asked for earlier, what in the testimony
10 would give rise to trigger this request anew? And we
11 see very little, at least in the cited portion of the
12 testimony for these follow-ups.

13 On the other hand, to the extent it's going to
14 be pertinent to get into any of these audit reports,
15 we're going to want the up-to-date follow-ups on them.
16 So those are the countervailing considerations.

17 I take it the follow-ups are all in separate
18 documents?

19 MR. CHRISTMAN: Yes. One has something like
20 the following: You have an audit plan, you have an
21 audit report, you have the responses, you have a Stone &
22 Webster follow-up, assurance that the responses are
23 adequate, and other backup data.

24 JUDGE BRENNER: Is there a separate identified
25 follow-up for each audit report, or are they sometimes

1 combined and tracked for follow-up to the follow-up, and
2 so on?

3 MR. CHRISTMAN: I'm not sure exactly how they
4 are packaged, but the people talk about a file for each
5 audit report. So I suppose that they are in a package
6 by audit reports.

7 JUDGE BRENNER: Some of the follow-ups might
8 be recent, is that correct?

9 MR. CHRISTMAN: Possibly.

10 JUDGE BRENNER: Give us a moment.

11 (Board conferring.)

12 JUDGE BRENNER: We're going to deny the
13 request. The audit reports were a focus earlier. They
14 could have -- follow-ups could have and should have been
15 asked for then. The reference in this portion of the
16 testimony at 167 through 169, and I guess carrying over
17 beyond that to the audit program, does not suffice to
18 give rise to a new request.

19 The County has the audit reports. Presumably,
20 the value of the audit reports, the probative value will
21 vary, and there may be some items which the County wants
22 to follow up on. That may or may not be available on
23 cross-examination, depending on where the issue is
24 going. But that would be a subject that we direct the
25 parties to discuss, and the result of those discussions

1 might be that some of the follow-up reports should be
2 turned over to facilitate efficiency later.

3 In addition, where the follow-ups are new they
4 should definitely be turned over where they relate to
5 one of the reports that the County is interested in.
6 Otherwise, we're not requiring LILCO now to go through
7 them and turn over all those that are new. But as part
8 of the discussions, when the County indicates particular
9 ones that they are interested in following up on, we are
10 urging that the parties -- that the County be given
11 access to it for efficiency in the case of the
12 particular follow-ups being new since the discovery
13 period. And our urging is a requirement.

14 But LILCO on its own does not have to go
15 through to identify new follow-ups at this time, because
16 we are not aware of a previous request which has to be
17 seasonally updated by LILCO on its own under the rules.

18 38. Is part of this one resolved?

19 MR. CHRISTMAN: Yes, sir. For what reason I
20 can't now fathom, we agreed to turn over the
21 surveillance reports. So that is resolved.

22 I think the second one ought to be resolved,
23 too, because of the following. The follow-ups are
24 called CAR's or corrective action requests. All CAR's
25 were put out for the County to discover in the spring.

1 The County copied a number of them. The County has a
2 copy of the log of CAR's, also taken away in that
3 discovery. And it seems to me that that should end
4 number 38.

5 JUDGE BRENNER: I guess I'll ask the County if
6 they agree.

7 MR. DYNNER: Yes, we heard. And no, we don't
8 agree. That is to say, I guess I should make a
9 statement for the record with respect to this and other
10 matters that the Board has ruled upon today. To
11 reiterate from the written material that we submitted,
12 it's the County's position that the Clinton case which
13 is cited in our memorandum controls the disposition of
14 and issuance of subpoenas and, as we read the case,
15 provides that the fact that documents were not requested
16 during discovery in no way precludes the right of a
17 party by subpoena to get those documents later on.

18 Secondly, that within the confines of the
19 subpoena rule in the Clinton case as we read it, the
20 test is that to the extent that the Board requests us to
21 show relevance we have to show relevance, and we believe
22 that we have.

23 Secondly, that the issue by which the subpoena
24 documents can be denied is that they are unduly
25 burdensome. We don't feel that LILCO has made very much

1 of a case that any of the documents that have been
2 rejected would be unduly burdensome to provide --

3 JUDGE BRENNER: Let me interject for a
4 moment. I understand what you are saying, and we can
5 come back to it at the end, and in fact we will, because
6 I want to come back to it at the end. But you are not
7 relating your general statement now to item 38, are
8 you?

9 MR. DYNNER: What prompted my digression into
10 this area was again the focus, Judge Brenner, of the
11 issue about whether or not we could have obtained the
12 discrepancy reports during discovery. And my response
13 to that can only be at this point, as Mr. Lanpher having
14 made his statement, that we're going under the subpoena
15 ruling, as we read the rule, what the tests are. And
16 the tests in fact have been met insofar as the documents
17 that we have requested.

18 JUDGE BRENNER: I'm sorry to interrupt, but I
19 don't think Mr. Christman argued that you shouldn't have
20 them because you had or should have had access earlier.
21 I think he believes that you do have the documents.
22 Let's find out if that's correct or not.

23 Mr. Christman, is that right? Do you think
24 they have the documents?

25 MR. CHRISTMAN: All of them were made

1 available to them. They copied a good many of them.
2 They have a copy of the log which tells what ones are
3 available. I can't represent that they copied every
4 single one of them. They could have, but I don't know
5 how many of them they took away. I am told they took
6 away lots.

7 JUDGE BRENNER: What are you still missing?

8 MR. DYNNER: We are interested in the CAR's
9 that relate to the specific surveillances that are
10 referenced here. And again, to get back to the issue
11 that we were trying to make in this regard, all of these
12 requests for Part B, we see them as enabling us to
13 prepare cross-examination in response to matters that
14 are referred to and relied upon in the testimony.

15 The statement is made here that corrective
16 action is required. We would like to have access to see
17 whether in fact the CAR's that are relevant to these
18 particular surveillances did in fact take corrective
19 action.

20 JUDGE BRENNER: So as to the 725 welding and
21 mechanical surveillances and the 450 electrical and
22 instrumentational surveillances referenced at page 176
23 of the testimony which you will be provided with, you
24 want the CAR's to each of those?

25 MR. DYNNER: That is correct, sir.

1 JUDGE BRENNER: Do you know what you have
2 obtained from the previous discovery and the extent to
3 which you have the information that you seek?

4 MR. DYNNER: Personally, I do not know at this
5 point. We could check into that. We should have
6 checked into it. But given, as you know, the time frame
7 that we were working under in the negotiations, we
8 didn't. I can check and see, going through all the
9 CAR's that we have, whether and to what extent they fill
10 this.

11 Perhaps another, more efficient way to do this
12 for all parties would be that if these things are in
13 some kind of shape where the files that LILCO has have
14 the CAR's related to the specific surveillances in the
15 same place, it might be more efficient for everybody,
16 and if it is not too burdensome, for LILCO to supply us
17 with those documents rather than have us go back and
18 search through everything.

19 In order to cut down on their work, maybe we
20 can ask them whether they would be able to do that.

21 JUDGE BRENNER: Well, LILCO believes that you
22 have the log. I infer that the log would be a listing
23 identifying the CAR's by date or some such number.

24 MR. CHRISTMAN: I think so.

25 JUDGE BRENNER: Do you have the log, Mr.

1 Dynner?

2 MR. DYNNER: I'm trying to find out.

3 (Counsel for Suffolk County conferring.)

4 MR. DYNNER: I am told the answer must be
5 yes.

6 (Board conferring.)

7 JUDGE BRENNER: We're going to deny this one
8 as discovery that could have been had earlier. I have
9 not forgotten the comments you made as to why that is
10 not the proper test, and we will come back to it after.

11 However, in terms of your further discussions
12 -- well, it could have been had earlier and there's
13 nothing in the testimony that sharpens the focus as to
14 particular ones. It is somewhat astounding to be
15 requesting over a thousand items this close to the time
16 of litigation of QA on the argument that that is the
17 efficient way to now be preparing to focus the case for
18 QA.

19 The testimony also focuses on a lesser number,
20 about 160 unsatisfactory items. Of course, the County
21 is entitled to disagree as to which items are
22 satisfactory and which ones are not. They should have
23 been focused on earlier.

24 To the extent that there are particular items
25 of importance, we urge the cooperation of the parties in

1 terms of efficiency to make the protective action
2 requests available, as to some of those, because if we
3 hear about particular ones that look like they are
4 problems we will be interested in the up to date
5 status.

6 Cross-examination on something like this is
7 not going to proceed by having the witness list each of
8 the items and then the CAR content.

9 I have a note that 39 through 45 are resolved
10 on the basis that LILCO will produce the documents
11 requested. Is that correct?

12 MR. CHRISTMAN: Yes. 39, 40, 41, 42, 43, 44,
13 and 45 are all settled. I think that's what you said.
14 Most of those were the subject of discovery last spring,
15 but for some reason we will provide those.

16 JUDGE BRENNER: I think the reason is that
17 you've got particular identified reports referenced in
18 the testimony.

19 MR. CHRISTMAN: That was probably my
20 reasoning.

21 I want to make a correction on 45.

22 JUDGE BRENNER: It might have been our ruling,
23 given that it was not your ruling.

24 MR. CHRISTMAN: The correction on 45, two
25 corrections. In my pleading I said we will provide the

1 three reports. That is an artifact of the renumbering
2 that occurred Friday afternoon. The answer is there are
3 no reports. Earlier I had indicated in a letter that no
4 reports are prepared in this program. That is
5 misleading, too. There will be reports at some time,
6 but there simply are none now. So there are no
7 documents, and that is the answer to 45.

8 JUDGE BRENNER: Okay. Did the County know
9 that? I guess they know it now.

10 MR. CHRISTMAN: They know it now. What I said
11 in my letter was that no reports are prepared, and that
12 was just a misunderstanding of my meaning. They have
13 just not prepared any in that program yet.

14 MR. DYNNER: I wonder if we could, in the
15 interest of efficiency and not coming back to you, see
16 whether we can reach agreement that we can get those
17 reports as they are issued.

18 MR. CHRISTMAN: I don't think so. I really
19 don't know -- well, I hate to agree without checking
20 with the client, to tell you the truth. The answer was,
21 in this round of discovery, was that we don't have any
22 documents. That's the only problem.

23 JUDGE BRENNER: Why don't you discuss it. Is
24 it the kind of report that might come up in the cross
25 anyway, as a report that might be available through the

1 witness?

2 The reason I started at 45 is, 46, there may
3 be no dispute, but I'm not sure if the County agrees
4 with LILCO.

5 MR. CHRISTMAN: I'm not sure, either. Let me
6 explain. That's in the operating section, the operating
7 QA. The fact of the matter is there aren't very many
8 trend reports of the operating QA organization. They
9 have only done a couple for the startup. That is a
10 prospective testimony about what they do during
11 operations.

12 We can provide those, roughly two reports of
13 the operating QA organization on their trends, if that
14 will make this go away.

15 MR. DYNNER: The question that we had I guess
16 is, is there also an analysis which is referred to, or
17 are there merely trends, or are they one and the same?

18 JUDGE BRENNER: Mr. Christman?

19 MR. CHRISTMAN: It is an analysis of the
20 report on trends. I'm not sure I understand the
21 question. A trend is not a document, and the analysis
22 of the trend would be a document, a report on that.

23 JUDGE BRENNER: Yes. But is there such a
24 report? You say there are only two reports?

25 MR. CHRISTMAN: A couple, I think.

1 JUDGE BRENNER: Are these reports or are these
2 reports of trends of other reports?

3 MR. CHRISTMAN: I suppose they are trends in
4 nonconformances or whatever, whatever the basic unit is
5 of deviations or that sort of thing.

6 MR. DYNNER: The testimony seems to indicate
7 that there may be two documents: A, an analysis of
8 safety-related nonconformance reports; and B, trends
9 which are reported to LILCO.

10 JUDGE BRENNER: It's not clear, the second
11 sentence of the second paragraph on 241.

12 MR. CHRISTMAN: There are going to be
13 nonconformance reports, and then what we're talking
14 about here is the analysis of the trends. Now, I think
15 we're talking about the report on the trends, not the
16 basic nonconformance reports.

17 MR. DYNNER: No. What I said was, the
18 analysis, document A, the analysis of the nonconformance
19 reports is what we asked for, not the nonconformance
20 reports themselves, but the analysis of the
21 nonconformance reports; and B, the report of the trends
22 to LILCO management.

23 It is ambiguous here as to whether there are
24 two or more or the same.

25 JUDGE BRENNER: All right, I'm going to leave

1 parties to discuss this before I get further confused.
2 There obviously aren't very many reports dealing with
3 the operational QA of this nature.

4 MR. CHRISTMAN: If there is a basic analysis
5 of the trends and if they generate a report to
6 management based on those, I think I can produce those.

7 JUDGE BRENNER: All right. You are going to
8 produce what exists which formed the basis of that
9 sentence, regardless of how we describe them; is that
10 correct?

11 MR. CHRISTMAN: Yes, the operating --

12 JUDGE BRENNER: I have a note that 47 is
13 resolved.

14 MR. CHRISTMAN: That's right.

15 JUDGE BRENNER: Okay, that completes the
16 rulings.

17 We've discussed the argument that we should
18 not have looked at the argument as to whether material
19 could have been asked for earlier by discovery because
20 they are now being requested by subpoena. Putting aside
21 whether or not the subpoena provision is applicable for
22 documents of a party -- and I put that aside because I
23 don't think it is material to get into whether you need
24 a subpoena to compel production of the documents in
25 order to enforce a previous order, which is one area --

1 of a previous discovery order to turn over documents,
2 which is one area where a subpoena might lie or a
3 subpoena duces tecum to require even a party to bring
4 documents to a deposition or something of that nature.

5 There may well be instances where you would
6 issue a subpoena against a party. There may not be. I
7 used to know this at one time and I have not gone back
8 through it again under the Federal Rules as adapted in
9 our practice.

10 However, even if that's the case, that is that
11 there may be instances when a subpoena is the
12 appropriate mechanism to enforce an order against a
13 party, you cannot read the subpoena provision to allow
14 discovery at a date out of time to previously arranged
15 discovery orders. Otherwise, any time we had a previous
16 discovery schedule which is past the party can then come
17 in and say, well, I want all these documents that could
18 have been asked for by discovery, by route of a
19 subpoena, because the previous schedule applied to
20 discovery.

21 And if we accepted your argument, that would
22 be the result of that argument, not academically but as
23 applied to this situation. And that's why we think it
24 is most material to take a look at whether these items
25 could have been requested earlier. And when applying

1 that test, we were liberal and would have been liberal
2 with some of these that LILCO agreed to turn over, had
3 we had to rule, where there were particular references
4 in the testimony to a particular report. That would
5 have been enough of a new focus. To assist the County's
6 cross-examination, we would have insisted that it be
7 turned over, even though the same documents could have
8 been asked for earlier on discovery.

9 Where we ruled against the County on the basis
10 that material could have been requested on discovery,
11 they were materials that formed background materials for
12 the testimony, rather than particular probative points
13 made from particular reports, such as the audit reports
14 from which the witness concluded a statement was made,
15 and so on. That is the distinction that we attempted to
16 draw.

17 I think resort to our particular rulings are
18 more instructive on that point than the brief, not fully
19 articulate statement that I make on it now. But
20 notwithstanding the argument that you are proceeding by
21 route of a request for a subpoena, that is the reason we
22 believe it pertinent to look at whether the material
23 could have been requested by discovery.

24 Incidentally, I have a recollection -- and
25 this wasn't focused on -- in other words, the request

1 was for a subpoena, I believe, but why they went that
2 procedural route, as opposed to saying there should be
3 new discovery, I'm not sure. But I do have a
4 recollection that the computer material being requested
5 was not the utility's, but it was rather a non-party
6 consultant to the utility.

7 Whether or not the consultant would have been
8 a sufficient agent to the utility, such that normal
9 discovery through the utility should have lied, rather
10 than need for a subpoena, is a matter I need not get
11 into here.

12 All right. We have to discuss dates. In
13 terms of turning over the material, is the 31st a good
14 day?

15 MR. CHRISTMAN: It's fine for me.

16 JUDGE BRENNER: I think that's a reasonable
17 date, since today is the 24th. If you want to file a
18 brief on work product, we would want to receive it early
19 Monday, unless that is totally unfeasible.

20 MR. CHRISTMAN: No, that is plenty
21 reasonable. I was afraid you were going to say Friday.

22 JUDGE BRENNER: No. I thought you might want
23 some time to put it together, and we wouldn't be able to
24 focus on it until first thing Monday morning in any
25 event. We would want to be able to devote time to it on

1 Monday, so we would want it very early on Monday.

2 Is that all? If you're not going to file it,
3 you might want to let us know on Friday through whatever
4 counsel is present.

5 MR. DYNNER: Judge Brenner, I assume that the
6 County will have an opportunity to respond to any such
7 brief.

8 JUDGE BRENNER: I assume. I had not thought
9 of it, but you are correct. If we are disposed to grant
10 it, we would not do that without requiring a response.
11 Let me put it that way.

12 And if we want a response I suppose we will
13 have to ask for it. We will ask whatever counsel is
14 present for the County Tuesday morning to propose a
15 rapid date thereafter for an oral or written response.
16 Let's wait and see whether there is a brief and, if so,
17 what it says, and maybe we can focus. The County
18 certainly will have the benefit of being here on the
19 record as to what part of it most interests us and so
20 on.

21 I think we have completed this item. I
22 sometimes wonder if this really is the most efficient
23 way. It's not the most efficient way for the Board, but
24 it gives us the benefit, when we are dealing with cold
25 papers and when we don't have a good handle on what the

1 subject of the request is, of getting the benefit of
2 further views of counsel, and that's why we do it this
3 way.

4 We will take a break. Are the witnesses
5 present? We would like to proceed with the testimony,
6 notwithstanding the late hour, unless there is something
7 else we should be doing or could be doing.

8 MR. LANPHER: .The County's witness -- we are
9 going to offer only Mr. Minor to sponsor the County's
10 testimony. He was the primary author. Mr. Hubbard is
11 unavailable, but Mr. Minor is here and it will just take
12 us a few minutes. He is downstairs.

13 JUDGE BRENNER: Incidentally, we are not going
14 to put the County on, the County witness on, right at
15 first with LILCO and Staff witnesses, in recognition of
16 the points suggested by Judge Carpenter and made in the
17 County's letter to us, if you want to stay with that
18 view.

19 If on your own you have thought about it and
20 decided it is okay to put the witness on, we won't
21 object. However, we may take advantage of, as suggested
22 by the County's letter, of putting the witnesses
23 together later on in the examination, after the initial
24 rounds.

25 MR. LANPHER: Fine. I would like more than a

1 ten-minute break. I don't know if their witnesses are
2 there.

3 JUDGE BRENNER: Well, assuming we break we
4 will break until 4:00 o'clock.

5 JUDGE CARPENTER: I just wanted to state on
6 the record, I thank the response and the cooperativeness
7 of the County. I want to thank you for your complete
8 response and your cooperativeness in agreeing to allow
9 us to do it if we thought it was desirable.

10 JUDGE BRENNER: All right. If there's nothing
11 else, we will break until 4:00 o'clock.

12 (At 3:40 p.m., the hearing was recessed, to
13 reconvene at 4:00 p.m. the same day.)

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1 JUDGE BRENNER: All right, we are ready to
2 proceed.

3 I guess my recollection is that Mr. Kreps, Mr.
4 Rigert and Dr. Rossi have all been previously sworn.

5 Would the others please stand, now, and raise
6 their right hand.

7 MR. EARLEY: Judge, as I mentioned to you on
8 the break, you have been handed a copy of a stipulation
9 regarding one piece of Subsection (a) of Suffolk County
10 27, SOC 3, and Part K of that contention. The
11 stipulation is signed by three of the four parties. SOC
12 has indicated to me, and I think also to the County,
13 that they would be satisfied when the County was
14 satisfied with both this stipulation and the resolution
15 of concerns that I think we will have for you by the end
16 of the day today.

17 So we will forward the original for signature,
18 and when we have all the parties' signatures on it, we
19 will send it to you.

20 JUDGE BRENNER: All right, fine.

21 Let's see what we have with respect to all of
22 them by tomorrow. Perhaps we will bind in what we have
23 tomorrow, just have the substance of it close to the
24 testimony if the signature is not arranged.

25 We will wait and see where we are when we

1 complete the litigation of it.

2 MR. EARLEY: We will try to get the signatures
3 done by tomorrow.

4 Whereupon,

5 JERRY MAUCK,

6 JOSEPH BARON

7 JOHN SCHMITT,

8 called as witnesses, having been duly sworn by the
9 presiding officer, were examined and testified as
10 follows:

11 and Whereupon,

12 JOHN KREPS,

13 JOHN RIGERT,

14 CHARLES ROSSI,

15 recalled as witnesses, having previously duly sworn,
16 were further examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. EARLEY:

19 Q Dr. Baron, would you please state your name
20 and organization that you are with, please?

21 A (WITNESS BARON) My name is Joseph Baron. I
22 am employed by Stone and Webster Engineering
23 Corporation, Boston, Massachusetts.

