

NUCLEAR REGULATORY COMMISSION

ORIGINAL

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

DOCKET NO. 50-322-OL

DATE: October 15, 1982

PAGES: 11,883 - 12,021

AT: Bethesda, Maryland

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

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In the Matter of :  
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LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL  
(Shoreham Nuclear Power Station) :  
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Bethesda, Maryland  
Friday, October 15, 1982

The hearing in the above-entitled matter  
convened, pursuant to notice, at 8:35 a.m.

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

## 1 APPEARANCES:

2 On behalf of Applicant:  
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12 LAWRENCE COE LANPHER, Esq.  
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|                   |                              | <u>C O N T E N T S</u> |              |                 |                |              |
|-------------------|------------------------------|------------------------|--------------|-----------------|----------------|--------------|
| <u>WITNESSES:</u> |                              | <u>DIRECT</u>          | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>BOARD</u> |
| 3                 | T. Tracy Arrington,          |                        |              |                 |                |              |
| 4                 | Frederick B. Baldwin,        |                        |              |                 |                |              |
| 5                 | William M. Eifert,           |                        |              |                 |                |              |
| 6                 | T. Frank Gerecke,            |                        |              |                 |                |              |
| 7                 | Joseph M. Kelly,             |                        |              |                 |                |              |
| 8                 | Arthur R. Muller,            |                        |              |                 |                |              |
| 9                 | Donald G. Long and           |                        |              |                 |                |              |
| 10                | William J. Museler (Resumed) |                        |              |                 |                |              |
| 11                | By Mr. Lanpher               |                        | 11,924       |                 |                |              |
| 12                | By Judge Carpenter           |                        |              |                 |                | 11,965       |
| 13                | By Judge Brenner             |                        |              |                 |                | 11,971       |
| 14                | By Judge Carpenter           |                        |              |                 |                | 11,972       |

(Afternoon Session..11,976)

|    |                              |  |        |  |  |  |
|----|------------------------------|--|--------|--|--|--|
| 15 | T. Tracy Arrington,          |  |        |  |  |  |
| 16 | Frederick B. Baldwin,        |  |        |  |  |  |
| 17 | William . Eifert,            |  |        |  |  |  |
| 18 | T. Frank Gerecke,            |  |        |  |  |  |
| 19 | Joseph M. Kelly,             |  |        |  |  |  |
| 20 | Arthur R. Muller,            |  |        |  |  |  |
| 21 | Donald G. Long and           |  |        |  |  |  |
| 22 | William J. Museler (Resumed) |  |        |  |  |  |
| 23 | By Mr. Lanpher               |  | 11,978 |  |  |  |

|               |  | <u>E X H I B I T S</u> |                 |        |
|---------------|--|------------------------|-----------------|--------|
| <u>NUMBER</u> |  | <u>IDENTIFIED</u>      | <u>RECEIVED</u> |        |
| 19            | SC 65 - FA 226, finding 4.3; FA 425,     |                        |                 |        |
| 20            | finding 4.2; FA 444, finding 4.1; FA     |                        |                 |        |
| 21            | 470, finding 4.1; FA 470, finding 4.5;   |                        |                 |        |
| 22            | FQC Audit 21, finding D.13A; FQC 23,     |                        |                 |        |
| 23            | finding K-5; FA 803, finding 4.4; FA     |                        |                 |        |
| 24            | 1275, finding 4.1, FA 1225 -- or 1325,   |                        |                 |        |
| 25            | finding 3.2 and 4.1; FQC Audit 40,       |                        |                 |        |
| 26            | finding 1.3.A.5; and FA 740, finding 4.1 |                        |                 | 11,959 |
| 27            | SC 65 - FQC 20, finding D.5; FA 721,     |                        |                 |        |
| 28            | finding 4.1; FA 1086, finding 4.2; and   |                        |                 |        |
| 29            | FQC 34, finding N.2.C                    |                        |                 | 11,965 |

C O N T E N T SE X H I B I T S (Cont'd)

| <u>NUMBER</u>   | <u>IDENTIFIED</u> | <u>RECEIVED</u> |
|---|-------------------|-----------------|
| Suffolk County No. 67   | 11,977            |                 |
| SC 67 - FQC 23, finding F.3;<br>FQC 25, finding K.1; FQC 26,<br>finding K.3; FQC 27, finding<br>K.2; FQC 28, finding K.2; FQC<br>29, finding K.2, FQC 30,<br>finding K.2, FQC 31, finding K.2 |                   | 11,997          |
| Memorandum for files prepared by David L.<br>Prestemon, dated October 14, 1982.....   |                   | page 12,007     |
| RECESSES:   |                   |                 |
| Morning -   | 11,914            |                 |
| Noon -  | 11,975            |                 |

P R O C E E D I N G S

1  
2 JUDGE BRENNER: Good morning.