24 Q Mr. Rigert, would you state your name and
25 organization, please?

1 A (WITNESS RIGERT) My name is John Rigert. I
2 am employed by Long Island Lighting Company, Hicksville,
3 New York.

4 Q And Mr. Schmitt, would you state your name and
5 organization, please?

6 A (WITNESS SCHMITT) My name is John Schmitt. I
7 am employed by Long Island Lighting Company at the
8 Shoreham Nuclear Power Station.

9 Q And Mr. Kreps, would you state your name and
10 organization, please?

11 A (WITNESS KREPS) My name is John Kreps. I am
12 employed by EDS, Incorporated at the Shoreham Nuclear
13 Power Station.

14 Q Gentlemen, do you have in front of you a
15 document entitled Testimony of John Rigert for the Long
16 Island Lighting Company on Suffolk County Contention 27
17 and Shoreham Opponents Coalition, Contention 3,
18 Regulatory Guide 1.97 that consists of 21 pages,
19 including Mr. Rigert's professional qualifications?

20 A (WITNESS KREPS) Yes.

21 A (WITNESS SCHMITT) Yes.

22 A (WITNESS RIGERT) Yes.

23 A (WITNESS BARON) Yes.

24 Q And Mr. Schmitt and Dr. Baron, do you have in
25 front of you documents entitled Professional

1 Qualifications of John Schmitt and Joseph S. Baron
2 respectively in front of you?

3 A (WITNESS BARON) Yes.

4 A (WITNESS SCHMITT) Yes.

5 Q Mr. Kreps, your professional qualifications
6 have been previously entered on the record in this
7 proceeding and modified slightly, haven't they?

8 A (WITNESS KREPS) Yes.

9 Q Mr. Rigert, that document on the testimony of
10 Suffolk County 27, do you have any corrections to that
11 testimony?

12 A (WITNESS RIGERT) Yes, there are three
13 corrections. On page 3 in the second line of the answer
14 to Question 5, delete the reference to "(Exhibit 1.)"

15 On page 8, in the tenth line of the answer to
16 Question 10, delete "the levels of noble gases," and
17 insert in its place "radiation dose rate and the
18 concentration of."

19 JUDGE BRENNER: I'm sorry, Mr. Rigert. Would
20 you give me that one again?

21 WITNESS RIGERT: On page 8, in the tenth line
22 of the answer to Question 10, delete "the levels of
23 noble gases," and insert in its place "radiation and
24 dose rate and the concentration of."

25 BY MR. EARLEY: (Resuming)

1 Q Mr. Schmitt, do you have any corrections to
2 your professional qualifications?

3 A (WITNESS SCHMITT) Yes, I do. I have one
4 correction. On page 1 of my professional
5 qualifications, on line 13, after the words "from the
6 University of Michigan in 1974," add the words "and
7 became a certified health physicist in 1982."

8 Q Gentlemen, as corrected, is that testimony and
9 are those professional qualifications true and correct
10 to the best of your knowledge?

11 A (WITNESS KREPS) Yes.

12 A (WITNESS SCHMITT) Yes.

13 A (WITNESS RIGERT) Yes.

14 A (WITNESS BARON) Yes.

15 MR. EARLEY: Judge, I now move into evidence
16 testimony of Mr. Rigert on Suffolk County Contention 27
17 and SOC Contention 3 and the professional qualifications
18 of Dr. Baron and Mr. Schmitt.

19 JUDGE BRENNER: All right. I take it the
20 corrections were made also on the copy being bound?

21 MR. EARLEY: The corrections have been made on
22 the copy to be bound.

23 JUDGE BRENNER: In the absence of objection,
24 those documents will be admitted into evidence and bound
25 into the record.

1 (The documents referred to, Testimony of John
2 Rigert on Suffolk County Contention 27 and SOC
3 Contention 3, and the professional qualifications of
4 Joseph Baron and John Schmitt follow:)

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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

TESTIMONY OF JOHN RIGERT FOR THE LONG ISLAND LIGHTING
 COMPANY ON SUFFOLK COUNTY CONTENTION 27 AND SHOREHAM
 OPPONENTS COALITION CONTENTION 3 -- REGULATORY GUIDE 1.97

Purpose

Regulatory Guide 1.97 lists categories of instrumentation needed during and following an accident. SC and SOC allege that Shoreham will not comply with this regulatory guide in that it is deficient in eleven instrument categories. This testimony describes LILCO's position with regard to these eleven instrumentation categories. It shows that Shoreham will have ample instrumentation to monitor plant and environmental conditions during and following an accident. Specifically, for each instrumentation category:

- (1) LILCO will have instrumentation that meets Regulatory Guide 1.97 installed prior to fuel load; or

- (2) LILCO will have instrumentation that meets Regulatory Guide 1.97 installed by the implementation date in the regulatory guide (June 1983) (In the interim, other instrumentation will perform essentially the same function as the new instrumentation); or
- (3) LILCO will not install the instrumentation because it is unnecessary since other instrumentation accomplishes the same purpose.

Related Contentions

SC 28(a)(iii)/SOC 7A(3) -- Iodine Monitoring

SC 3/SOC 8 -- Inadequate Core Cooling

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

TESTIMONY OF JOHN RIGERT FOR THE LONG ISLAND LIGHTING
COMPANY ON SUFFOLK COUNTY CONTENTION 27 AND SHOREHAM
OPPONENTS COALITION CONTENTION 3 -- REGULATORY GUIDE 1.97

1. Q. Please state your name and business address.
A. My name is John A. Rigert. My business address is Long
Island Lighting Co., 175 East Old Country Road,
Hicksville, New York.

2. Q. What is your position with LILCO?
A. I am employed by LILCO as the Section Head of the
Systems Engineering Section of the Nuclear Engineering
Department and serve as the Lead Nuclear Systems
Engineer for the Shoreham Project. I have held this
position since October, 1978.

3. Q. Please state your professional qualifications.

A. My resume, which appears on pages 20-21, summarizes my professional qualifications. Throughout my career I have been involved in instrumentation from both the operations and the design viewpoint. I have been an active member of the BWR Owners' Group Regulatory Guide 1.97 Committee since its establishment in April 1981. I have also been involved in LILCO's evaluation of the Shoreham plant as it relates to Regulatory Guide 1.97.

4. Q. Would you please summarize the issue involved in these contentions?

A. SC Contention 27 and SOC Contention 3 are identical contentions. They allege that Shoreham does not comply with Regulatory Guide 1.97, Revision 2, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant Environs Conditions During and Following an Accident." Specifically these contentions claim that Shoreham is deficient in eleven areas:

- (a) Radiation Exposure Rate Monitoring;
- (b) Radioactivity Concentration or Radiation Level in Circulating Primary Coolant;
- (c) Continuous On-Line Monitoring of Halogen in Effluent;
- (d) Secondary Containment Area Radiation Monitor;
- (e) Reactor Coolant System Soluble Boron Concentration;

- (f) Analysis of Primary Coolant (Gamma Spectrum);
- (g) Drywell Spray Flow and Suppression Chamber Spray Flow;
- (h) Standby Liquid Control System Flow;
- (i) Plant and Environment Radiation Monitoring;
- (j) Post Accident Sampling Capability; and
- (k) BWR Core Thermocouples.

5. Q. Please explain LILCO's position with regard to Regulatory Guide 1.97.

A. As stated in the introduction to Regulatory Guide 1.97, Revision 2 (~~Exhibit 1~~), "this guide describes a method acceptable to the NRC staff for complying with the Commission's regulations to provide instrumentation to monitor plant variables and systems during and following an accident in a light-water-cooled nuclear power plant." Of course, regulatory guides are not binding; they are just one acceptable means of complying with the NRC's regulations. Moreover, according to the regulatory guide, its provisions need not be implemented until June 1983 except where an earlier date is established by NUREG-0737 and the Commission's Memorandum and Order (CLI-80-21). LILCO, both individually and as a member of the BWR Owners' Group, has compared the

Shoreham plant design to the regulatory guide to determine whether the functional requirements described for particular instruments are met. And while LILCO's position on the regulatory guide has not been submitted to the NRC Staff for review, the Company's intent with regard to the eleven items raised in this contention is set out in this testimony. As will be explained in detail below, with regard to some of the eleven items, LILCO either has or is in the process of complying with Regulatory Guide 1.97. In other instances, LILCO and the BWR Owners' Group Regulatory Guide 1.97 Committee^{1/} have identified a number of variables that have marginal or no benefit, or are not feasible. Thus, LILCO does not intend to install them. The purpose to be served by these instruments, however, is met by instrumentation other than that specified in the regulatory guide. It should be noted that in each instance where LILCO does not intend to install instrumentation, the need for such instrumentation is still under review by the BWR Owners' Group Regulatory Guide 1.97 Committee.

^{1/} The BWR Owners' Group is comprised of all domestic BWR utilities as well as several foreign BWR utilities. The group sponsors generic studies and evaluations on issues relevant to BWR plants. The Regulatory Guide 1.97 Committee is performing a comprehensive review of this regulatory guide.

LILCO plans to reassess its position when the BWR Owners' Group review is complete.

(a) Radiation Exposure Rate Monitoring

6. Q. Mr. Rigert, please discuss each of the eleven categories of instruments raised in these contentions individually. We will take them in the order they appear in the contentions. Where in Regulatory Guide 1.97 do radiation exposure rate monitoring instruments appear?

A. The radiation exposure rate monitors referenced in the contention appear in three places in the regulatory guide. On page 1.97-10, radiation exposure rate monitors are listed as a Type C variable for the purpose of indicating a breach in the primary containment. They also appear in the listing of Type E variables for the purpose of detection and monitoring of significant radioactive releases into buildings to which access may be needed (page 1.97-13) and for verification and monitoring of releases in fixed locations outside the plant (page 1.97-14).

7. Q. What is a radiation exposure rate monitor?

A. A radiation exposure rate monitor is designed to measure the ambient rate of radiation exposure, in units

of roentgen/hr (usually equivalent to rem/hr), at a given location due to all gamma sources. This includes direct radiation emitted from equipment containing radioactive substances, such as piping, tanks, and the primary containment, airborne radioactive gases, and airborne particulate matter.

8. Q. Does LILCO intend to install radiation exposure rate monitors to detect a breach in the primary containment?

A. No. Using local radiation exposure rate monitors to detect breach or leakage through primary containment penetrations and hatches is ineffective and unnecessary. In general, radiation exposure rate in the secondary containment will be a function of radioactivity in the water and steam flowing in ECCS piping and the primary containment. This radioactivity would cause direct radiation shine on the area monitors. Thus, it would be difficult, if not impossible, to determine whether increased radiation levels were the result of increased radioactivity within the primary system or a breach of containment.

Containment leakage or breach is best determined by noble gas effluent monitors. These monitors distinguish the airborne radioactivity sources from sources

such as direct radiation from piping. Since any breach in containment will be characterized by an increase in airborne activity, these monitors are the most appropriate ones for breach detection. Shoreham has noble gas effluent monitors installed that meet Regulatory Guide 1.97.

9. Q. Does LILCO intend to install radiation exposure rate monitors to detect and monitor radioactive releases into buildings to which access is needed?
- A. No. Access is not required to any area of the secondary containment to operate equipment in a post-accident situation. Thus, it is not necessary to know exact radiation levels in the secondary containment. The operator will be alerted to the high radiation levels by the normal area radiation monitors which may be at the high end of their range. When accessibility is reestablished in the long term, it would be done by a combination of portable radiation survey instruments and use of the post-accident sampling system. The post-accident sampling system would allow sampling the primary and secondary containment atmosphere at various locations as well as the primary coolant. Also, as radiation levels decrease, the low range radiation monitors may be available for use.

10. Q. And does LILCO intend to install radiation exposure rate monitors at locations outside the plant?

A. No. Implementation of this parameter is being deferred pending additional guidelines and a revised implementation date which are to be developed by the NRC in accordance with their July 1981 Errata to Regulatory Guide 1.97.

LILCO plans to monitor offsite radiation levels in two ways:

(a) Field teams will use high volume air samplers, G-M detectors, ion chambers and swipe surveys to determine ^{radiation dose rate and concentration of} ~~the levels of noble gases,~~ iodines and particulates.

(b) As part of our Radiological Environmental Monitoring Program (REMP), LILCO will measure integrated radiation doses with thermoluminescent dosimeters and air particulate and iodine monitors. These instruments are located both onsite and offsite in sectors centering on the station vent.

(b) Radioactivity Concentration
or Radiation Level in Circulating
Primary Coolant

11. Q. Where in Regulatory Guide 1.97 is the instrumentation for measuring concentration or radiation level in the circulating primary coolant found?

- A. On page 1.97-9, instrumentation of this sort is included as a Type C variable to detect a cladding breach.
12. Q. Does LILCO intend to install instrumentation as specified in Regulatory Guide 1.97 to monitor radioactivity concentration or radiation level in the circulating primary coolant.
- A. No. But Shoreham already has main steam line and off-gas radiation monitors that will detect a cladding breach. These monitors can be used as long as the main steam isolation valves (MSIV) remain open. After MSIV closure, the containment high range radiation monitors and the containment hydrogen monitors provide an indication of clad failure. Both of these types of monitors meet Regulatory Guide 1.97. As will be explained later, LILCO is also installing a Post Accident Sampling System that can be used to detect clad failure.

(c) Continuous On-Line Monitoring
of Halogen in Effluent

13. Q. What does Regulatory Guide 1.97 recommend for continuous on-line monitoring of halogens?
- A. There are two Type E variables listed in Regulatory

Guide 1.97 concerning halogen monitoring. The first (page 1.97-14) calls for monitoring halogens from all plant release points. It should be noted that this does not require continuous monitoring but rather continuous sampling with the capability to analyze the samples. The second (also page 1.97-14) deals with portable radiohalogen and particulate monitors.

14. Q. Does Shoreham have the capability to sample all plant release points for halogens?

A. Yes. The Shoreham design includes sample filter apparatus in the station vent and the reactor building standby ventilation system exhaust for the collection of radioactive halogen samples. These samplers meet Regulatory Guide 1.97. The samples can be analyzed in the on-site laboratory facilities. A detailed discussion of the location of halogen sampling capability for Shoreham is contained in the testimony of John Schmitt on Suffolk County Contention 28(a)(iii) and SOC Contention 7A(3) on iodine monitoring.

15. Q. And will Shoreham have portable radiohalogen monitors available?

A. Yes. LILCO has available portable radiohalogen monitors that meet Regulatory Guide 1.97.

(d) Secondary Containment
Area Radiation Monitor

16. Q. Where are secondary containment area radiation monitors found in Regulatory Guide 1.97?

A. On page 1.97-13, secondary containment (or reactor building) area radiation monitors are included as a Type E variable. The purpose of these instruments is to detect and monitor significant releases of radioactivity from the primary containment.

17. Q. Does Shoreham have secondary containment area radiation monitors of the type suggested by this regulatory guide?

A. Although Shoreham does have low range area radiation monitors, LILCO does not intend to install high range monitors of the type included in this regulatory guide. Area radiation monitors are fixed location radiation exposure rate monitors. As explained in response to question 8 above, an area radiation monitor is not effective in detecting and assessing primary containment releases. Radioactive releases to the secondary containment are more appropriately monitored by measuring noble gas in the effluent. Long term surveillance will be accomplished by using the Post Accident Sampling System, health physics surveys, and existing area and effluent monitors.

(e) Reactor Coolant System
Soluble Boron Concentration

18. Q. What does Regulatory Guide 1.97 recommend with regard to monitoring reactor coolant system soluble boron concentration?
- A. Reactor coolant system boron concentration is listed as a Type B variable on page 1.97-8. The purpose of the instrumentation is to verify that sufficient boron is present in the reactor coolant in the unlikely event that boron is needed to keep the reactor shut down.
19. Q. Does Shoreham have the capability to monitor soluble boron concentration?
- A. LILCO intends to install an analyzer capable of measuring soluble boron concentration by June 1983. The analyzer will comply with Regulatory Guide 1.97.
20. Q. In the time period between fuel load and June 1983, how would boron in the primary coolant be monitored?
- A. First, it is extremely unlikely that boron would ever have to be used to keep Shoreham shut down. Thus, the likelihood that boron would be needed during the short period in question is remote. Second, as discussed in the answer to question 26 below, there are instruments available to monitor the injection of boron

into the core. Once the boron is injected the operator would closely monitor neutron power level to ensure the reactor remains shut down. Any indication of criticality would prompt the operator to inject more boron. Finally, boron concentration can be measured using special sampling procedures and on-site laboratory equipment.

(f) Analysis of Primary Coolant
(Gamma Spectrum)

21. Q. What does Regulatory Guide 1.97 recommend in the way of analysis of the primary coolant gamma spectrum?
- A. On page 1.97-9, analysis of the primary coolant gamma spectrum is included as a Type C variable. It is intended to provide information related to the nature and extent of fuel damage.
22. Q. Does Shoreham have the capability to perform an analysis of the primary coolant gamma spectrum?
- A. LILCO has purchased a multichannel analyzer that meets Regulatory Guide 1.97. It will be installed in the Post Accident Sampling System before fuel load. The analysis will be conducted by extracting a sample of reactor coolant from the Post Accident Sampling System in a grab sample flask. The flask is then put into the

sample cave of the computerized multichannel analyzer in the Post Accident Sample building where it is analyzed for specific isotopes.

(g) Drywell Spray Flow and
Suppression Chamber Spray Flow

23. Q. What does Regulatory Guide 1.97 recommend with regard to drywell spray flow and suppression chamber spray flow indication?
- A. On page 1.97-11, these two parameters are included as Type D variables to monitor the operation of the containment sprays.
24. Q. Are these two variables monitored at Shoreham?
- A. Shoreham does not have instruments to monitor drywell and suppression chamber spray flow directly, but there are other instruments available to provide equivalent information. The primary function of the drywell and suppression chamber sprays is to control containment pressure and temperature. Both of these parameters are monitored directly. The spray flow is provided by the RHR system by manually aligning motor operated RHR valves from the control room. The operator does have direct indication of RHR flow and can check the positions of RHR system valves. Thus, the operator can

monitor containment spray by observing that the system has been properly lined up and by checking RHR system flow. He can further confirm operation by monitoring containment pressure and temperature.

(h) Standby Liquid Control System Flow

25. Q. What does Regulatory Guide 1.97 have to say about monitoring standby liquid control system flow?

A. On page 1.97-12, standby liquid control system flow is included as a Type D variable. Its purpose is to monitor the operation of the standby liquid control system.

26. Q. Does Shoreham have a standby liquid control system flow meter?

A. No. Monitoring of the standby liquid control system (SLCS) can be adequately done using existing instrumentation. SLCS pump operation can be verified by observing the pump status lights and pump discharge pressure. The flow path to the reactor can be checked by looking at the squib continuity lights for the squib (injection) valves and by verifying decreasing SLCS tank level. Finally, system operation can be verified by observing a reduction in reactor power on the neutron monitoring system. All of these indications are

presently available to the operator in the control room at, or near, the SLCS portion of the main control panel.

(i) Plant and Environment
Radiation Monitoring

27. Q. What does Regulatory Guide 1.97 recommend with respect to plant and environment radiation monitoring?

A. Plant and environment radiation monitoring is listed on page 1.97-14 as a Type E variable. It recommends portable instrumentation to assess levels of beta and gamma radiation.

28. Q. Does Shoreham have portable radiation monitoring equipment of the sort contemplated in the regulatory guide?

A. LILCO has determined that portable radiation monitoring equipment of the type required by the regulatory guide is commercially available. This equipment will be procured by June 1983.

29. Q. Between the time the plant loads fuel and June 1983, will portable radiation monitoring equipment be available?

A. LILCO already has available portable radiation monitoring equipment. The range of this equipment is lower than that specified in the regulatory guide. The

highest range monitor that LILCO now has goes up to 1000 R/hr. The regulatory guide specifies a range of 10,000 R/hr. It should be noted that LILCO does not believe that portable monitors would ever be used in fields up to the 1000 R/hr range of existing equipment. There doesn't seem to be any reason to have equipment with even higher ranges.

(j) Post Accident Sampling Capability

30. Q. What does Regulatory Guide 1.97 recommend with respect to post accident sampling capability?

A. On page 1.97-15, the post accident sampling capability is set out under the Type E variables. It recommends having the ability to take specified liquid and atmospheric samples and to analyze the samples on-site for specified parameters.

31. Q. Does LILCO have the post accident sampling capability specified in Regulatory Guide 1.97?

A. LILCO is in the process of building a Post Accident Sampling System. The system and its building are discussed in FSAR section II.B.3. This facility will be completed prior to fuel load. The Post Accident Sampling System will meet Regulatory Guide 1.97 in all respects except one. It will not have the sump

sampling capability described in footnote 17 on page 1.97-15 of the guide. The containment sumps are isolated by an accident signal and will, therefore, not collect any water that is highly contaminated due to fuel failure. The ECCS pump room (reactor building secondary containment) sump pumps are de-energized upon receipt of an accident signal. Excess water is pumped back to the suppression pool by a special leakage return pump.

(k) BWR Core Thermocouples

32. Q. What does Regulatory Guide 1.97 recommend with respect to core thermocouples?

A. On page 1.97-8, BWR core thermocouples are included in the regulatory guide as a Type B variable.

33. Q. Does LILCO intend to install BWR core thermocouples?

A. No. The issue of BWR core thermocouples is treated in depth in LILCO's testimony concerning SC Contention 3 and SOC Contention 8.

Summary

34. Q. Mr. Rigert, please summarize your testimony.

A. LILCO intends to install instrumentation that accomplishes the purposes set out in Regulatory Guide 1.97 for

the eleven categories covered by this contention. It will be done by either installing instruments that meet the regulatory guide or by having other instrumentation available that accomplishes the same function as that listed in the regulatory guide.

JOHN A. RIGERT

Section Head, Nuclear Systems Engineering Section
Long Island Lighting Company

My name is John A. Rigert. My business address is Long Island Lighting Company, 175 East Old Country Road, Hicksville, New York. I am the Section Head of the Systems Engineering Section of the Nuclear Engineering Department. I have held this position since October, 1978. My responsibilities include the review and approval of the technical aspects of nuclear and radwaste systems engineering and the performance of special studies relating to nuclear and radwaste system design and performance. In addition, I will provide technical support for modifications and improvements during nuclear plant operation.

I received my Bachelor of Mechanical Engineering degree from Pratt Institute in 1970 and my Master of Science degree in Nuclear Engineering from Polytechnic Institute of Brooklyn in June 1976. I have completed courses in GE BWR systems and simulator training, Westinghouse PWR systems training and other subjects related to nuclear power.

I am a member of the American Society of Mechanical Engineers and am a registered Professional Engineer in the State of New York.

I have been employed by LILCO since June 1970. In the period from June 1970 to February 1972, I held the position of assistant engineer in the Gas Production and Operations Department. Then, from February 1972 to August 1976, I held the positions of associate engineer and engineer in the Power Engineering Department. I was responsible for various assignments related to Shoreham, Jamesport, Northport 3 & 4 and other projects with emphasis on mechanical and electronic instrumentation and controls, demineralizers and water treatment.

In the period from August 1976 to October 1978, I held the position of Nuclear Systems Test Engineer in the Shoreham Startup organization. I was responsible for procedure preparation, flushing, testing and other activities on the following systems: control rod drive, reactor core isolation cooling, standby liquid control, refueling and reactor vessel servicing, fuel pool cooling and cleanup and other miscellaneous systems.

PROFESSIONAL QUALIFICATIONS

Joseph S. Baron

Power Engineer, Nuclear Engineering Group

STONE & WEBSTER ENGINEERING CORPORATION

My name is Joseph Baron. My business address is 245 Summer Street, Boston, Massachusetts 02107. I am employed by Stone & Webster Engineering Corporation (SWEC) as a Power Engineer and have held this position since January 1973. In this capacity I am currently responsible for the radiation monitoring system for the Shoreham Nuclear Power Station - Unit 1 Project.

I was awarded a Bachelor of Science degree in chemical engineering in 1966, dual Master of Science degrees in chemical and nuclear engineering in 1968, and a Ph.D. in nuclear engineering in 1971, all by Massachusetts Institute of Technology.

Prior to joining SWEC in August 1971, I worked as a part-time Assistant Process Engineer for Diamond Shamrock Company in Cleveland, Ohio. I was responsible for the evaluation of chemical kinetics data, development of a workable kinetics model for use in the design of a production chemical reactor and design of scrubbing towers. Later as a Research Associate with Argonne National Laboratory, I established the setup and calibration of an analytical system for the determination of impurities in sodium. Next, with Oak Ridge National Laboratory as a Research Associate (August 1967 - February 1968), I was responsible for the design of an accurate method of determining the thermal flux history of the irradiation cavity of the high flux isotope reactor,

for feasibility and kinetic studies in the use of amines as dehydrating agents in the microsphere production step of the Sol-Gel process; analysis of the electrical charge distribution in a metallic aerosol; and preparation of reactor physics data for use in an economic evaluation of a high temperature gas-cooled reactor (HTGR). From February 1968 - August 1971 I was involved in resident study towards my master and doctorate degrees.

Upon joining SWEC in August 1971 as an Engineer in the Nuclear Division, I functioned as an Assistant Supervisor in charge of the design and development of light water reactor (LWR) radioactive waste systems as well as consultant in the phenomenon of ion exchange. In this capacity, I interacted with technical staff members involved in other plant systems in an effort to minimize potential radioactive releases. I supervised the simulation group which developed computer models for the operation of radioactive waste systems and for plant effluent releases, both steady state and transient. On assignment to Boston Edison Pilgrim Project, I participated in the conceptual development of alternate radioactive waste processing capability. I was also involved in the evaluation of the existing equipment, and systems to determine the long-term viability. Another activity concerned determination and development of various accident scenarios for the liquid metal fast breeder reactor (LMFBR) prototype project.

On the Wisconsin Utilities Project as Principal Nuclear Engineer (February 1978 - July 1979) I was responsible for all nuclear steam supply system (NSSS) interfaces and the design of systems in the reactor portion of the plant. I participated in the development of

site specific potential accident sequences. On temporary assignment to Virginia Electric and Power Company's Surry project, I assisted in coordinating the proposed primary coolant hot magnetic filter retrofit, which was not installed.

As Principal Nuclear Engineer on the SWEC sponsored Reference Nuclear Power Plant (July 1979 - May 1980), I ensured that systems designs within the reactor portion of the plant met applicable interface criteria for the various pressurized water reactor (PWR) NSSS vendors and developed generic systems descriptions. I participated in the design and development of the concept of the Independent Fuel Storage Facility.

Later, as Lead Nuclear Process Engineer on the Nuclear Power Company, Ltd. (NPC), Project (April 1980 - May 1981), I was responsible for the development of the Civil Demonstration Fast Reactor Cover Gas System design. Additionally, I coordinated design and structural activities for the NPC efforts within the London and Boston offices.

I was also responsible for developing an economical and efficient method of clean the reactor coolant of a boiling water reactor following an inadvertent injection of sodium pentaborate. A constraint was using existing plant equipment. This involved simulation of the various operations to determine the rate limiting step; the development and sequencing of the process to minimize the impact of this step was an integral part of the study for Toyo Engineering, Japan.

Additionally, I was engaged in development of the conceptual process design for a coal slurry dewatering and storage facility. Although a generic design was being developed, specific application was for the Nevada Power and Light Company.

Since assigned as a Power Engineer on the Shoreham Nuclear Power Station - Unit 1 (SNPS-1) Project (May 1981), I am responsible for securing a workable and calibrated radiation monitoring system.

I am a Registered Professional Engineer in Massachusetts and a member of the following technical societies: The American Institute of Chemical Engineers, the American Nuclear Society, The American Nuclear Society's Standards Groups developing design criteria for Gaseous and Liquid Radioactive Waste Systems for Light Water Reactors, Sigma Xi - Honorary Research Society, Tau Beta Pi - Honorary Engineering Society and Phi Lambda Upsilon - Honorary Chemical Society.

Publications include "Upper-Bound Cost/Benefit Analysis under Appendix I for a Hypothetical Pressurized Water Reactor," J.S. Baron and R.M. Vanasse, presented at the ANS Toronto meeting in June 1976; and "Treatment of Liquid Wastes," Chapter 6, Nuclear Power Waste Technology, J.S. Baron and B.V. Coplan, ASME (1978).

PROFESSIONAL QUALIFICATIONS

John F. Schmitt

Radiochemistry Engineer

LONG ISLAND LIGHTING COMPANY

My name is John F. Schmitt. I am the Radiochemistry Engineer of the Shoreham Nuclear Power Station, a position I have held since January 1975. As such, I am responsible for developing and implementing the chemistry, radiochemistry and effluent monitoring program for Shoreham. This includes, among other things, directing all work related to conducting the chemical and radiochemical analyses and treatments of plant process systems; detecting and controlling environmental releases; implementing the ALARA policy for these releases; and preparing records and reports of chemical surveys.

I graduated from Manhattan College in 1966 with a Bachelor of Science degree in chemistry and received a Master of Science degree in Environmental Health Science, specializing in Radiological Health (Health Physics), from the University of Michigan in 1974. *and become a Certified Health Physicist in 1982* I completed the General Electric Boiling Water Reactor Chemistry Course in November 1975. I have also completed many industry seminars and training programs, including:

- a) Radiation Protection - LILCO Evening Institute
- b) Radiation Protection Workshops - General Electric Company
- c) BWR Chemistry Training - General Electric Company
- d) Health Physics Review - Rockwell International
- e) Accelerated Health Physics Instruction - NUS

- f) Accelerated Nuclear Plant Chemistry Instruction - NUS
- g) Health Physics Review - Brookhaven National Labs
- h) Environmental Radiation Surveillance - Harvard School of Public Health
- i) Radioactive Waste Management for Nuclear Power Reactors - ASME/University of Virginia
- j) Post Accident Sampling Workshops - Sentry Equipment, EPRI
- k) Control of Plant Radiation Fields - EPRI, General Electric Company
- l) Atomic Absorption, Atomic Emission Spectrometry - Instrumentation Labs
- m) Gamma Spectrometer Operation - Canberra Industries

I started work for the Long Island Lighting Company in 1966 as an Assistant Engineer at the Far Rockaway Power Station. I took a military leave of absence from 1967-1972 to serve as an officer in the U.S. Air Force. Returning to LILCO in 1972, I was an Associate Engineer at the Glenwood Power Station. From 1973 until assuming my present position in 1975, I was assigned to the staff of the Shoreham Nuclear Power Station as an Associate Engineer and Plant Engineer. During this time, I studied health physics at the University of Michigan and received training at the AEC's Savannah River Plant and Commonwealth Edison's Dresden Nuclear Power Station.

I am a member of the New York Chapter of the Health Physics Society, Power Reactor Health Physicists, and the Long Island Chapter of the American Nuclear Society.

1 BY MR. EARLEY: (Resuming)

2 Q Mr. Rigert, would you please summarize your
3 testimony?

4 A (WITNESS RIGERT) Yes. Because a number of
5 the parts of this contention have been resolved, my
6 summary will address only the outstanding issues, Parts
7 A, D, G, and H.

8 Parts A and D of this testimony involve the
9 provisions of Regulatory Guide 1.97 dealing with area
10 radiation monitors outside the primary containment. The
11 Regulatory Guide calls for the installation of high
12 range area radiation monitors to detect and assess
13 leakage from the primary containment following an
14 accident and to provide long term surveillance. Our
15 testimony shows that an area radiation monitoring system
16 of the type included in the Regulatory Guide is not a
17 practical way to accomplish the desired purposes. The
18 testimony shows that Shoreham has alternative
19 instrumentation that can detect and assess radioactive
20 leakage from the primary containment. These instruments
21 include the noble gas effluent monitors and the
22 post-accident sampling system.

23 The post-accident sampling system can provide
24 information about the radioactivity concentration in the
25 reactor coolant and suppression coolant water and

1 airborne radiation levels in the primary and secondary
2 containment atmosphere. Detailed radiation surveys will
3 be conducted using portable radiation monitoring
4 equipment.

5 Part G of the testimony shows that Shoreham
6 has adequate instrumentation to monitor drywell and
7 suppression chamber spray flow. The RHR system which
8 supplies the spray flow has direct flow indications in
9 the control room. The operator has indication of the
10 spray flow valve position and can monitor containment
11 temperature and pressure.

12 Part H of the testimony shows that Shoreham
13 has adequate instrumentation to monitor SLCS system
14 flow. The operator has available pump running lights
15 and pump discharge pressure. He also can verify that
16 the squib valves have fired, that SLCS tank level is
17 decreasing, and that reactor power is decreasing.

18 That's the end of my summary.

19 MR. EARLEY: Judge, this panel is ready for
20 cross examination.

21 JUDGE BRENNER: Staff?

22 BY MR. BLACK:

23 Q Mr. Rossi, would you state your name and
24 position with the NRC for the record, please?

25 A (WITNESS ROSSI) My name is Charles Rossi, and

1 I am a section leader in the instrumentation and control
2 systems branch of the Nuclear Regulatory Commission in
3 Bethesda, Maryland.

4 Q Mr. Mauck, could you state your name and
5 position with the NRC for the record, please?

6 A (WITNESS MAUCK) My name is Jerry Mauck, and I
7 am an electrical engineer in the Instrumentation and
8 Control Systems Branch for the NRC at Bethesda,
9 Maryland.

10 Q Mr. Mauck, do you have a document before you
11 entitled NRC Staff Testimony of Jerry L. Mauck on
12 Instrumentation for Post-accident Monitoring?

13 A (WITNESS MAUCK) Yes, I do.

14 Q Is your statement of professional
15 qualifications attached to it?

16 A (WITNESS MAUCK) Yes, it is.

17 Q Do you have any additions to the testimony or
18 the professional qualifications statement?

19 A (WITNESS MAUCK) No, I don't.

20 Q Do you adopt it as your testimony in this
21 proceeding?

22 A (WITNESS MAUCK) Yes, I do.

23 Q Mr. Rossi, do you have a document before you
24 entitled NRC Staff Reply Testimony of Charles E. Rossi
25 and Jerry L. Mauck on Instrumentation for Post-accident

1 Monitoring?

2 A (WITNESS ROSSI) Yes, I do.

3 Q Does that testimony also include a statement
4 of professional qualifications for you?

5 A (WITNESS ROSSI) Yes, it does.

6 Q Do you have any corrections to that
7 testimony?

8 A (WITNESS ROSSI) Yes, I do. On page 6, in the
9 answer to Question No. 7, in line 3 of the answer,
10 strike out the words "plant -- neither for any
11 licensed," and replace those words with the word
12 "operating." In the following line, insert the word
13 "operating" between "under" and "licensing," and change
14 the word "licensing" to the word "license." In line No.
15 5 of that same answer to Question No. 7, insert --
16 strike out the word "licensing" and insert the words
17 "operating license."

18 So those first five sentences would now read:
19 "It should be understood that the Staff has not
20 completed review of the response to Regulatory Guide
21 1.97 Rev. 2 for any operating plant, nor for any plant
22 under operating license review. The Shoreham plant, as
23 well as other plants for which the operating license
24 review has been completed," and then the rest continues
25 as in the prefiled testimony.

1 Q Does this testimony also contain attachments?

2 A (WITNESS ROSSI) Yes, it does.

3 Q Could you identify those attachments for the
4 record, please?

5 A (WITNESS ROSSI) The first attachment is a
6 memorandum from William J. Dircks, Executive Director
7 for Operations, from Samuel J. Chilk, Secretary, and it
8 is dated July 20, 1982, and the subject is "Staff
9 Requirements - Affirmation Session, 11:50 a.m., Friday,
10 July 16, 1982, Commissioners Conference Room, D.C.
11 Office (Open to Public Attendance)."

12 Following that is an enclosure A entitled
13 "Insert to SECY 82-111 Report." Following that is
14 another enclosure, which I believe is enclosure B,
15 although the "B" seems to be left off my copy, and it is
16 entitled "An Emergency Response Capability."

17 Following that is enclosure C, entitled
18 "Statement of Policy; Further Commission Guidance on
19 Emergency Response Capability."

20 Following that is a document with the number
21 SECY 82-111, dated March 11, 1982, which is for the
22 Commissioners from William J. Dircks, Executive Director
23 for Operations, and the subject is "Requirements for
24 Emergency Response Capability." And there is an
25 enclosure to that dated March 10, 1982, entitled "NRC

1 Staff Recommendations on the Requirements for Emergency
2 Response Capability."

3 Then following that is the statement of my
4 professional qualifications.

5 Q As corrected by you, does this testimony,
6 including the attachments, constitute your testimony in
7 this proceeding? Is it true and correct to the best of
8 your knowledge?

9 A (WITNESS ROSSI) Yes, it does.

10 MR. BLACK: Mr. Chairman, with that we would
11 like to move to incorporate this testimony, these two
12 pieces of testimony, into the record as if read. And at
13 this time also, we would like to incorporate section 7.5
14 of the SER, which we have not previously submitted to
15 the Board, but we indicated is the applicable SER
16 section. And I believe that we have also, although I
17 may be mistaken about this, but I believe we had also
18 incorporated into the record the NRC Staff motion to
19 supplement the witness panel on each of these
20 contentions. But if that is not a requirement, then I
21 am not prepared -- I don't need to do that.

22 JUDGE BRENNER: Don't worry about that. Don't
23 worry about the motion at this point. I don't recall if
24 we bound it in or not, if we heard a particular argument
25 on it.

1 Well, the qualification is attached to it, is
2 it not?

3 MR. BLACK: The qualifications are also
4 attached to his testimony.

5 JUDGE BRENNER: All right. We don't have to
6 have the motion in in this instance, then. It would
7 assist us, obviously not at this moment, to have
8 photocopies of the excerpts from the SER portions before
9 each contention in the future, and I would like the
10 Staff to do that. That way each of the Board members
11 can have it in before a particular markup as related to
12 the particular contention and we can bind it in with the
13 testimony also. I don't know if you have it available
14 for this one.

15 MR. BLACK: I have it available for you.

16 JUDGE BRENNER: All right. We will, in the
17 absence of objection, admit the two pieces of testimony
18 and attachments as identified into evidence, and also
19 bind in as a last item the identified section 7.5 of the
20 SER, the whole document of which has previously been
21 placed in evidence. I will bind this section in at this
22 point for convenience, along with the testimony.

23 (The documents referred to follow)

24

25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station,)
Unit 1))

Docket NO. 50-322
(OL)

NRC STAFF TESTIMONY OF JERRY L. MAUCK ON
INSTRUMENTATION FOR POST-ACCIDENT MONITORING

(SC Contention 27)
(SOC Contention 3)

OUTLINE OF TESTIMONY

This testimony addressed Suffolk County Contention 27 and Shoreham Opponents Coalition Contention 3 on post-accident monitoring instrumentation and Shoreham's compliance with Regulatory Guide 1.97, Revision 2.

Regulatory Guide 1.97, Revision 2 provides guidance for establishing the criteria for design and qualification categories for post-accident monitoring instrumentation. To date the Regulatory Guide has not yet been implemented and, accordingly, licensees and applicants have not been required to address it. The Applicant will be expected to comply with the Regulatory Guide when it is implemented. This means that all the recommended instruments of the Guide will be required in the design unless the Applicant otherwise shows that the design meets NRC technical requirements.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF TESTIMONY OF JERRY L. MAUCK
ON SC CONTENTION 27 AND SOC CONTENTION 3

Q. Please state your name and position with the NRC.

A. My name is Jerry L. Mauck. I am employed by the U.S. Nuclear Regulatory Commission as a Reactor Engineer in the Instrumentation and Control Systems Branch of the Division of Systems Integration. A copy of my professional qualifications is attached.

Q. What is the purpose of your testimony?

A. The purpose of this testimony is to respond to Suffolk County (SC) Contention 27 and Shoreham Opponents Coalition (SOC) Contention 3, which state:

The recent Revision 2 of Regulatory Guide 1.97, "Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant Environs Conditions During and Following an Accident" details needed devices and qualifications of instruments. Shoreham is deficient in the following areas:

(a) Radiation Exposure Rate Monitoring (Item 18, Table 1; Items 20 and 41, Table 2);

(b) Radioactivity Concentration or Radiation Level in Circulating Primary Coolant (Item 11, Table 1; Item 14, Table 2);

- (c) Continuous On-Line Monitoring of Halogen in Effluent (Item 39, Table 1; Item 43, Table 2);
- (d) Secondary Containment Area Radiation Monitor (Item 36, Table 1; Item 17, Table 2);
- (e) Reactor Coolant System Soluble Boron Concentration (Item 3, Table 1; Item 4, Table 2);
- (f) Analysis of Primary Coolant (Gamma Spectrum) (Item 12, Table 1; Item 15, Table 2);
- (g) Drywell Spray Flow and Suppression Chamber Spray Flow (Items 21 and 24, Table 1; Items 23 and 23A, Table 2);
- (h) Standby Liquid Control System Flow (Item 28, Table 1; Item 37, Table 2);
- (i) Plant and Environment Radiation Monitoring (Item 40, Table 1; Item 45, Table 2);
- (j) Post-Accident Sampling Capability (Item 42, Table 1; Item 47, Table 2); and
- (k) BWR Core Thermocouples (Item 5; Table 1; Item 13, Table 2).

Q. What is the purpose of Regulatory Guide 1.97, Revision 2?

A. Regulatory Guide 1.97, "Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident" was published during December 1980. This guide describes a method acceptable to the NRC Staff for complying with the Commission's regulations to provide instrumentation to monitor plant variables and systems during and following an accident in a light-water cooled nuclear power plant. The Advisory Committee on Reactor Safeguards has been consulted concerning this guide and has concurred in the regulatory position.

Q. What are the requirements specified in Regulatory Guide 1.97, Revision 2?

A. Regulatory Guides, by definition, comprise guidance rather than requirements. Reg. Guides present prudent criteria for methods that are acceptable to the NRC Staff for complying with the Commission's regulations. Regulatory Guide 1.97, Revision 2, provides guidance for design and qualification criteria for the instrumentation used to measure the various variables listed in this Regulatory Guide. These criteria are separated into three groups or categories that provide a graded approach to qualification of instrumentation depending on the importance to safety of the measurement of a specific variable. Category 1 provides the most stringent criteria and is intended for key variables. Category 2 provides less stringent criteria and generally applies to instrumentation designated for indicating system operating status. Category 3 is intended to provide criteria that will ensure that high commercial grade quality is obtained and applies to background diagnostic instrumentation.

Q. To date, have licensees and applicants been required by the Staff to address Regulatory Guide 1.97, Revision 2?

A. Licensees and applicants have not, to date, been required to address this Regulatory Guide. The Staff is currently reviewing the schedule for implementing Regulatory Guide 1.97, Revision 2, for all plants -- both operating plants and plants to be licensed in the near future. The applicant will be required to meet this schedule when it is defined.

Q. What is the status of the Shoreham plant concerning Regulatory Guide 1.97, Revision 2?

A. The Shoreham Applicant has not formally submitted design information with regard to Regulatory Guide 1.97, Revision 2. Therefore, the Staff has not reviewed the degree to which Shoreham will comply with Regulatory Guide 1.97, Revision 2. The Applicant's expected compliance with Regulatory Guide 1.97, Revision 2, is discussed in the SER related to the operation of Shoreham Nuclear Power Station, Unit No. 1 (NUREG-0420, Section 7.5) dated April 1981. It is our position that either all the recommended instruments of the Guide should be included in the design or that a technical justification should be provided for any instrument not included. A Staff evaluation of the Applicant's instruments and technical justifications will be issued upon submittal of an acceptable design.

Q. What is your conclusion?

A. SC Contention 27 and SOC Contention 3 are inappropriate at this time. Regulatory Guide 1.97, Revision 2 has not yet been implemented. When the Reg. Guide is implemented, the Shoreham plant will be required to meet it, or show how it otherwise meets NRC technical requirements in this area.

JERRY L. MAUCK

DIVISION OF SYSTEMS INTEGRATION

U.S. NUCLEAR REGULATORY COMMISSION

PROFESSIONAL QUALIFICATIONS

I have been with the U.S. Nuclear Regulatory Commission since September 1980. I am a Reactor Engineer (Instrumentation) in the Instrumentation and Control Systems Branch, Division of Systems Integration, Office of Nuclear Reactor Regulation.

I serve as a reviewer in the area of nuclear power plant instrumentation and control systems in performing and coordinating reviews and evaluations of those portions of the applications for Construction Permits and Operating Licenses and submittals regarding proposed modifications in licensed nuclear power plants for which the branch has responsibility to assure public health and safety and protection of the environment. I serve as project leader and coordinator of other reviewers for the resolution of highly complex technical issues and licensing problems and provide technical assistance and authoritative advice in the areas relating to the safety aspects of reactor plant instrumentation and control systems and components.

I received a Bachelor of Science degree in Electrical Engineering from Virginia Tech University in 1967. Additional graduate studies were subsequently performed at George Washington University where I received a Masters of Science degree in Engineering Administration. Other educational background includes: CFC Instrumentation School, 1968; Interdata Computer School, 1972; Hewlett Packard Computer School, 1978; Boiling Water Reactor Technology - NRC sponsored - 1980; Boiling Water Reactor Simulator School - NRC sponsored - 1981; Pressurized Water Reactor Simulator Technology - NRC sponsored - 1982.

From 1967 to 1980 I was employed by the Naval Ship Research and Development Center (David W. Taylor Model Basin) as an Electronic Engineer with such duties as specifying, processing, and operating highly sophisticated instrumentation systems for use during naval ship trials (conventional and nuclear powered).

OUTLINE OF TESTIMONY

Concurrent with the filing of Staff's original testimony on SC 27/SOC 3, Applicant purported in its testimony to show compliance with Regulatory Guide 1.97, Rev. 2, or to provide justifications for appropriate alternates. Subsequently, the Commission approved Staff's proposal regarding implementation of Emergency Response Capability including the Regulatory Guide in question. Staff is unable to state at present whether Applicant is in compliance with the Regulatory Guide. The Staff's review at Shoreham will follow the guidance approved by the Commission. Such review may be after the beginning of plant operation. However, it is the Staff's position that Shoreham can, in the interim, be operated without undue risk to the health and safety of the public.

2.A Regulatory Guide 1.97, Rev. 2 is discussed in Section 7.5 of the Shoreham SER dated April, 1981. However, it should be noted that some items related to this contention, SC 27/SOC 3, appear in Chapter ?? of the Shoreham Supplemental SER's due to their inclusion in NUREG-0737.

3.Q Please state the background events which lead to the preparation of this reply testimony.

3.A In May of this year the Staff filed testimony responding to the contentions in question which stated that:

1. Regulatory Guide 1.97, Rev. 2 has not yet been implemented and, accordingly, licensees and applicants have not yet been required to address it.
2. The Shoreham applicant will be expected to comply with the Regulatory Guide or to provide appropriate technical justifications for any alternatives when the Regulatory Guide is implemented.

Concurrent with the filing of the above-referenced Staff testimony, the Applicant also filed testimony in response to the contentions. The Applicant's testimony, among other things, purported to show compliance with the intent of Regulatory Guide 1.97, Rev. 2.

Subsequent to the filing of the above referenced testimonies, the Commission considered the Staff's proposed requirements for emergency response capability (including requirements for post accident monitoring) contained in SECY-82-111, "Requirements

for Emergency Response Capability" dated March 11, 1982. The Commission approved SECY-82-111 on July 16, 1982. The Staff was informed of the Commission's decision in a memorandum from Samuel J. Chilk dated July 20, 1982. Copies of these documents, which are attached, were served on the Board and parties on July 27, 1982.

On July 30, 1982, the Board at Tr. 8551-53, requested the Staff to address several matters set out below.

- 4.Q Are you prepared to state whether or not the Applicant meets the guidelines set out in Regulatory Guide 1.97, Rev.2?
- 4.A No. There is not sufficient information available at the present time for the Staff to make a decision on the ultimate acceptability of the Applicant's position with respect to the specific items listed in SC Contention 27 and SOC Contention 3. Before a proper review can be made, additional details with regard to instrument ranges, locations, power supplies, design criteria, and qualification criteria will be necessary (see page 14 of the enclosure to SECY-82-111). Furthermore, it would be imprudent of the Staff to make piecemeal decisions with respect to Regulatory Guide 1.97, Rev. 2 on one specific plant, which might set a precedent for other plants, without benefit of a careful, orderly review.

- 5.Q Please state how the Staff plans to review Shoreham for compliance with the Regulatory Guide in question.
- 5.A The Staff plans to perform an audit review of the Shoreham plant, to ascertain conformance with R.G. 1.97, Rev. 2, in conjunction with the Staff's review of emergency response capability. This audit review is not a prerequisite for implementation of R.G. 1.97, Rev. 2 (see page 14 of the enclosure to SECY 82-111). As noted above, proposed requirements were sent to the Commission in SECY-82-111, "Requirements for Emergency Response Capability," March 11, 1982. The Commission has approved SECY-82-111 subject to modifications. The Staff was informed of the Commission's decision by memorandum, S. Chilk to W. Dircks, "Staff Requirements - Affirmation Session . . .," July 20, 1982. Enclosure C to the July 20, 1982, memorandum is a "Statement of Policy: Further Commission Guidance on Emergency Response Capability". This statement clearly relates (page 2) the applicability of SECY-82-111 to operating license proceedings including implementation schedules.

The schedule for implementing basic requirements for Emergency Response Capability is shown on page 1 of the enclosure to SECY-82-111. There it is stated that:

When the basic requirements for emergency response capabilities and facilities are finalized, they should be transmitted to licensees by a generic letter from NRR, promulgated to NRC Staff, and incorporated as

regulatory requirements (e.g., in the Standard Review Plan or by regulation or Order as appropriate). The letter to licensees should request that licensees submit a proposed schedule for completing actions to comply with the basic requirements. Each licensee's proposed schedules would then be reviewed by the assigned NRC Project Manager, who would discuss the subject with the licensee and mutually agree on schedules and completion dates. The implementation dates would then be formalized into an enforceable document.

Use of existing documentation is addressed on pg. 3 of the enclosure to SECY-82-111:

The NRC Staff recommends that the following NUREG documents are intended to be used as sources of guidance and information, and the Regulatory Guides are to be considered as guidance or as an acceptable approach to meeting formal requirements. The items by virtue of their inclusion in these documents shall not be misconstrued as requirements to be levied on licensees or as inflexible criteria to be used by NRC Staff reviewers.

R.G. 1.97 is included in the list of documents. Furthermore, pages 13 and 14 of the enclosure to SECY-82-111 discuss implementation of R.G. 1.97. Documentation and NRC Review is addressed on pg. 14 where it is stated that:

Deviations from the guidance in Regulatory Guide 1.97 (Rev. 2) should be explicitly shown, and supporting justification or alternatives should be presented.

- 6.Q Is it possible that the review and implementation of Regulatory Guide 1.97, Rev. 2, may not be completed prior to the licensing of Shoreham?
- 6.A Yes. As provided for in SECY 82-111, the review is not a prerequisite for Applicant implementation of Regulatory Guide 1.97, Rev. 2 guidance. Further, the date of final

implementation as agreed upon between the Staff and the Applicant will be formalized as provided in SECY 82-111.

- 7.Q On what basis does the Staff propose to proceed with the licensing of Shoreham in the absence of the completion of a review of the Applicant's response to the Regulatory Guide?
- 7.A It should be understood that the Staff has not completed review of the response to Regulatory Guide 1.97, Rev. 2 for any ~~plant~~^{operating} - neither for any licensed plant nor for any plant under ^{operating} licensing review. The Shoreham plant, as well as other plants for which the ^{operating license} licensing review has been completed, was reviewed in accordance with the Standard Review Plan to insure that sufficient indications are available for the operator to cope with Design Basis Events. In addition, the Emergency Procedures for Shoreham at the time of initial plant operation will make use only of the indications available at that time. It should be noted that in addition to indications needed to follow the course of design basis events, Regulatory Guide 1.97, Rev. 2, recommends indications (and ranges) for severe accident scenarios that may go beyond the design basis events.
- 8.Q Please summarize the Staff's position with regard to the contention in question.
- 8.A Although the Applicant has attempted to show compliance with the intent of Regulatory Guide 1.97, Rev. 2, the Staff is

unable to state whether the Applicant has in fact adequately complied with the Regulatory Guide. It is unlikely that compliance can be demonstrated prior to final licensing of Shoreham. By Commission vote the Staff has been instructed to use SECY-82-111 in implementation of Emergency Response Facilities. SECY-82-111 implementation includes the recommendations of R.G. 1.97, Rev. 2. The Staff has been instructed to be flexible in the schedule and implementation of the provisions of R.G. 1.97, Rev. 2, under the premise that an orderly, well planned effort will result in greater safety than would a rapid, possibly fragmented attempt to modify existing designs. The Staff's position with respect to the specific items listed in SC 27/SOC 3 is that the Shoreham plant can be operated without undue risk to the health and safety of the public until a Staff review and decision is made with respect to the applicant's overall compliance with Regulatory Guide 1.97, Rev. 2



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 20, 1982

IN RESPONSE REFER
TO M820716

ACTION - NRR/IE/RES/ELD
Cys: Dircks
Rehm
Stello

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations

FROM: Samuel J. Chilk, Secretary 

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION,
11:50 A.M., FRIDAY, JULY 16, 1982,
COMMISSIONERS' CONFERENCE ROOM, DC OFFICE
(OPEN TO PUBLIC ATTENDANCE)

SECY-82-111 - Requirements for Emergency Response Capability.

The Commission, by a vote of 4-1* (Commissioner Gilinsky disapproving) approved SECY-82-111 subject to the following:

1. The staff should provide an information paper which responds to the ACRS' recommendations (May 10, 1982 letter to the Chairman) for additional staff attention to emergency operating procedures, the Safety Parameter Display System, and Control Room Design Reviews. (NRR)
2. Item 8 on page 23 of the Enclosure to SECY 82-111 should be revised to read: "8. Staffed using Table 2. (previous guidance approved by the Commission) as a goal. Reasonable exceptions to goals for the number of additional staff personnel and response times for their arrival should be justified and will be considered by NRC staff." (IE)
3. Add the following to the first paragraph on page 1 of the enclosure to SECY 82-111:

"It is also not intended that either the guidance documents or the fundamental requirements are to be considered binding legal requirements at this time. As indicated below, however, the fundamental requirements will be translated into binding legal requirements in the manner specified."

* Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Asselstine was not present when this item was affirmed, but had previously indicated that he would approve. Commissioner Gilinsky was also not present when this item was affirmed, but had previously indicated that he would disapprove. Had Commissioners Gilinsky and Asselstine been present, they would have affirmed their prior votes. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision.

4. The statement under No. 1, on page 4 should be modified so that the last sentence reads:

"While the NRC does not plan to impose additional requirements on licensees regarding SPDS, the NRC will work with the industry to assure the development of appropriate industry standards for SPDS systems. (NRR)

5. The description provided to the ACRS on May 7, 1982 by Hugh Thompson on NRC intentions regarding control room design review ~~should be incorporated~~ into SECY 82-111. (See also Commissioner Ahearne's vote sheet of 6/10/82, and pages 4-5 of the attachments to it.) (NRR)
6. A statement referring to the need for operating crew training to cover handling accident conditions both with and without the SPDS should be included in the enclosure to SECY 82-111. (NRR)
7. The enclosure to SECY-82-111 should be published as a NUREG-0737 Supplement. You should make the appropriate modifications to the enclosure to make it suitable for such publication. In particular, you need to include the language proposed by OGC in their July 15, 1982 memorandum as modified in enclosure A. You also should reflect that the document is Commission direction to licensees rather than a proposal for Commission review. (NRR)
8. Page 1 to the enclosure of SECY-82-111 should be modified as attached (Enclosure B). (NRR)
9. The Commission has agreed that a Policy Statement be issued reflecting the Commission's approval of the enclosure to SECY-82-111 as a Supplement to NUREG-0737. The proposed Policy Statement by OGC (July 15, 1982 memorandum) should be revised as attached (Enclosure C) with appropriate additional changes to reflect that SECY-82-111 is to be issued as a Supplement to NUREG-0737. (ELD)
10. NUREG-0696 should be revised, reviewed by CRGR and approved and issued as a Regulatory Guide. The Commission should be advised of the progress and the final version should be sent to the Commission for review (under negative consent procedures) prior to issuance.

(200) (SECY Suspense: July 15, 1983)

(RES/IE)

11. Prior to sending 50.54 (f) letters to licensees, you should provide the Commission with a draft for approval.
(SDD) (SECY Suspense: September 1, 1982)
(NRR)

cc: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
Commission Staff Offices
ACRS
PDR (Advance)
DCS - 016 Phillips

Insert to SECY-82-111 Report

Add to page 2 of "NRC Staff Recommendations on the Requirements for Emergency Response Capability" (Enclosure to SECY-82-111) the following:

The recommended requirements set forth in this document have been reviewed by the Commission and, at a meeting held June 21, 1982, were approved by the Commission as appropriately clarifying and providing greater detail with respect to related TMI Action Plan requirements contained in NUREG-0737 for all operating license applicants. These recommended requirements are, therefore, to be accorded the status of approved NUREG-0737 items as set forth in the Commission's "Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses" (45 Fed. Reg. 85236, Dec. 24, 1980). In this connection, the provisions for scheduling set forth herein supersede any schedules with respect to such items contained in NUREG-0737. Accordingly, the recommended requirements should be used by the staff and by adjudicatory boards as appropriate clarifications and interpretation of the related NUREG-0737 items.

The recommended requirements set forth in this document are believed to be consistent with the requirements regarding related items for construction permits and manufacturing licenses contained in 10 CFR 50.34(f) and 10 CFR Part 50, Appendix E. Accordingly, no change in such regulation is required. ~~Rather, the recommended requirements contained in this document should be treated as guidance as to the meaning of the requirements~~

1. INTRODUCTION

This report was prepared as a result of a review by the Committee to Review Generic Requirements (CRGR). The recommendations herein have been developed by the program offices and are supported by CRGR. The report represents the staff's attempt to distill the fundamental requirements for nuclear plant Emergency Response Capability from the wide range of guidance documents that NRC has issued. It is not intended that these guidance documents (NUREG reports and Regulatory Guides) be ignored; they are still useful sources of guidance for licensees and NRC staff regarding acceptable means for meeting the fundamental requirements contained in this document.

These fundamental requirements are further specification of the general guidance specified previously by the Commission in its regulations, orders and policy statements on emergency planning and TMI issues. It is intended that these fundamental requirements would be applicable to licensees of operating nuclear power plants and holders of construction permits for nuclear power plants. For applicants for a construction permit (CP) or manufacturing license (ML), the requirements described in this document must be supplemented with the specific provisions in the rule specifying licensing requirements for pending CP and ML applications.

Thus, compliance with requirements in this document may not be sufficient to meet the related requirements in 10 CFR 50.34 (f) and Appendix E.

In this regard, it is expected that the staff would review CP and ML applications against the guidance in the current Standard Review Plan

(which includes the provisions of NUREG 0718)

and this might lead to more detailed requirements than prescribed in this document, in order to satisfy the requirements of 50.34(f) and Appendix

Based on discussions with licensees, the staff has learned that many of the Commission approved schedules for emergency response facilities probably will not be met. In recognition of this fact and the difficulty of implementing generic deadlines, the staff proposes that plant-specific schedules be established which take into account the unique status of each plant. The following sequence for developing implementation schedules is proposed.

When the basic requirements for emergency response capabilities and facilities are finalized, they should be transmitted to licensees by a generic letter from NRR, promulgated to NRC staff, and incorporated as regulatory requirements (e.g., in the Standard Review Plan or by Regulatory Order, as appropriate). The letter to licensees should request that licensees submit a proposed schedule for completing actions to comply with the basic requirements. Each licensee's proposed schedules would then be reviewed by the assigned NRC Project Manager, who would discuss the subject with the licensee and mutually agree on schedules and completion dates. The implementation dates would then be formalized into an enforce-

STATEMENT OF POLICY: FURTHER COMMISSION GUIDANCE
ON EMERGENCY RESPONSE CAPABILITY FOR
~~REACTOR OPERATING LICENSES~~

AGENCY: Nuclear Regulatory Commission

ACTION: Publication of Policy Statement

SUMMARY: On December 24, 1980, the Commission published a Statement of Policy: "Further Commission Guidance to Power Reactor-Operating Licenses" (45 FR 85236), modifying an earlier Policy Statement on the same subject (45 FR 41736, June 23, 1980). The Commission's Policy Statement discussed the background of efforts to improve safety requirements in light of experience resulting from the Three Mile Island accident. The Commission indicated that operating license applications would be measured by the Commission's regulations, as augmented by the requirements reflected in NUREG-0737, "Clarification of Action Plan Requirements". The Commission further noted that it will continue to monitor developments with regard to litigation of action plan requirements and continue to offer guidance where appropriate.

Since that time, the NRC staff has developed a number of NUREG documents and other guidance documents which provide information and guidance as to methods of implementation and other details concerning certain NUREG-0737 items relating to emergency response capability. The more important elements of these various staff documents have been identified in "NRC Staff Recommendations on the Requirements for Emergency Response

Capability", which the NRC staff has recommended be adopted by the NRC in order to provide guidance clarifying and amplifying the NUREG-0737 items relating to emergency response capability. The Commission has considered the staff recommendation and approved the requirements recommended in "NRC Staff Recommendations on the Requirements for Emergency Response Capability" as appropriately clarifying and providing greater detail with respect to the TMI Action Plan Requirements contained in NUREG-0737 relating to emergency response capability. The provisions for scheduling set forth in these recommended requirements supersede the schedules with respect to related NUREG-0737 items.

Accordingly, the Commission has concluded that these recommended requirements should be used by the staff and by adjudicatory boards as appropriate clarifications and interpretations of related NUREG-0737 items and should be accorded the status of approved NUREG-0737 items as set forth in the December 24, 1980 Statement of Policy. Litigation of the recommended requirements set forth in NRC Staff Recommendations on the Requirements for Emergency Response Capability should be permitted in operating license proceedings under the same conditions as those applicable to NUREG-0737 items in accordance with the December 24, 1980 Statement of Policy. In this regard, it should be understood that the Commission's December 24, 1980 Statement of Policy is applicable to all operating license applications and that therefore this new guidance on emergency response capability is applicable to all operating license applications.

March 11, 1982



SECY-82-111

POLICY ISSUE

(Notation Vote)

For:

The Commissioners

From:

William J. Dircks
Executive Director for Operations

Subject:

REQUIREMENTS FOR EMERGENCY RESPONSE CAPABILITY

Purpose:

To request Commission approval of a set of basic requirements for emergency response capability and approval for the staff to work with licensees to develop plant-specific implementation schedules.

Discussion:

One of the first issues reviewed by the Committee to Review Generic Requirements (CRGR) was the broad area of emergency response facilities and capabilities at nuclear plants. The Committee found that implementation schedules were not being coordinated within the NRC. In addition, existing NRC documents published as guidance to licensees were sometimes being used as firm requirements. Discussions with industry representatives and the staff indicated that some licensees had slowed down on work in this area pending NRC clarification of its requirements. Some utilities have virtually stopped work on some of the items, while others have proceeded and, in some cases, completed some of the items. The Committee recommended that steps be taken by the Office Directors involved to clarify the requirements and implementation schedules for the Safety Parameter Display System (SPDS), Control Room Design Review, upgraded Emergency Operating Procedures, Regulatory Guide 1.97, Technical Support Center (TSC), Operational Support Center (OSC), and Emergency Operations Facility (EOF). In my memo to the Commission dated December 31, 1981, I noted that the DEDROGR staff would work with the program offices to clarify the basic requirements in this area and establish a revised implementation plan.

Enclosed are the staff's recommendations for the requirements in the broad area of emergency response facilities and capabilities outlined above. The requirements were developed by the program offices

Contact:

V. Stello, Jr., DEDROGR
49-29704

and are supported by CRGR. The enclosure represents a distillation of fundamental requirements from the broad range of guidance documents that NRC has issued (principally NUREG reports and Regulatory Guides). The staff intends that the guidance documents referred to in the enclosure not be used to impose requirements on licensees, but rather that they be used as sources of guidance for NRC reviewers and licensees regarding acceptable means for meeting the fundamental requirements proposed.

In discussions with owners' groups and individual licensees, the staff has learned that the Commission approved schedule of October 1, 1982, for implementation of the TSC and EOF probably cannot be met. In recognition of this fact and the difficulty of implementing generic deadlines, the staff is proposing that plant-specific schedules be established which take into account the unique status of each plant. Each licensee would be requested to submit a proposed schedule for completing the actions to comply with the fundamental requirements. The NRC Project Manager for each plant should be knowledgeable of the overall work effort going on at a plant and, based on guidance received from NRC management, could reach agreement with licensees on schedules which optimize use of utility and NRC resources. The agreed upon completion dates would be formalized in an order. By this approach, future staff coordination problems regarding implementation schedules will be avoided.

Resource
Estimates:

The costs to licensees to implement the requirements proposed in the enclosure were included in the estimates set out in NUREG-0660.

Recommendation:

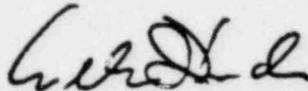
That the Commission:

1. Approve the fundamental requirements described in the enclosure.
2. Approve the issuance of the requirements in the enclosure by 50.54f letters as a revision to NUREG 0737.
3. Approve the method for establishing plant-specific implementation schedules described in the enclosure.

4. Approve the implementation of these requirements through plant-specific orders.
5. Note that the staff intends to use the previously issued NUREG reports and Regulatory Guides as guidance documents only.

Scheduling:

Licensees are currently required to establish a TSC and EOF by October 1. Prompt action on this paper is required in order to provide guidance to licensees.



William J. Dircks
Executive Director for Operations

Enclosure:
NRC Staff Recommendation
on the Requirements for
Emergency Response Capability

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, March 29, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, March 22, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

Commissioners
Commission Staff Offices
Exec Dir for Operations
Exec Legal Director
ACRS
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Secretariat

ENCLOSURE

NRC STAFF RECOMMENDATIONS
ON THE
REQUIREMENTS FOR
EMERGENCY RESPONSE CAPABILITY

March 10, 1982

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EMERGENCY RESPONSE CAPABILITY

1. INTRODUCTION

This report was prepared as a result of a review by the Committee to Review Generic Requirements (CRGR). The recommendations herein have been developed by the program offices and are supported by CRGR. The report represents the staff's attempt to distill the fundamental requirements for nuclear plant Emergency Response Capability from the wide range of guidance documents that NRC has issued. It is not intended that these guidance documents (NUREG reports and Regulatory Guides) be ignored; they are still useful sources of guidance for licensees and NRC staff regarding acceptable means for meeting the fundamental requirements contained in this document.

These fundamental requirements are further specification of the general guidance specified previously by the Commission in its regulations, orders and policy statements on emergency planning and TMI issues. It is intended that these fundamental requirements would be applicable to licensees of operating nuclear power plants and holders of construction permits for nuclear power plants. For applicants for a construction permit (CP) or manufacturing license (ML), the requirements described in this document must be supplemented with the specific provisions in the rule specifying licensing requirements for pending CP and ML applications. In this regard, it is expected that the staff would review CP and ML applications against the guidance in the current Standard Review Plan, and this might lead to more detailed requirements than prescribed in this document.

Based on discussions with licensees, the staff has learned that many of the Commission approved schedules for emergency response facilities probably will not be met. In recognition of this fact and the difficulty of implementing generic deadlines, the staff proposes that plant-specific schedules be established which take into account the unique status of each plant. The following sequence for developing implementation schedules is proposed.

When the basic requirements for emergency response capabilities and facilities are finalized, they should be transmitted to licensees by a generic letter from NRR, promulgated to NRC staff, and incorporated as regulatory requirements (e.g., in the Standard Review Plan or by regulation or Order, as appropriate). The letter to licensees should request that licensees submit a proposed schedule for completing actions to comply with the basic requirements. Each licensee's proposed schedules would then be reviewed by the assigned NRC Project Manager, who would discuss the subject with the licensee and mutually agree on schedules and completion dates. The implementation dates would then be formalized into an enforceable document.

The basic requirements in this document do not alter previously issued guidance, which remains in effect. This document does attempt to place that guidance in perspective by identifying the elements that the NRC staff believes to be essential to upgraded emergency response capabilities. The proposal to formalize implementation dates in an enforceable document reflects the level of importance which the NRC staff attributes to these basic requirements. The NRC staff does not recommend that existing guidance be imposed in this manner, but rather that it be used as guidance to be considered in upgrading emergency response capabilities. This indicates the distinction which the staff believes should be made between the basic requirements and guidance.

The following sections describe NRC staff recommendations on basic requirements, their interrelationships, and NRC actions to improve management of emergency response regulation. Reference documents are cited with a description of content as it relates to specific initiatives.

2. USE OF EXISTING DOCUMENTATION

The NRC staff recommends that the following NUREG documents are intended to be used as sources of guidance and information, and the Regulatory Guides are to be considered as guidance or as an acceptable approach to meeting formal requirements. The items by virtue of their inclusion in these documents shall not be misconstrued as requirements to be levied on licensees or as inflexible criteria to be used by NRC staff reviewers.

NUREG Report

Titles

- 0696 - Functional Criteria for Emergency Response Facilities
- 0700 - Guidelines for Control Room Design Reviews
- 0799 - Draft Criteria for Preparation of Emergency Operating Procedures
- 0801 - Evaluation Criteria for Control Room Design Reviews
- 0814 - Methodology for Evaluation of Emergency Response Facilities
- 0818 - Emergency Action Levels for Light Water Reactors
- 0835 - Human Factors Acceptance Criteria for SPDS

Regulatory Guides

- 1.23 (Rev. 1) - Meteorological Measurement Program for Nuclear Power Plants
- 1.97 (Rev. 2) - Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident
- 1.101 (Rev. 2) - Emergency Planning for Nuclear Power Plants
- 1.47 - Bypassed and Inoperable Status Indication for Nuclear Power Plant Safety Systems

3. COORDINATION AND INTEGRATION OF INITIATIVES

1. The design of the Safety Parameter Display System (SPDS), design of instrument displays based on Regulatory Guide 1.97 guidance, control room design-review, development of symptom oriented emergency operating procedures, and operating staff training should be integrated with respect to the overall enhancement of operator ability to comprehend plant conditions and cope with emergencies. Assessment of information needs and display formats and locations should be performed by individual licensees. The SPDS could affect other control room improvements that licensees may consider. In some cases, a good SPDS may obviate the need for large-scale control room modifications. However, installation of the SPDS should not be delayed by slower progress on other initiatives. The SPDS should not be contingent on completion of the control room design review. NRC does not plan to impose additional requirements on licensees regarding SPDS.
2. Implementation of part or all of Regulatory Guide 1.97 (Rev. 2) represents a control room improvement. The implementation of control room improvements is not contingent on implementing Technical Support Center (TSC) and Emergency Operations Facility (EOF) requirements.
3. The Technical Support Center (TSC) and Emergency Operations Facility (EOF) are dependent on control room improvements in terms of communication and instrumentation needs among the TSC, EOF, and control room. TSC and EOF facilities are not necessarily dependent on each other. The Operational Support Center (OSC) is independent of TSC and EOF.
4. The three groups of initiatives--SPDS, control room improvements, and emergency response facilities (TSC, EOF, OSC)--should have the following interrelationships:
 - a. The SPDS is an improvement in the control room because it enhances operator ability to comprehend plant conditions and interact in situations that require human intervention. The SPDS could affect other control room improvements that licensees may consider. In some cases, a good SPDS could obviate the need for extensive modifications to control rooms.
 - b. New instrumentation that may be added to the control room should be considered a requirement for inclusion in the design of the TSC and EOF only to the extent that such instrumentation is essential to the performance of TSC and EOF functions.
 - c. The SPDS and control room improvements are essential elements in operator training programs and the upgraded plant-specific emergency operating procedures.
 - d. Acquisition, processing, and management of data for SPDS, control room improvements, and emergency response facilities should be coordinated but need not be centralized.

5. Specific implementation plans and reasonable achievable schedules should be established by agreement between the NRC Project Manager and each individual licensee. The NRC office responsible for implementing each requirement should develop procedures identifying the following:
 - a. The respective roles of NRR, IE, and Regional Offices in managing implementation, checking licensee rate of progress, and verifying compliance, including the extent to which NRC review and inspection is necessary during implementation.
 - b. Procedural methods and enforcement measures that could be used to ensure NRC staff and licensee attention to meeting mutually agreed upon schedules without significant delays and extensions.
6. The NRC Project Manager for each nuclear power plant is assigned program management responsibility for NRC staff actions associated with implementing emergency response initiatives. The NRC Project Manager is the principal contact for the licensee regarding these initiatives.
7. NRC will make allowances for work already done by licensees in a good-faith effort to meet requirements as they understand them. For each case in which a licensee would have to remove or rip out emergency response facilities or equipment that was installed in good faith to meet previous guidance in order to meet the basic requirements described in this document, the Director of the Office of Nuclear Reactor Regulation or Inspection and Enforcement will review the circumstances and determine whether removal is necessary or existing facilities or equipment represent an acceptable alternative. Any regulatory position that would require the removal or major modification of existing emergency response facilities or equipment requires the specific approval of the Office Director.
8. NRC recognizes that acceptable alternative methods of phasing and integrating emergency response activities may be developed. Each licensee needs flexibility in integrating these activities, taking into account the varying degree to which the licensee has implemented past requirements and guidance. An example of a way in which these activities could be integrated is discussed below. Other methods of integration proposed by licensees would be reviewed considering licensees' progress on each initiative.
 - a. SPDS
 - (1) Review the functions of the nuclear power plant operating staff that are necessary to recognize and cope with rare events that (a) pose significant contributions to risk, (b) could cause operators to make cognitive errors in diagnosing them, and (c) are not included in routine operator training programs.
 - (2) Combine the results of this review with accepted human factors principles to select parameters, data display, and functions to be incorporated in the SPDS.

- (3) Design, build, and install the SPDS in the control room and train its users.
- b. To be done parallel without delaying SPDS, complete emergency operating procedure technical guidelines that will be used to develop plant-specific emergency operating procedures.
 - c. Using these EOP technical guidelines, the SPDS design, and accepted human factors principles, conduct a review of the control room design. Apply the results of this review to:
 - (1) Verify SPDS parameter selection, data display, and functions.
 - (2) Develop plant-specific EOPs.
 - (3) Design control room modifications that correct conditions adverse to safety (reduce significant contributions to risk), and add additional instrumentation that may be necessary to implement Regulatory Guide 1.97.
 - (4) Train and qualify plant operating staff regarding EOPs and modifications.
 - d. Verify, prior to finalization of designs for modifications and of procedures and training, that the functions of control room operators in emergencies can be accomplished (i.e., that the individual initiatives have been integrated sufficiently to meet the needs of control room operators and provide adequate emergency response capabilities).
 - e. Implement EOPs and install control room modifications coincident with scheduled outages as necessary, and train operators in advance of these changes as they are phased into operation.

4. SAFETY PARAMETER DISPLAY SYSTEM (SPDS)

Current Regulatory Requirements

No licensee action is required.

Functional Statement

The SPDS should provide a concise display of critical plant variables to the control room operators to aid them in rapidly and reliably determining the safety status of the plant. Although the SPDS will be operated during normal operations as well as during abnormal conditions, the principal purpose and function of the SPDS is to aid the control room personnel during abnormal and emergency conditions in determining the safety status of the plant and in assessing whether abnormal conditions warrant corrective action by operators to avoid a degraded core. This can be particularly important during anticipated transients and the initial phase of an accident.

Recommended Requirements

1. Each operating reactor shall be provided with a Safety Parameter Display System that is located convenient to the control room operators. This system will continuously display information from which the plant safety status can be readily and reliably assessed by control room personnel who are responsible for the avoidance of degraded and damaged core events.
2. The control room instrumentation required (see General Design Criteria 13 and 19 of Appendix A to 10 CFR 50) forms the basic safety components required for safe reactor operation under normal, transient, and accident conditions. The SPDS is used in addition to the basic components and serves to aid and augment these components. Thus, requirements applicable to control room instrumentation are not needed for this augmentation (e.g., GDC 2, 3, 4 in Appendix A; 10 CFR Part 100; single-failure requirements). The SPDS need not meet requirements of the single-failure criteria and it need not be qualified to meet Class 1E requirements. The SPDS shall be suitably isolated from electrical or electronic interference with equipment and sensors that are in use for safety systems. The SPDS need not be seismically qualified, and additional seismically qualified indication is not required for the sole purpose of being a backup for SPDS. After the SPDS has been installed, operating procedures should be available that will allow timely and correct safety status assessment when the SPDS is not available.
3. There is a wide range of useful information that can be provided by various systems. This information is reflected in such staff documents as NUREG-0696, NUREG-0835, and Regulatory Guide 1.97.

Prompt implementation of an SPDS can provide an important contribution to plant safety. The selection of specific information that should be provided for a particular plant shall be based on engineering judgment of individual plant licensees, taking into account the importance of prompt implementation.

4. The SPDS display shall be designed to incorporate accepted human factors principles so that the displayed information can be readily perceived and comprehended by SPDS users.
5. Minimum information to be provided shall be sufficient to provide information to plant operators about:
 - a. Reactivity control
 - b. Reactor core cooling and heat removal from the primary system
 - c. Reactor coolant system integrity
 - d. Radioactivity control
 - e. Containment conditions

The specific parameters to be displayed shall be determined by the licensee.

6. The licensee shall prepare a written safety analysis describing the basis on which the selected parameters are sufficient to assess the safety status of each identified function for a wide range of events, which include symptoms of severe accidents. Such analysis, along with the specific implementation plan for SPDS shall be reviewed as described below.
7. The licensee's proposed implementation of an SPDS system shall be reviewed in accordance with the licensee's technical specifications to determine whether the changes involve an unreviewed safety question or change of technical specifications. If they do, they shall be processed in the normal fashion with prior NRC review. If the changes do not involve an unreviewed safety question or a change in the technical specifications, the licensee may implement such changes without prior approval by NRC. However, the licensee's analysis shall be submitted to NRC promptly on completion of review by the licensee's offsite committee. Based on the results of NRC review, the Director of IE or the Director of NRR may request or direct the licensee to cease implementation if a serious safety question is posed by the licensee's proposed system, or if the licensee's analysis is seriously inadequate.

Integration

Prompt implementation of an SPDS is a design goal and of primary importance. The schedule for implementing SPDS should not be impacted by schedules for the control room design review and development of symptom-oriented emergency operating procedures. For this reason, licensees should develop and propose an integrated schedule for implementation in which the SPDS design is an input to the other initiatives. If reasonable, this schedule should be accepted by NRC.

Reference Documents

NUREG-0660

-- Need for SPDS identified

- NUREG-0737 -- Specified SPDS
- NUREG-0696 -- Functional criteria for SPDS
- NUREG-0835 -- Specific acceptance criteria keyed to 0696
- Reg. Guide 1.97 (Rev. 2) -- Instrumentation for Light-Water Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident

5. DETAILED CONTROL ROOM DESIGN REVIEW

Current Regulatory Requirements

As specified in Item I.D.1 in NUREG-0737, the implementation schedule is still to be developed.

Functional Statement

The objective of the control room design review is to "improve the ability of nuclear power plant control room operators to prevent accidents or cope with accidents if they occur by improving the information provided to them" (from NUREG-0660, Item I.D.1). As a complement to improvements of plant operating staff capabilities in response to transients and other abnormal conditions that will result from implementation of the SPDS and from upgraded emergency operating procedures, this design review will identify any modifications of control room configurations that would contribute to a significant reduction of risk and enhancement in the safety of operation. Decisions to modify the control room would include consideration of long-term risk reduction and any potential temporary decline in safety after modifications resulting from the need to relearn maintenance and operating procedures. This should be carefully reviewed by persons competent in human factors engineering and risk analysis.

Recommended Requirements

1. Conduct a control room design review to identify human engineering discrepancies. The review shall consist of:
 - a. The establishment of a qualified multidisciplinary review team and a review program incorporating accepted human engineering principles.
 - b. The use of function and task analysis (that had been used as the basis for developing emergency operating procedure Technical Guidelines) to identify control room operator tasks and information and control requirements during emergency operations. This analysis has multiple purposes and should also serve as the basis for developing training and staffing needs and verifying SPDS parameters.
 - c. A comparison of the display and control requirements with a control room inventory to identify missing and surplus (distracting) displays and controls.
 - d. A control room survey to identify deviations from accepted human factors principles. This survey will include, among other things, assessment of control room layout, the usefulness of audible and visual alarm systems, information recording and recall capability, and control room environment.
2. Assess which human engineering discrepancies are significant and should be corrected. Select design improvements that will correct those discrepancies. Improvements that can be accomplished with an enhancement program (paint-tape-label) should be done promptly.

3. Verify that each selected design improvement will provide the necessary correction, and can be introduced in the control room without creating any unacceptable human engineering discrepancies because of significant contribution to increased risk, unreviewed safety questions, or situations in which a temporary reduction in safety could occur. Improvements that are introduced should be coordinated with changes resulting from other improvement programs such as SPDS, operator training, new instrumentation (Reg. Guide 1.97, Rev. 2), and upgraded emergency operating procedures.

Documentation and NRC Review

1. All licensees shall submit a program plan within two months of the start of the control room review that describes how items 1, 2 and 3 above will be accomplished. NRC approval is not required before licensees conduct their reviews.
2. Selected licensees will undergo an in-progress audit by the NRR human factors staff based on the program plans and advice from resident inspectors.
3. All licensees shall submit a summary report outlining proposed control room changes. The report will also provide a summary justification for human engineering discrepancies with safety significance to be left uncorrected or partially corrected.
4. Within two weeks after receipt of the licensee's summary report, the NRC will inform the licensee whether it will conduct a pre-implementation onsite audit. The decision will be based on the content of the program plan, summary report, and results of NRR in-progress audits, if any. The licensee selection for pre-implementation audit may or may not include licensees selected for in-progress audits under paragraph 2.
5. For control rooms selected for pre-implementation onsite audit, within one month after receipt of the summary report, the NRC will conduct:
 - a. A pre-implementation audit of proposed modifications (e.g., equipment additions, deletions and relocations, and proposed modifications).
 - b. An audit of the justification for those human engineering discrepancies of safety significance to be left uncorrected or only partially corrected.

The audit will consist of a review of licensee's record of the control room reviews, discussions with the licensee review team, and usually a control room visit. Within a month after this onsite audit, NRC will issue its safety evaluation report (SER).

6. For control rooms for which NRC does not perform a pre-implementation onsite audit, NRC will conduct a review and issue its SER within two

months after receipt of the licensee's summary report. The review shall be similar to that conducted for pre-implementation plants under paragraph 5 above, except that it may or may not include a specific audit. The SER shall indicate whether, based on the review carried out, changes in the licensee's modification plan are needed to assure operational safety. Flexibility is considered in the control room review, because certain control board discrepancies can be overcome by techniques not involving control board changes. These techniques could include improved procedures, improved training, or the SPDS.

7. The following approach will be used for OL review. For OL applications with SSER dates prior to June 1983, licensing may be based on either a Preliminary Design Assessment or a Control Room Design Review (CRDR) at the applicant's option. However, applicants who choose the Preliminary Design Assessment option are required to perform a CRDR after licensing. For applications with SSER dates after June 1983, Control Room Design Review will be required prior to licensing.

Integration

Prompt implementation of an SPDS is a design goal and of primary importance. The schedule for implementing SPDS should not be impacted by schedules for the control room design review and development of symptom-oriented emergency operating procedures. For this reason, licensees should develop and propose an integrated schedule for implementation in which the SPDS design is an input to the other initiatives. If reasonable, this schedule should be accepted by NRC.

Reference Documents

- | | |
|--------------------|---|
| NUREG-0585 | -- States that licensees should conduct review. |
| NUREG-0660, Rev. 1 | -- States that NRR will require reviews for operating reactors and operating licensee applicants. |
| NUREG-0700 | -- Final guidelines for CRDR. |
| NUREG-0737 | -- States that requirement was issued June, 1980, final guidance not yet issued. |
| NUREG-0801 | -- October 1981 draft for comment; staff evaluation criteria. |

REGULATORY GUIDE 1.97

6. APPLICATION TO EMERGENCY RESPONSE FACILITIES

Current Regulatory Requirements

No licensee action is required.

Functional Statement

Regulatory Guide 1.97 provides data to assist control room operators in preventing and mitigating the consequences of reactor accidents.

Recommended Requirements1. Control Room

Provide measurements and indication of Type A, B, C, D, E variables listed in Regulatory Guide 1.97 (Rev. 2). Individual licensees may take exceptions based on plant-specific design features. BWR incore thermocouples and continuous offsite dose monitors are not required pending their further development and consideration as requirements. It is acceptable to rely on currently installed equipment if it will measure over the range indicated in Regulatory Guide 1.97 (Rev. 2), even if the equipment is presently not environmentally qualified. Eventually, all the equipment required to monitor the course of an accident would be environmentally qualified in accordance with the pending Commission rule on environmental qualification.

Provide reliable indication of the meteorological variables (wind direction, wind speed, and atmospheric stability) specified in Regulatory Guide 1.97 (Rev. 2) for site meteorology. No changes in existing meteorological monitoring systems are necessary if they have historically provided reliable indication of these variables that are representative of meteorological conditions in the vicinity of the plant site. Information on meteorological conditions for the region in which the site is located shall be available via communication with the National Weather Service.

2. Technical Support Center (TSC)

The Type A, B, C, D, E variables that are essential for performance of TSC functions shall be indicated in the TSC.

- a. BWR incore thermocouples and continuous offsite dose monitors are not required pending their further development and consideration as requirements.
- b. The indicators and associated circuitry shall be of reliable design but need not meet Class 1E, single-failure or seismic qualification requirements.

3. Emergency Operations Facility (EOF)

- a. Those primary indicators needed to monitor containment conditions and releases of radioactivity from the plant shall be provided in the EDF.
- b. The EOF data indications and associated circuitry shall be of reliable design but need not meet Class 1E, single-failure or seismic qualification requirements.

Documentation and NRC Review

NRC review is not a prerequisite for implementation. Staff review will be in the form of an audit that will include a review of the licensee's method of implementing Regulatory Guide 1.97 (Rev. 2) guidance and the licensee's supporting technical justification of any proposed alternatives.

The licensee shall submit a report describing how it meets these requirements. The submittal should include documentation which may be in the form of a table that includes the following information for each Type A, B, C, D, E variable shown in Regulatory Guide 1.97 (Rev. 2):

- (a) instrument range
- (b) environmental qualification (as stipulated in guide or state criteria)
- (c) seismic qualification (as stipulated in guide or state criteria)
- (d) quality assurance (as stipulated in guide or state criteria)
- (e) redundancy and sensor(s) location(s)
- (f) power supply (e.g., Class 1E, non-Class 1E, battery backed)
- (g) location of display (e.g., control room board, SPDS, chemical laboratory)
- (h) schedule (for installation or upgrade)

Deviations from the guidance in Regulatory Guide 1.97 (Rev. 2) should be explicitly shown, and supporting justification or alternatives should be presented.

7. UPGRADE EMERGENCY OPERATING PROCEDURES (EOPs)

Current Regulatory Requirements

NUREG-0737, Item I.C.1, which has been approved by the Commission for implementation.

Functional Statement

Symptom-based emergency operating procedures will improve human reliability and the ability to mitigate the consequences of a broad range of initiating events and subsequent multiple failures or operator errors.

Recommended Requirements

1. In accordance with NUREG-0737, Item I.C.1, reanalyze transients and accidents and prepare Technical Guidelines. These analyses will identify operator tasks, and information and control needs. The analyses also serve as the basis for integrating upgraded emergency operating procedures and the control room design review and verifying the SPDS design.
2. Upgrade EOPs to be consistent with Technical Guidelines and an appropriate procedure Writer's Guide.
3. Provide appropriate training of operating personnel on the use of upgraded EOPs prior to implementation of the EOPs.
4. Implement upgraded EOPs.

Documentation and NRC Review

1. Submit Technical Guidelines to NRC for review. NRC will perform a pre-implementation review of the Technical Guidelines and the Writer's Guide. Within two months of receipt of the Technical Guidelines and Writer's Guide, NRC will advise the licensees of their acceptability.
2. Each licensee shall submit to NRC a procedures generation package at least three months prior to the date it plans to begin formal operator training on the upgraded procedures. NRC approval of the submittal is not necessary prior to upgrading and implementing the EOPs. The procedures generation package shall include:
 - a. Plant-Specific Technical Guidelines -- plant-specific guidelines for plants not using generic technical guidelines. For plants using generic technical guidelines, a description of the planned method for developing plant specific EOPs from the generic guidelines, including plant specific information.
 - b. A Writer's Guide that details the specific methods to be used by the licensee in preparing EOPs based on the Technical Guidelines.

- c. A description of the program for validation of the EOPs.
 - d. A brief description of the training program for the upgraded EOPs.
3. All procedures generation packages will be reviewed. On an audit basis for selected facilities, upgraded EOPs will be reviewed. The details and extent of this review will be based on the quality of the procedures generation packages submitted to NPC. A sampling of upgraded EOPs will be reviewed for technical adequacy in conjunction with the NRC Reactor Inspection Program.

- Reference Documents

NUREG-0660, Item I.C.1, I.C.8, I.C.9

NUREG-0799

8. EMERGENCY RESPONSE FACILITIES

Current Regulatory Requirements

- 10 CFR 50.47(b)(6) (for Operating License applicants) -- Requirement for prompt communications among principal response organizations and to emergency personnel and to the public.
- 10 CFR 50.47(b)(8) -- Requirement for emergency facilities and equipment to support emergency response.
- 10 CFR 50.47(b)(9) -- Requirement that adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.
- 10 CFR 50.54(q) (for Operating Reactors) -- Same requirement as 10 CFR 50.47(b) plus 10 CFR 50, Appendix E.
- 10 CFR 50, Appendix E, Paragraph IV.E
Requirement for:
 - "1. Equipment at the site for personnel monitoring;
 - "2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;
 - "3. Facilities and supplies at the site for decontamination of onsite individuals;
 - "4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;
 - "5. Arrangements for the services of physicians and other medical personnel qualified to handle radiation emergencies on site;
 - "6. Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;
 - "7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;
 - "8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;
 - "9. At least one onsite and one offsite communications system; each system shall have a backup power source.

All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:

- "a. Provision for communications with contiguous State/local governments within the plume exposure pathway (emergency planning zone) EPZ. Such communications shall be tested monthly.
- "b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.
- "c. Provision for communications among the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.
- "d. Provision for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility. Such communications shall be tested monthly."

Within this section on emergency response facilities, the Technical Support Center (TSC), Operational Support Center (OSC) and Emergency Operations Facility (EOF) are addressed separately in terms of their functional statements and recommended requirements. The subsections on Documentation and NRC Review and Reference Documents that follow the EOF discussion apply to this entire section on emergency response facilities.

Technical Support Center (TSC)

Functional Statement

The TSC is the onsite technical support center for emergency response. When activated, the TSC is staffed by predesignated technical, engineering, senior management, and other licensee personnel, and five predesignated NRC personnel. During periods of activation, the TSC will operate uninterrupted to provide plant management and technical support to plant operations personnel, and to relieve the reactor operators of peripheral duties and communications not directly related to reactor system manipulations. The TSC will perform EOF functions for the Alert Emergency class and for the Site Area Emergency class and General Emergency class until the EOF is functional.

Recommended Requirements

The TSC will be:

1. Located within the site protected area so as to facilitate necessary interaction with control room, OSC, EOF and other personnel involved with the emergency.
2. Sufficient to accommodate and support NRC and licensee predesignated personnel, equipment and documentation in the center.
3. Structurally built in accordance with the National Uniform Building Code.
4. Environmentally controlled to provide room air temperature, humidity and cleanliness appropriate for personnel and equipment.
5. Provided with radiological protection and monitoring equipment necessary to assure that radiation exposure to any person working in the TSC would not exceed 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident.
6. Provided with reliable voice and data communications with the control room and EOF and reliable voice communications with the OSC, NRC Operations Centers and state and local operations centers.
7. Capable of reliable data collection, storage, analysis, display and communication sufficient to determine site and regional status, determine changes in status, forecast status and take appropriate actions. The following variables shall be available in the TSC:
 - (a) the variables in the appropriate Table 1 or 2 of Regulatory Guide 1.97 (Rev. 2) that are essential for performance of TSC functions; and
 - (b) the meteorological variables in Regulatory Guide 1.97 (Rev. 2) for site vicinity and National Weather Service data available by voice communication for the region in which the plant is located.

Principally those data must be available that would enable evaluating incident sequence, determining mitigating actions, evaluating damages and determining plant status during recovery operations.

8. Provided with accurate, complete and current plant records (drawings, schematic diagrams, etc.) essential for evaluation of the plant under accident conditions.
9. Staffed by sufficient technical, engineering, and senior designated licensee officials to provide needed support, and be fully operational within approximately 1 hour after activation.
10. Designed taking into account good human factors engineering principles.

Operational Support Center (OSC)

Functional Statement

When activated, the OSC will be the onsite area separate from the control room where redesignated operations support personnel will assemble. A predesignated licensee official shall be responsible for coordinating and assigning the personnel to tasks designated by control room, TSC or EOF personnel.

Recommended Requirements

The OSC will be:

1. Located onsite to serve as an assembly point for support personnel and to facilitate performance of support functions and tasks.
2. Capable of reliable voice communications with the control room, TSC and EOF.

Emergency Operations Facility (EOF)

Functional Statement

The EOF is a licensee controlled and operated facility. The EOF provides for management of overall licensee emergency response, coordination of radiological and environmental assessment, determination of recommended public protective actions, and coordination of emergency response activities with Federal, State, and local agencies.

When the EOF is activated, it will be staffed by predesignated emergency personnel identified in the emergency plan. A designated senior licensee official will manage licensee activities in the EOF.

Facilities shall be provided in the EOF for the acquisition, display, and evaluation of radiological and meteorological data and containment conditions necessary to determine protective measures. These facilities will be used to evaluate the magnitude and effects of actual or potential radioactive releases from the plant and to determine dose projections.

Recommended Requirements

The EOF will be:

1. Located and provided with radiation protection features as described in Table 1 (previous guidance approved by the Commission) and with appropriate radiological monitoring systems.
2. Sufficient to accommodate and support Federal, State, local and licensee predesignated personnel, equipment and documentation in the EOF.
3. Structurally built in accordance with the National Uniform Building Code.
4. Environmentally controlled to provide room air temperature, humidity and cleanliness appropriate for personnel and equipment.
5. Provided with reliable voice and data communications facilities to the TSC and control room, and reliable voice communication facilities to OSC and to NRC, State and local emergency operations centers.
6. Capable of reliable collection, storage, analysis, displays and communication of information on containment conditions, radiological releases and meteorology sufficient to determine site and regional status, determine changes in status, forecast status and take appropriate actions. Variables from the following categories that are essential to EOF functions shall be available in the EOF:
 - (a) variables from the appropriate Table 1 or 2 Regulatory Guide 1.97 (Rev. 2), and

- (b) the meteorological variables in Regulatory Guide 1.97 (Rev. 2) for site vicinity and regional data available via communication from the National Weather Service.
7. Provided with up to date plant records (drawings, schematic diagrams, etc.), procedures, emergency plans and environmental information (such as geophysical data) needed to perform EOF functions.
 8. Staffed in accordance with Table 2 (previous guidance approved by the Commission). Reasonable exceptions to the 30-minute and 1-hour time limits for staffing should be justified and will be considered by NRC staff.
 9. Provided with industrial security when it is activated to exclude unauthorized personnel and when it is idle to maintain its readiness.
 10. Designed taking into account good human factors engineering principles.

Documentation and NRC Review

The conceptual design for emergency response facilities (TSC, OSC, and EOF) have been submitted to NRC for review. In many cases, the lack of detail in these submittals has precluded an NRC decision of acceptability. Some designs have been disapproved because they clearly did not meet the intent of the applicable regulations. NRC does not intend to approve each design prior to implementation, but rather has provided in this document those "recommended requirements" which should be satisfied. These recommended requirements provided a degree of flexibility within which licensees can exercise management prerogatives in designing and building emergency response facilities (ERF) that satisfy specific needs of each licensee. The foremost consideration regarding ERFs is that they provide adequate capabilities of licensees to respond to emergencies. NUREG guidance on ERFs has been intended to address specific issues which the Commission believes should be considered in achieving improved capabilities.

Licensees should assure that the design of ERFs satisfies these basic requirements. Exemptions from or alternative methods of implementing these requirements should be discussed with NRC staff and in some cases could require Commission approval. Licensees should continue work on ERFs to complete them according to schedules that will be negotiated on a plant-specific basis. NRC will conduct appraisals of completed facilities to verify that these requirements have been satisfied and that ERFs are capable of performing their intended functions. Licensees need not document their actions on each specific item contained in NUREG-0696 or 0814.

Reference Documents (Emergency Response Facilities)

- 10 CFR 50.47(b) -- Requirements for emergency facilities and equipment for OLs.
- 10 CFR 50.54(q) and Appendix E, Paragraph IV.E -- Requirements for emergency facilities and equipment for ORs.

- NUREG-0660 -- Description of and implementation schedule for TSC, OSC and EOF.
- Eisenhut letter to power reactor licensees 9/13/79 -- Request for commitment to meet requirements.
- Denton letter to power reactor licensees 10/30/79 -- Clarification of requirements and implementation schedule.
- Eisenhut letter to power reactor licensees 4/25/80 -- Clarification of requirements.
- NUREG-0654 -- Radiological Emergency Response Plans
- NUREG-0696 -- Functional criteria for emergency response facilities.
- NUREG-0737 -- Guidance on meteorological monitoring and dose assessment.
- Eisenhut letter to power reactor license 2/18/81 -- Commission approved guidance on location, habitability and staff for emergency facilities. Request and deadline for submittal of conceptual design of facilities.
- NUREG-0814 (Draft Report for Comment) -- Methodology for evaluation of emergency response facilities.
- NUREG-0818 (Draft Report for Comment) -- Emergency Action Levels
- Reg. Guide 1.97 (Rev. 2) -- Guidance for variables to be used in selected emergency response facilities.
- COMJA-80-37, January 21, 1981 -- Commission approval guidance on EOF location and habitability.
- Secretary memorandum S81-19, February 19, 1981 -- Commission approval of NUREG-0696 as general guidance only.

TABLE 1

EMERGENCY OPERATIONS FACILITY

Option 1
Two Facilities

Option 2
One Facility

Close-in Primary: Reduce Habitability*

- o within 10 miles
- o protection factor = 5
- o ventilation isolation with HEPA (no charcoal)

- o At or Beyond 10 miles. . .
- o No special protection factor.
- o If beyond 20 miles, specific approval required by the Commission, and some provision for NRC site team closer to site.
- o Strongly recommended location be coordinated with offsite authorities.

Backup EOF

- o between 10-20 miles
- o no separate, dedicated facility
- o arrangements for portable backup equipment
- o strongly recommended location be coordinated with offsite authorities
- o continuity of dose projection and decision making capability

For both Options:

- located outside security boundary
- space for about 10 NRC employees
- none designated for severe phenomena, e.g., earthquakes

Habitability requirements are only for the part of the EOF in which dose assessments communications and decision making take place.

If a utility has begun construction of a new building for an EOF that is located within 5 miles, that new facility is acceptable (with less than protection factor of 5 and ventilation isolation and HEPA) provided that a backup EOF similar to "B" in Option 1 is provided.

TABLE 2

MINIMUM STAFFING REQUIREMENTS FOR NRC LICENSEES
FOR NUCLEAR POWER PLANT EMERGENCIES

Major Functional Area	Major Tasks	Position Title or Expertise	Capability for Additions		
			On Shift*	30 min.	60 min.
Plant Operations and Assessment of Operational Aspects		Shift supervisor (SRO)	1	--	--
		Shift foreman (SRO)	1	--	--
		Control-room operators	2	--	--
		Auxiliary operators	2		
Emergency Direction and Control (Emergency Coordinator)***		Shift technical advisor, shift supervisor, or designated facility manager	1**	--	--
Notification/ Communication****	Notify licensee, state local, and federal personnel & maintain communication		1	1	2
Radiological Accident Assessment and Support of Operational Accident Assessment	Emergency operations facility (EOF) director	Senior manager	--	--	1
	Offsite dose assessment	Senior health physics (HP) expertise	--	1	--
	Offsite surveys		--	2	2
	Onsite (out-of-plant)		--	1	1
	Inplant surveys	HP technicians	1	1	1
Chemistry/radio- chemistry	Rad/chem technicians	1	--	1	

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NOTE: Source of this table is NUREG-0654, "Functional Criteria for Emergency Response Facilities."

TABLE 2 (Continued)

Major Functional Area	Major Tasks	Position Title or Expertise	Capability for Additions		
			On Shift*	30 min.	60 min.
Plant System Engineering, Repair and Corrective Actions	Technical support	Shift technical advisory	1	--	--
		Core/thermal hydraulics	--	1	--
		Electrical	--	--	1
		Mechanical	--	--	1
	Repair and corrective actions	Mechanical maintenance/ Radwaste operator	1**	--	1
		Electrical maintenance/ instrument and control (I&C) technician	1**	1	1
Protective Actions (In-Plant)	Radiation protection:	HP technicians	2**	2	2
	a. Access control				
	b. HP Coverage for repair, correc- tive actions, search and rescue first-aid, & firefighting				
	c. Personnel monitor- ing				
	d. Dosimetry				
Firefighting	--	--	Fire brigade per techni- cal specifi- cation	Local support	
Rescue Operations and First-Aid	--	--	2**	Local support	

TABLE 2 (Continued)

Major Functional Area	Major Tasks	Position Title or Expertise	Capability for Additions		
			On Shift*	30 min.	60 min.
Site Access Control and Personnel Accountability	Security, firefighting communications, per- sonnel accountability	Security personnel	All per security plan		
		Total	10	11	15

*For each unaffected nuclear unit in operation, maintain at least one shift foreman, one control-room operator, and one auxiliary operator except that units sharing a control room may share a shift foreman if all functions are covered.

**May be provided by shift personnel assigned other functions.

***Overall direction of facility response to be assumed by EOF director when all centers are fully manned. Director of minute-to-minute facility operations remains with senior manager in technical support center or control room.

****May be performed by engineering aide to shift supervisor.

STATEMENT OF PROFESSIONAL QUALIFICATIONS

CHARLES E. ROSSI

I have been with the U. S. Nuclear Regulatory Commission (NRC) since October 1980. Since August 1981 I have been a Section Leader in the Instrumentation and Control Systems Branch, Division of Systems Integration, Office of Nuclear Reactor Regulation. I am responsible for supervising the review of nuclear power plant instrumentation and control system designs for compliance with regulatory criteria. From October 1980 to August 1981 I was a Principal Reactor Engineer in the Instrumentation and Control Systems Branch. I performed the operating license review of the Callaway and Wolf Creek instrumentation and control system designs, the review of construction permit applicant responses to Three Mile Island Lessons Learned Items related to instrumentation and control systems, and the review of licensee responses to recommendations made by Babcock and Wilcox resulting from failure modes and effects analyses of the Integrated Control System.

I have a Ph.D degree (1969) and M.E degree (1967) in Applied Physics from Harvard University, a M.S degree (1962) in Physics from George Washington University and a B.A degree Magna cum Laude Highest Honors (1958) in Engineering and Applied Physics from Harvard University. I have a certificate from a six month reactor engineering course given by the Bettis Atomic Power Laboratory (1960). I was elected to Phi Beta Kappa in 1958 and Sigma Xi in 1962.

From June 1958 to July 1962 I served as a commissioned officer in the United States Navy. I was assigned to Naval Reactors, U. S. Atomic Energy Commission, where I reviewed and approved test and operating procedures for submarine nuclear power plant fluid systems and reactor instrumentation and control systems designs for the pressurized water reactor at Shippingport, PA.

From September 1966 to November 1977 I held professional and management positions in the Nuclear Energy Systems division of the Westinghouse Electric Corporation. As a manager I supervised the preparation of system functional design requirements for nuclear reactor plant systems which affect plant control, protection, and transient performance. In addition to reactor control and protection systems, these systems included emergency feedwater systems, emergency boration systems, and steam dump systems. For four years I was the lead engineer responsible for establishing functional requirements for reactor control and protection systems used in the Westinghouse 3 loop nuclear reactor plants and for performing transient and accident analyses of these plants for safety analysis reports submitted to the Atomic Energy Commission.

From November 1977 to October 1980 I was Systems and Civilian Applications Program Manager in the Office of Inertial Fusion at the U. S. Department of Energy. In this position, I provided technical and administrative direction for studies of the commercial applications of inertial confinement fusion.

I am a member of the American Nuclear Society and past member of the IEEE Nuclear Power Engineering Committee Standards Subcommittee (SC-6) on Safety Related Systems. I have authored or co-authored over ten technical articles for presentation at conferences or publication in journals.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322
(OL)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REPLY TESTIMONY OF CHARLES E. ROSSI AND JERRY L. MAUCK ON INSTRUMENTATION FOR POST-ACCIDENT MONITORING (SC 27/SOC 3)" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by a double asterisk, by hand delivery, or, as indicated by a triple asterisk, by Express Mail, this 10th day of August, 1982:

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7.5 Safety-Related Display Instrumentation

The safety-related display instrumentation provides the operator with information on the status of the plant to allow manual safety actions to be performed whenever necessary and to assess the status of the facility during post-accident conditions. The objectives of our review were to determine that the various design aspects of the safety-related display instrumentation conform to all applicable acceptance criteria set forth in Section 7.1 of this report and will perform as intended during all plant operating and accident conditions for which their function is required.

Our review of the safety-related display instrumentation included:

- (1) Status monitoring of the reactor trip system and engineered safety feature systems.
- (2) Design provisions in the event of loss of habitability of main control room.
- (3) Systems having instrumentation and controls outside the main control room.
- (4) Design of system level automatic bypass indication.
- (5) Post-accident monitoring display instrumentation.

Our review of the post-accident monitoring display instrumentation channels noted that the initial design did not satisfy our position set forth in Branch Technical Position ICSB 23, "Qualification of Safety-Related Display Instrumentation for Post-Accident Condition Monitoring and Safe Shutdown," with regard to having redundant and power independent channels for each parameter monitored. The applicant has implemented our positions in the design and we concluded that it is acceptable.

The scope of the review included the descriptive information, functional logic diagrams, functional piping and instrument diagrams and physical arrangement drawings pertaining to the various design aspects of the safety-related display instrumentation. The review has included the applicant's design bases and their relation to the proposed design criteria for the safety-related display instrumentation and the applicant's analyses of the adequacy of those criteria and bases.

We requested that the applicant review the adequacy of emergency operating procedures to be used by control room operators to attain safe shutdown upon loss of any Class 1E or non-Class 1E buses supplying power to safety or non-safety

related instruments and to control systems. (This issue was addressed for operating reactors through I&E Bulletin 79-27.) The applicant has not yet responded. We will report on the resolution of this issue in a supplement to this report.

The applicant will be expected to upgrade post accident monitoring instrumentation in accordance with Revision 2 to Regulatory Guide 1.97, "Instrumentation for Light Water-Cooled Nuclear Power Plants To Assess Plant And Environs Conditions During And Following An Accident." The schedules and specific implementation requirements for this upgrading are discussed in NUREG-0737 and Commission Memorandum and Order (CLI-80-21). An evaluation of the applicant's new instrumentation to meet these requirements will be issued upon submittal of an acceptable design but not necessarily as a supplement to this report.

1 MR. BLACK: With that, Judge Brenner, I would
2 also like to indicate that by and large the initial
3 Staff filing on this testimony, which is the testimony
4 Jerry L. Mauck which was filed on May 25, 1982, has been
5 superseded almost 100 percent by the combined testimony
6 of Mauck and Rossi. However, since the combined
7 testimony of Mauck and Rossi did refer back to the
8 original filing of Mauck, we decided to go ahead and use
9 that and incorporate it in the record for consistency.

10 JUDGE BRENNER: All right. You propose to
11 have them summarize the testimony?

12 MR. BLACK: I believe --

13 JUDGE BRENNER: You don't have to.

14 MR. BLACK: Usually I would do that, but I
15 believe the outline of the testimony is sufficient for
16 that purpose.

17 (Pause.)

18 JUDGE BRENNER: All right, I guess we are
19 prepared to proceed with the County's
20 cross-examination.

21 CROSS-EXAMINATION ON BEHALF OF SUFFOLK COUNTY

22 BY MS. LETSCHE:

23 Q Mr. Mauck, what is, in your position in the
24 Instrumentation and Control Systems Branch with the NRC
25 Staff -- what work have you done with respect to

1 compliance by any utility with Reg Guide 1.97, Revision
2 2?

3 A (WITNESS MAUCK) We have not looked at any --
4 I myself have not looked at any particular plant as
5 regards compliance with Reg Guide 1.97.

6 JUDGE BRENNER: Excuse me, Mr. Mauck. I can't
7 hear you. I don't know if that microphone is not
8 working correctly.

9 BY MS. LETSCHE: (Resuming)

10 Q Mr. Mauck, I take it, then, that you have not
11 reviewed any information submitted by LILCO with respect
12 to their compliance with Reg Guide 1.97, Rev. 2; is that
13 correct?

14 A (WITNESS MAUCK) That's true.

15 Q Mr. Rossi, have you done any work with respect
16 to Reg Guide 1.97 compliance with Rev. 2 by any plant?

17 A (WITNESS ROSSI) I have not done any with
18 respect to any operating plant. However, I was involved
19 in reviews that were carried out with regard to the
20 construction permit rule that related to the
21 post-accident monitoring instrumentation, and I was the
22 -- either the reviewer in some cases or I supervised the
23 review for post-accident monitoring for several
24 construction permit applications in the last
25 approximately year to year and a half.

1 Q Did those reviews involve compliance with the
2 requirements stated in Reg Guide 1.97, Rev. 2?

3 A (WITNESS ROSSI) Those reviews basically
4 involved a review of commitments of applications for
5 construction permits to eventually either meet the
6 provisions of the Regulatory Guide or to provide
7 appropriate justifications for alternatives. And it
8 also involved some clarifications as to particular items
9 into how they apply to particular plants.

10 Q I take it you have not reviewed any materials
11 submitted by LILCO with respect to Reg Guide 1.97, Rev.
12 2, compliance; is that correct?

13 A (WITNESS ROSSI) The only material I reviewed
14 is the material that is in the LILCO testimony.

15 Q Did either one of you have any involvement in
16 the preparation of SECY 82-111?

17 A (WITNESS MAUCK) I didn't, no.

18 A (WITNESS ROSSI) SECY 82-111 was prepared over
19 a period of several months, and I'm not sure of the
20 precise date that work began. I was involved in
21 numerous discussions within the Instrumentation and
22 Control Systems Branch as to the method that should be
23 reviewed for the eventual review of Regulatory Guide
24 1.97, Rev. 2.

25 These discussions were eventually passed back

1 to the people who were doing the actual preparation of
2 the SECY 82-111. However, my involvement was through
3 those discussions, and I also supervised -- or I
4 supervise one person in my section who was more closely
5 involved with commenting on information that eventually
6 went into SECY 82-111.

7 Q Mr. Rigert, do you have -- in your position
8 with LILCO, have you had any responsibility with respect
9 to any of the four items that remain in this litigation
10 on Suffolk County contention 27?

11 A (WITNESS RIGERT) I have been involved as a
12 member of the Nuclear Engineering Department in
13 reviewing Reg Guide 1.97, coming to positions on the
14 applicability to Shoreham, the appropriate actions to be
15 taken by LILCO, and basically the positions we took in
16 this testimony.

17 Q From your description, it sounds like your
18 involvement was primarily in policy matters, whether or
19 not LILCO was going to -- whether or not they thought
20 they would comply with requirements, either because they
21 were or were not applicable, or because you had
22 something else. Is that a correct characterization?

23 A (WITNESS RIGERT) Well, this is fairly
24 detailed work. It's not what I would call
25 policymaking. One of my jobs as the section head of

1 systems engineering in the Nuclear Engineering
2 Department is to review systems and the instrumentation
3 associated with those systems, and it is a detailed
4 level, I would say. I wouldn't call it policymaking.

5 Q Have you personally been involved in decisions
6 with respect to the installation or the non-installation
7 of flow meters that are discussed in the contention?

8 A (WITNESS RIGERT) Yes.

9 Q And how about with respect to the radiation
10 monitors of the type discussed in the contention? Is
11 that within your scope of work?

12 A (WITNESS RIGERT) To a lesser degree. I am
13 not a radiation monitoring expert by any means.

14 Q Did you participate at all in the preparation
15 or review of information contained in Mr. McAffrey's
16 affidavit which was attached to a motion for summary
17 disposition in 1981 relating to this contention, that
18 set out LILCO's position with respect to compliance with
19 Reg Guide 1.97, Rev. 2?

20 A (WITNESS ROSSI) Yes, I was involved with
21 that.

22 Q Mr. Baron, you indicate at page 4 of your
23 professional qualifications that part of your
24 responsibilities at Shoreham is to secure a workable and
25 calibrated radiation monitoring system.

1 A (WITNESS BARON) Yes.

2 Q Does that work include the radiation monitors
3 that are the subject of parts A and D of Suffolk County
4 contention 27?

5 A (WITNESS BARON) Well, as no monitors were
6 purchased, it's sort of an academic question, but
7 involved for all monitors that are obtained. I have
8 been involved in terms of the callibration and
9 procurement and delivery to site.

10 Q I gather you have only been in that position
11 since May of 1981. Is that true??

12 A (WITNESS BARON) No. I have been involved in
13 it since December of '81.

14 Q December of '81?

15 A (WITNESS BARON) I've been involved on
16 Shoreham since May of '81.

17 Q But in this position since December of '81?

18 A (WITNESS BARON) Yes, December of '81.

19 Q I take it the decision not to acquire the
20 types of monitors referenced in subparts A and D was
21 made prior to your obtaining that position?

22 A (WITNESS BARON) Yes.

23 Q Have you had any involvement with the BWR
24 owners group work, studies being performed relative to
25 Reg Guide 1.97, Rev. 2?

1 A (WITNESS BARON) I reviewed a draft copy. I
2 have not been involved or participated with any input
3 into that study.

4 Q You say you reviewed a draft copy. A copy of
5 what?

6 A (WITNESS BARON) Of the BWR owners group
7 position on various items. It wasn't a review for
8 comment. It was for my own personal information.

9 Q Have you had -- let me go back for a second to
10 Mr. Rigert. Have you been involved, Mr. Rigert, in the
11 BWR owners group work related to Reg Guide 1.97, Rev. 2,
12 compliance?

13 A (WITNESS RIGERT) Yes, I have.

14 Q Are you familiar with this owners group
15 position paper that Mr. Baron mentioned?

16 A (WITNESS RIGERT) Yes.

17 Q Does that position paper deal with any of the
18 remaining items in the Suffolk County contention 27?

19 A (WITNESS RIGERT) It covers them all.

20 Q Has that position paper been submitted to the
21 NRC Staff?

22 A (WITNESS RIGERT) No, it hasn't at this time,
23 and I'm not sure exactly how the owners group will
24 handle it. It is approaching its completion and has not
25 been issued to the NRC at this time.

1 Q You say it's approaching its completion. You
2 mean the study is not complete yet?

3 A (WITNESS RIGERT) The study is complete. It
4 is in the final writing stages, and I believe it should
5 be submitted formally to the owners from the committee
6 within the next couple of weeks.

7 Q Does it then have to be approved by the owners
8 group by a vote or something before it becomes the
9 owners group position?

10 A (WITNESS RIGERT) Well, from what I understand
11 -- I missed the last meeting, but the owners group has
12 decided that they approve it as it exists, but it will
13 not be submitted generically from the owners group to
14 the NRC. So it's going to be submitted to the owners.
15 I can't explain why, because I disagree with that
16 approach, but they decided that they would not send it
17 under owners group cover letter to the NRC. It would be
18 up to each utility to send it with their own submittal.

19 Q Does LILCO intend to adopt the owners group
20 position and submit that to the NRC Staff?

21 A (WITNESS RIGERT) On these particular issues
22 that we are talking about now, I would say that our
23 position is the same as the owners group position. *

24 Q Well, does that mean you aren't going to
25 submit the owners group study to the NRC Staff?

1 A (WITNESS RIGEPT) Well, I don't think we have
2 decided from a licensing point of view now what we're
3 going to do as far as submittal to the NRC.

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1 Q Well, does that mean you are going to submit
2 the Owners' Group study to the NRC Staff?

3 A (WITNESS RIGERT) Well, I don't think we have
4 decided from a licensing point of view now what we are
5 going to do as far as submittal to the NRC.

6 Q I'll come back in a minute to the substance of
7 what the Owners' Group position is on each of these
8 issues, but let me talk for just a minute more to the
9 other members of the panel.

10 Mr. Schmitt, in your position at LILCO, have
11 you had any involvement with any of the Reg. Guide 1.97
12 issues that are remaining in Suffolk County Contention
13 27?

14 A (WITNESS SCHMITT) Yes. On the radiation
15 monitors, my role at the plant is to maintain a
16 radiation monitoring system and make sure that it is
17 performing as it is intended to perform at the station.
18 Due to that, I have been involved in discussions, you
19 know, whenever items concerning the radiation monitoring
20 capability at the plant come up. I have been involved
21 in discussions, making input more or less depending on
22 the particular issue, to make sure that we have a good
23 operating situation to protect the people and the
24 environment by a properly installed radiation monitoring
25 system.

1 Q Were you involved -- you said you were
2 involved in maintaining the system.

3 Did you have any involvement in the decision
4 not to install the radiation monitors of the type that
5 are mentioned in Parts A and D of this contention?

6 A (WITNESS SCHMITT) I was involved in review of
7 some early reports on the subject, made input via
8 meetings, nothing beyond that, input at meetings and
9 general discussions.

10 Q What reports are they that you are referring
11 to relating to this?

12 A (WITNESS SCHMITT) There was -- I'm not
13 involved in the project so, you know, these become a
14 little vague to me, the people who are involved in
15 design reviews and such, you know, I don't do that
16 specifically, but when Reg. Guide 1.97, Rev. 2 came out,
17 and 0737, all of those become somewhat muddled to me,
18 exactly when they came out, because I'm not into
19 design.

20 But a study or a review of what they meant was
21 asked for by LILCO of Stone and Webster, and I saw some
22 preliminary documents that came out of that review.

23 Q Are you familiar with any of the Owners' Group
24 work that has been done on the radiation monitor
25 issues?

1 A (WITNESS SCHMITT) I have seen the report just
2 recently.

3 Q This is the report that Mr. Rigert had?

4 A (WITNESS SCHMITT) Yes, I guess actually it is
5 a draft report.

6 Q Mr. Kreps, have you had any participation or
7 any involvement in work relating to the issues left in
8 Suffolk County Contention 27?

9 A (WITNESS KREPS) Not from the standpoint of
10 making any policy decision. My only involvement has
11 been to look at the Reg. Guide and the equipment we have
12 in the plant and at our procedures to make sure they are
13 compatible.

14 Q Dr. Rossi and Mr. Mauck, I would like to ask
15 you some questions about your reply testimony that was
16 recently filed.

17 You state on page 3 of that testimony in the
18 answer to Question 4 that there is not sufficient
19 information available at the present time for the staff
20 to make a decision on the ultimate acceptability of the
21 Applicant's position with respect to the specific items
22 listed in Suffolk County Contention 27 and SOC
23 Contention 3.

24 Has the Staff asked for any such information
25 from LILCO?

1 A (WITNESS ROSSI) No.

2 Q Why not?

3 A (WITNESS ROSSI) As we point out in our
4 testimony, Regulatory Guide 1.97, Rev. 2 implementation
5 will be done in accordance with SECY-82-111. We have
6 not asked for this information from LILCO because we
7 were awaiting the completion of Commission action on
8 SECY-82-111 to give us the guidance as to exactly how we
9 were going to implement Reg. Guide 1.97, Rev. 2, and I
10 believe our testimony describes that implementation on
11 page 4 at the bottom. It is quoted from SECY-82-111.

12 Q And that is the procedure where there will be
13 a generic letter sent out to the licensees, and the
14 licensees will then provide a schedule, and then
15 ultimately they will submit --

16 A (WITNESS ROSSI) Correct, that's the
17 procedure.

18 Q Has there been any indication to date by LILCO
19 that information the staff would require in order to
20 determine compliance with Reg. Guide 1.97, Rev. 2 is not
21 available?

22 A (WITNESS ROSSI) Has there been indication
23 that that information is not available?

24 Q That's right.

25 A (WITNESS ROSSI) No, I have no indication as

1 to whether it either is or is not available. I think
2 that at the current time we would have to wait until we
3 have written the generic letter to better define
4 precisely what information, in what format it is that we
5 are going to want that information in before LIILCO could
6 make any such statement as to whether all that
7 information is available or not.

8 Q Can you explain, Dr. Rossi, what it is that
9 the staff is going to want other than a statement by the
10 Applicant as to whether or not it is going to install
11 equipment meeting the descriptions that are set out in
12 Reg. Guide 1.97 by a particular date, or a statement as
13 to why they are not if they don't intend to?

14 A (WITNESS ROSSI) Basically what we are going
15 to ask for is outlined on page 14 of the enclosure to
16 SECY-82-111. What our plans at this time are is to ask
17 each licensee to submit a report that gives us a table
18 listing the key items for each particular variable in
19 Regulatory Guide 1.97, Rev. 2 that we would like to look
20 at to assure ourselves that he does indeed meet
21 precisely the requirements of Regulatory Guide 1.97,
22 Rev. 2. Our intent is to get that table, get a clear
23 statement from the licensee that he will meet Reg. Guide
24 1.97, Rev. 2 on an instrument-by-instrument basis for
25 those instruments where he can make such an unequivocal

1 statement, and then we will spend our effort reviewing
2 the justifications for any areas where he does not
3 precisely meet the Reg. Guide. That's the intent, basic
4 intent of what we intended to do.

5 Q Well, does the staff know whether or not LILCO
6 has that information now?

7 A (WITNESS ROSSI) I don't know. I don't think
8 anyone on the staff knows whether they have that
9 information at this particular point in time.

10 Q When do you expect this generic letter that is
11 mentioned in the SECY document to go out?

12 A (WITNESS ROSSI) I cannot answer that
13 question. SECY-82-111, action was taken by the
14 Commission in the letter from Mr. Chuck to Mr. Dirks was
15 only written on July 20, and so far as I know, no
16 schedules have been established for that generic
17 letter.

18 Q Who is going to be preparing a generic
19 letter? I seem to recall that it says it somewhere in
20 here.

21 A (WITNESS ROSSI) The generic letter, it is in
22 here, I believe. I don't remember there being a
23 schedule in here anywhere. What I remember is that it
24 states that the project managers will do that.

25 Q That is not something that you are going to be

1 responsible for?

2 A (WITNESS ROSSI) Our branch will not write
3 that letter, no.

4 If you would like, I will see if I can find
5 the reference to precisely who is going to write it
6 since I am reasonably certain it is here.

7 I'm not sure it is clear on who writes the
8 letter. If you look at the last paragraph on what I
9 guess is page 1 to the enclosure to SECY-82-111, it
10 talks about each licensees proposed schedules would then
11 be reviewed by the assigned NRC project manager who
12 would discuss the subject with the licensee and mutually
13 agree on schedules and completion dates.

14 Just above that it talks about the letter.

15 Q It says they will be from NRR?

16 A (WITNESS ROSSI) From NRR, yes. As a matter
17 of fact, I suspect that the letter may ver well be a
18 letter coming from a division director level rather than
19 from each individual project manager, but the only
20 information that I know of as to who is going to write
21 that letter is what is in this paragraph here.

22 Q You state on page 4 of your reply testimony in
23 the answer to Questin 5 that the staff plans to perform
24 an audit review of the Shoreham plant, and that is in
25 conformance with SECY-82-111.

1 When will that audit review be performed?

2 A (WITNESS ROSSI) Again there is no schedule
3 for that audit review. That schedule will be dependent
4 upon the schedule that is used for writing the generic
5 letter.

6 Q So you are talking about something at the
7 generic level and then --

8 A (WITNESS ROSSI) Negotiations on the schedule,
9 and the schedule will be established, and in fact, I
10 don't recall there being a specific time period during
11 which the staff will respond in here in SECY-82-111.

12 Q No, I don't think there is a time period.
13 That's why I was g you.

14 Who will be performing the audit review?

15 A (WITNESS ROSSI) On Regulatory Guide 1.97,
16 Rev. 2, the audit review will be basically performed by
17 the Instrumentation and Control Systems Branch. It
18 hasn't been finally assigned to a particular reviewer.
19 However, I would anticipate that it would be in the
20 section for which I am responsible. Instrumentation and
21 Control Systems Branch will review such things as power
22 supply assignments, ranges, that type of thing. They
23 will review the table that I discussed before to
24 determine which variables the licensee intends to
25 exactly meet the Regulatory Guide requirements, and then

1 they will coordinate with other appropriate branches
2 within the NRC reviews and decisions related to any
3 alternates that might be proposed by licensees to the
4 requirements in the Regulatory Guide.

5 Q You state in your testimony that the audit
6 review is not a prerequisite for implementation of Reg.
7 Guide 1.97, Rev. 2, and you referred to the SECY paper.

8 Why isn't it?

9 A (WITNESS ROSSI) One of the reasons that
10 SECY-82-111 was done was to make sure that all of the
11 items that are covered by SECY-82-111 are done in an
12 orderly fashion and are done on a schedule which is
13 reasonably prompt within the limits of still being
14 orderly, and the conclusion was reached on some of these
15 items, the applicant could go ahead, or the licensee
16 could go ahead and install the equipment, and perhaps he
17 could get equipment in more rapidly that way than if he
18 were to wait for the NBC to complete its audit review.

19 Q Well, do you anticipate that applicants are
20 going to go out and comply with this Reg. Guide when the
21 staff hasn't told them yet or hasn't reviewed yet what
22 it is they are proposing -- what incentive is there for
23 an applicant to go out and do that?

24 A (WITNESS ROSSI) Well, as I indicated, they
25 are going to receive a generic letter which basically

1 tells them that they should implement all the items that
2 are covered by SECY-82-111. We will then negotiate the
3 schedules with them. Those schedules will -- I mean,
4 they are going to be asked to do it. There will be a
5 schedule negotiated with them. The intent is to get a
6 schedule that is as rapid as possible, again within the
7 limits of making sure that whatever is done is done in
8 an orderly way.

9 I guess the incentive is that they are
10 expected to comply with our requests.

11 Q Okay. And the request that is in 82-111, with
12 the possible exception of the thermocouple and the fixed
13 location radiation monitors, is that the requirements of
14 Reg. Guide 1.97, Rev. 2 be met or that information be
15 provided as to deviations, is that right?

16 A (WITNESS ROSSI) That it either be met or
17 information and justification be given for appropriate
18 alternatives.

19 Q Has the staff reviewed the affidavits that
20 were attached to the motion for summary disposition of
21 SOC Contention 3 back in 1981 that contained LILCO's
22 status of compliance at that time with the Reg. Guide
23 1.97, Rev. 2 requirements?

24 A (WITNESS ROSSI) I don't recall reviewing it.
25 I may have at one time or another referred to it or have

1 possibly read it. I don't know. Mr. Mauck will have to
2 answer for himself.

3 A (WITNESS MAUCK) I have just taken a quick
4 glance at it. I don't think review is the right word.

5 Q I guess one thing I am a little confused about
6 is why is this procedure that the staff is going to
7 follow here with this generic letter and the
8 negotiations and all of this stuff down the road more
9 orderly than having told the applicants back right after
10 December of '80 when this Reg. Guide came out, or
11 sometime subsequent to that, tell us whether or not you
12 comply with all these things?

13 A (WITNESS ROSSI) Well, I think the concern has
14 been, and what we are trying to avoid is a unilateral
15 letter that goes out and tells licensees that they have
16 to go install equipment to meet Regulatory Guide 1.97,
17 Rev. 2 by a certain date, just coming from the NRC
18 saying go do it by this date without any consideration
19 given to other things that the applicant or licensee
20 might be involved in doing over that same time period,
21 and it is felt that it is more appropriate to establish
22 a schedule that is reasonable and takes into
23 consideration the other things that the licensee might
24 be doing, other workload that he might have, and that
25 that will be a more orderly procedure.

1 Q So the staff's concern is just with the
2 scheduling of when these things get in or when the
3 applicants are required to do them? Is that the main
4 concern that the SECY paper is designed to address?

5 A (WITNESS ROSSI) I'm not sure that I can
6 answer that question. I'm not sure I even understand
7 exactly the question.

8 Q It really wasn't a very good question.

9 Did the staff do any review of the Shoreham
10 plant as to compliance with Reg. Guide 1.97, Rev. 1?

11 A (WITNESS ROSSI) Well, the Shoreham plant has
12 been reviewed in accordance with the standard review
13 plan, and the Safety Evaluation Report, Section 7.5,
14 does indicate to some extent what it was reviewed to.
15 Let's see if I can find that.

16 If you look on page 7-12 of Section 7.5, it
17 references the fact that there was a review of the
18 post-accident monitoring display instrumentation
19 channels, and it was done in accordance with the branch
20 technical position that was in effect at that time,
21 which is Branch Technical Position 23, qualification of
22 safety-related display instrumentation for post-accident
23 condition monitoring and safe shutdown.

24 Now, that branch technical position is more
25 concerned with the criteria that is used for the

1 instrumentation than is used for post-accident
2 monitoring. That is referred to here and indicates the
3 kind of review that was done.

4 Now, in addition to that, the normal review of
5 each section of the FSAR would take into consideration
6 for each particular review branch those items that might
7 be related to post-accident monitoring. I have not
8 personally been involved in that review because it is
9 done by many branches, but I am generally familiar that
10 that is done as part of the review.

11 JUDGE CARPENTER: Ms. Letsche, may I ask one
12 question?

13 MS. LETSCHE: Certainly.

14 JUDGE CARPENTER: Dr. Rossi, you have
15 expressed several times, using different words,
16 something about orderly schedule.

17 Can you give me a numerical value for that in
18 your mind? Are you talking about a year, two years,
19 five years?

20 What are staff's goals?

21 WITNESS ROSSI: I don't know that we have a
22 goal that I know of, but I would -- I'll give you my
23 personal opinion of what I think that means with respect
24 to Regulatory Guide 1.97, Rev. 2. I think we are
25 talking on the order of one to two years for essentially

1 wrapping up the entire review and the implementation of
2 the Regulatory Guide.

3 Now, it is my belief, based on what I know
4 about plants in general, that we are going to find that
5 most plants substantially meet the Regulatory Guide
6 today, and what we are talking about is looking for the
7 additional things that they may have to either modify or
8 add in order to fully address everything that is in the
9 Regulatory Guide. And so it is that part I am talking
10 about taking one to two years.

11 JUDGE CARPENTER: Thank you.

12 BY MS. LETSCHE: (Resuming)

13 Q Mr. Rossi, you indicated that you have done a
14 review of Reg. Guide 1.97, Rev. 2, compliance review of
15 commitments made by plants applying for construction
16 permits or construction licenses.

17 A (WITNESS ROSSI) Yes, I was involved in some
18 of those reviews.

19 Q Why couldn't the same method that you used for
20 those reviews be used in reviewing the Shoreham plant's
21 compliance at a time earlier than the schedule you
22 described?

23 A (WITNESS ROSSI) Well, I think that all we are
24 interested in at the construction permit stage is
25 getting a commitment from the Applicant that he will

1 eventually do the detailed work to implement the
2 Regulatory Guide, and it is much less of -- much less
3 detail involved in that than asking them to submit the
4 table and so forth that we are going to ask for here.

5 Q You note on page 6 of the reply testimony in
6 answer to Question No. 7 that Shoreham was reviewed in
7 accordance with the standard review plan, as you
8 mentioned before, to ensure that sufficient indications
9 are available for the operator to cope with design basis
10 events, and you then note that Reg. Guide 1.97, Rev. 2
11 recommendations indications and ranges for severe
12 accident scenarios that may go beyond the design basis
13 events.

14 That means, then, that it is the staff's
15 position that it would be all right to license this
16 plant without having done any review of available
17 indications for severe accident scenarios, is that
18 right?

19 A (WITNESS ROSSI) The staff's position is that
20 if the plant has been reviewed in accordance with the
21 standard review plan, that that is adequate for safe
22 operation of the plant.

23 JUDGE MORRIS: Ms. Letsche, I don't like to be
24 picky on words, but reading a cold record, it might not
25 have been clear, the distinction between a design basis

1 accident and a serious accident. You used both terms, I
2 think, in phrasing your question, or at least in your
3 preamble to it.

4 MS. LETSCHE: Judge Morris, your statement is
5 accurate. I was quoting the staff's testimony, however,
6 where they were contrasting the standard review plan as
7 applying to indications relating to design basis events
8 and Reg. Guide 1.97 which indicates recommendations and
9 ranges for what staff refers to as severe accident
10 scenarios.

11 I guess I should amend my question to refer to
12 those referenced in Reg. Guide 1.97.

13 JUDGE MORRIS: The last sentence you didn't
14 quite finish: severe accident scenarios that may go
15 beyond the design basis accident.

16 MS. LETSCHE: That's correct.

17 JUDGE MORRIS: I hate to be picky on that, but
18 I think we have to be careful.

19 BY MS. LETSCHE: (Resuming)

20 Q Dr. Rossi, what is the basis for the staff's
21 position that it is not necessary to make a
22 determination prior to licensing concerning the
23 availability of indications and ranges for severe
24 accident scenarios that may go beyond design basis
25 events?

1 A (WITNESS ROSSI) Well, the design basis events
2 that are referred to here -- and this applies in part to
3 Judge Morris' comment -- would be those that are
4 normally analyzed as part as the licensing review, would
5 be the accidents that are covered in Chapter 15. The
6 accidents that are normally analyzed as part of the
7 licensing process and are required to be in Chapter 15
8 and are reviewed by the staff in accordance with the
9 standard review plan have been chosen to be very
10 conservative representations of what might happen on a
11 plant. The analyses are done in a very conservative
12 way. Those analyses are intended to bracket a large
13 number of occurrences that might occur on a plant, that
14 might occur in a different way than the precise way that
15 they are analyzed in Chapter 15.

16 The analyses that are included in Chapter 15
17 have been developed over a period of years and are based
18 on the judgment of the staff, reviewed by the Advisory
19 Committee on Reactor Safeguards, input from experience
20 that we have seen in events that have actually occurred
21 on plants, and they are considered to be a very
22 conservative set of events.

23 So the staff's position is that if you have
24 analyzed those events, you have designed the plant to
25 handle them, you have done the analyses in a

1 conservative way, that that represents reasonable
2 assurance that the plant is sufficiently safe from the
3 standpoint of public health and safety.

4 The intent with Regulatory Guide 1.97, Rev. 2
5 is to use ranges and additional instrumentation to give
6 additional assurance that if even more severe
7 occurrences or additional equipment failures should
8 occur at any point in time on some plant someplace, that
9 there will be additional assurance that that situation
10 can be handled.

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1 JUDGE BRENNER: Dr. Rossi, as to the four
2 items still in dispute in this contention, is it the
3 Staff's position that those items would be required
4 someday only because of accidents beyond the design
5 basis event, or would they also be useful for accidents
6 up to design, up to and including design basis
7 accidents?

8 WITNESS ROSSI: Give me just a minute to refer
9 back to the four items.

10 JUDGE BRENNER: They are --

11 WITNESS ROSSI: Let me just look if I could,
12 please, just a minute.

13 (Pause.)

14 JUDGE BRENNER: Ms. Letsche, while he's
15 looking, as soon as we give him back to you, when you
16 reach a convenient point we will recess for the day.

17 WITNESS ROSSI: It is the Staff's position --
18 well, I don't think we could say that they wouldn't be
19 useful for accidents up to the design basis events, but
20 it is the Staff's position that for the design basis
21 events they would not be necessary.

22 JUDGE CARPENTER: You are testifying in the
23 context of not contributing to substantial reduction in
24 risk to the public, or not contributing substantially to
25 change in reasonable assurance of no threat from this

1 plant to the public, is that what you're saying?

2 WITNESS ROSSI: I believe I would rather word
3 it a different way. I would rather state that there is
4 not undue risk to the health and safety of the public
5 without implementation of the Regulatory Guide 1.97,
6 Rev. 2 requirements for these four items.

7 JUDGE CARPENTER: The increment is not
8 important?

9 WITNESS ROSSI: My problem in the way you word
10 your question, in giving an answer, is that I might cut
11 a very small risk, extremely small risk, by a factor of
12 two, perhaps. But if it is a very, very small risk to
13 begin with, I don't know whether it is cutting it
14 substantially by cutting it a factor of two or not.

15 So I would rather deal with it from the other
16 direction and say that I believe that there is not --
17 there is reasonable assurance that there is no undue
18 risk to the health and safety of the public without
19 implementing Reg Guide 1.97, Rev. 2, with respect to
20 those four items.

21 JUDGE MORRIS: Is that in fact one of the
22 reasons that you consider one to two years a reasonable
23 time for implementation of SECY 82-111?

24 WITNESS ROSSI: It certainly is one of the
25 reasons that we consider that plants can be licensed

1 without full compliance with Reg Guide 1.97, Rev. 2, is
2 that we're talking about very low probability situations
3 where you would need that instrumentation. And even in
4 those cases I believe we are talking about additional
5 assurance and not a black or white situation as to the
6 need.

7 JUDGE MORRIS: Are there any other bases for
8 not considering one to two years as rather a long time
9 for implementation?

10 WITNESS ROSSI: You understand that when I say
11 one to two years I am talking about fully deciding what
12 should be done with respect to Reg Guide 1.97, Rev. 2,
13 on a plant, and it is our belief that in general the
14 plants basically are going to comply with it, just
15 because they have been reviewed in accordance with the
16 standard procedures that are currently in use for
17 plants.

18 So the one to two years is in my opinion a
19 small increment.

20 JUDGE BRENNER: You said going to comply with
21 it in the interim. I don't know what "it" is. You mean
22 Revision 2 of the Reg Guide?

23 WITNESS ROSSI: Revision 2 of the Reg Guide,
24 substantially in compliance with the Regulatory Guide
25 1.97, Rev. 2, just as a result of the standard

1 requirements that have been used in the current plants.

2 JUDGE BRENNER: Except that as I read LILCO's
3 testimony as to the four items that we still have,
4 they're not going to do those four things now.

5 WITNESS ROSSI: That is still open to
6 discussion between the Staff and LILCO.

7 JUDGE BRENNER: Then how can you assume that
8 they're going to go ahead and do it?

9 WITNESS ROSSI: I was referring, when I made
10 my statement before about being substantially in
11 compliance with Regulatory Guide 1.97, Rev. 2, I was
12 referring to the entire requirements of the Regulatory
13 Guide, not with respect to just these four items. In
14 other words, I was referring to the entire table of
15 parameters that are eventually to be addressed by the
16 Regulatory Guide.

17 JUDGE BRENNER: Let me say something briefly
18 that's more of a statement than a question. We are
19 going to have a different focus here between the Staff
20 witnesses and the Board on that point, if the Staff
21 witnesses are not careful. I understand you have
22 problems beyond Shoreham and beyond those four items in
23 terms of implementation of a SECY paper and the Reg
24 Guide, and some of your comments take that into account
25 in terms of your overall schedule and what you are

1 worried about, and an orderly process and so on.

2 In the particular context of this issue, the
3 Board is interested in, for now, these four items. So
4 you're going to have to be careful to make your comments
5 applicable to these four items. Now, you can talk about
6 the general to some extent, the extent you want to. But
7 you should then in addition at least talk about the
8 applicability of those reasons to these items.

9 I didn't jump in before. We may come back to
10 it at the end. But for example, when you talk about
11 being worried about having an orderly schedule
12 implementation, I assume that you had the whole range of
13 Reg Guide items in mind for the whole range of utilities
14 in fact. And we will come back to see how applicable
15 some of that reasoning is to just these four items when
16 the utility testimony is that they're not going to do
17 it.

18 Now, they have reasons in their view as to why
19 they don't have to.

20 WITNESS ROSSI: Well, let me say a few words
21 about the four items. I do apologize for not more
22 carefully distinguishing between when I was talking
23 about these four items and when I was talking about the
24 entire Regulatory Guide. But let me say a few words
25 about the four items here.

1 Basically, to summarize what LILCO is stating
2 here, they have reasons why they believe that they don't
3 have to fully comply with Regulatory Guide 1.97, Rev. 2,
4 on these four particular items. They haven't stated
5 this in here, but it may very well be that in some cases
6 there are technical problems with fully complying with
7 Regulatory Guide 1.97, Rev. 2. That could be the fact.
8 I don't know whether it is or isn't, but it might be.

9 We want to make sure that when we review any
10 exceptions to the Regulatory Guide that we consider
11 other instrumentation that might not only be adequate as
12 replacements for any item to which a licensee takes an
13 exception, but it may actually turn out that licensees
14 may come in and convince us that there may be better
15 instrumentation that they can use to accomplish the same
16 kind of thing that we're trying to with any particular
17 item, that there may be a better way to do it than what
18 is in Regulatory Guide 1.97, Rev. 2.

19 Now, when I talk about an orderly review
20 process, we don't want to make premature decisions on
21 any exceptions on these items until we have considered
22 those arguments very carefully. In considering those
23 kinds of arguments, we want to have the benefit of
24 discussions between all the possible involved branches
25 within the NRC and we would also anticipate possibly

1 using outside consultants to aid us in our decisions.

2 JUDGE CARPENTER: Dr. Rossi, let me be sure I
3 understand. You recall the Board struck the County
4 testimony which went beyond the specific items. And do
5 I understand what you just testified is Staff will not
6 be ready to look even at these four specific items for
7 Shoreham until the whole -- the many, many items to be
8 looked at, they are all being looked at as a package,
9 rather than item by item or group by group over a period
10 of time?

11 I am still trying to flesh out your feeling
12 about orderly procedure.

13 WITNESS ROSSI: Our intent right now -- and
14 again, I would like to point out that the Commission
15 only very recently took action on SECY 82-111. All of
16 the Staff considerations and actions to implement the
17 recommendations of SECY 82-111, you know, they have not
18 been completed. They have hardly even been started at
19 this point in time.

20 But the intent right now is to ask for an
21 entire package which addresses Regulatory Guide 1.97,
22 Rev. 2, on an appropriate schedule which will be
23 negotiated with the licensees or applicants, as the case
24 may be. Now, in doing that schedule I would anticipate
25 that if there are two or three items that a licensee

1 says he just simply is not ready to try to address as
2 yet, that we might get a package exclusive of two or
3 three items and have a separate schedule six or eight
4 months later for those two or three items if there is a
5 good reason why a licensee feels he has difficulty
6 including those in the entire package at the start.

7 But basically, I believe we are going to get
8 the entire package, and basically what I think we're
9 going to get is a table that indicates that for most --
10 and I'm talking about the entire Regulatory Guide now --
11 that for most of the items the licensees will fully
12 comply. There will be some items which I believe they
13 may have to upgrade particular instruments in order to
14 fully comply, but they will readily agree to do that.

15 And there are going to be some items, like
16 some of the ones that are in this contention, where the
17 licensees feel that they are being asked to do something
18 that is not appropriate or that they have alternative
19 ways or even better ways of doing the same thing, and
20 we're going to try to focus on those and spend our time
21 reviewing those.

22 (Pause.)

23 JUDGE BRENNER: We could either break now, Ms.
24 Letsche -- but if you want to follow up with a few
25 questions now, we will allow that.

1 MS. LETSCHE: I think it would be fine to
2 break now, Judge Brenner.

3 JUDGE BRENNER: Let's recess until 9:00
4 o'clock tomorrow morning.

5 (Whereupon, at 5:15 p.m., the hearing in the
6 above-entitled matter was recessed, to reconvene at 9:00
7 a.m. on Wednesday, August 25, 1982.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

ATOMIC SAFETY AND LICENSING BOARD

In the matter of: LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power
Station)

Date of Proceeding: August 24, 1982

Docket Number: 50-322-OL

Place of Proceeding: Hauppauge, New York

were held as herein appears, and that this is the original transcript
thereof for the file of the Commission.

Susan A. Harris

Official Reporter (Typed)

Susan A. Harris

(SIGNATURE OF REPORTER)