3 The first thing we wanted to do was to get  
4 some elucidation, I guess, in the first instance from  
5 the county with regard to its motion to supplement its  
6 quality assurance, quality control witness panel with  
7 Messrs. Inskeep and Bland, and the response by LILCO,  
8 and we think, and Mr. Ellis can later disagree with us,  
9 but for starting purposes, we think that LILCO's key  
10 argument, aside from timeliness, is found at the bottom  
11 of Page 6, going over to the top of Page 7 of its  
12 response, which includes the quote from a transcript and  
13 the explanation thereafter, particularly the first  
14 paragraph.

15 Mr. Lanpher?

16 MR. LANPHER: Judge Brenner, let me respond to  
17 both your comments then and your comments yesterday,  
18 where you indicated you wanted me to respond to the  
19 questions in Mr. Ellis's letter by providing some  
20 background just as a way of initial argument, which I  
21 think will respond to most of the questions in the  
22 letter at the same time, not necessarily in the sequence  
23 that they arise.

24 First, I did omit to provide some necessary  
25 detail, I think, in view of your comment, which I had

1 forgotten, on the record in late July that any further  
2 motion should specify why the supplementation was not  
3 provided earlier. Going to the chronology, Messrs.  
4 Inskip and Bland were retained as consultants by  
5 Suffolk County in late July. I am not sure of the exact  
6 date that they became contractors. It was around July  
7 28th, is my best recollection. They were not contacted  
8 prior to early July.

9           They were contacted at that time, after the  
10 Suffolk County legislature had passed an appropriation  
11 to follow up on earlier resolution of an independent  
12 inspection of the Shoreham facility. The earlier  
13 resolution was not supported by an appropriation to hire  
14 people until July, and it was in early July, and again I  
15 don't have the exact date, that the appropriation  
16 resolution was passed, and Messrs. Inskip and Bland  
17 were contacted in the hopes that the county would be  
18 able to effect some sort of an inspection of the  
19 Shoreham plant.

20           Their initial retention was not with the view  
21 of providing testimony in this proceeding, to answer one  
22 of the questions of Mr. Ellis. They have not supplied  
23 information nor worked on Mr. Hubbard's testimony prior  
24 to the time it was filed. While their initial purpose  
25 in being retained was not to supply testimony in this

1 proceeding, I don't have copies of their contracts with  
2 me, but I recall that their contracts did state, and I  
3 would characterize it in typically broad fashion, that  
4 of consulting contracts, that they might participate in  
5 the NRC proceedings, just so we didn't have to go back  
6 and amend contracts if that became the case.

7           Messrs. Inskip and Bland commenced  
8 substantive work relating to Shoreham in early August,  
9 and they had not been previously involved, and it took  
10 time for them to familiarize themselves with materials  
11 relevant to QA and QC matters at Shoreham. They were  
12 provided copies of the testimony that had been prefiled  
13 because we thought that would be a good way of giving an  
14 overview on issues, I&E reports, and audits, so that  
15 they could get a sense for the county's independent  
16 inspection effort.

17           We met again in late August to discuss their  
18 preliminary views on matters, and that was in the last  
19 week of August. I don't have the exact date. At that  
20 time, they voiced views that they shared many of the  
21 concerns that Mr. Hubbard had expressed in his  
22 testimony, though they had not focused on his testimony  
23 in the sense of adopting it or becoming a part of that  
24 testimony.

25           After that meeting, I asked the witnesses to



1 take a hard look at that testimony when they could.  
2 They were consultants at that point. And with a view to  
3 possibly becoming part of the witness panel along with  
4 Mr. Hubbard adopting that testimony. A final decision  
5 that they could adopt that testimony was not made until  
6 after the first session of the QA, QC hearings. It  
7 probably could have been made somewhat earlier in that  
8 time frame, but I was the one that had asked them to  
9 review it, and while I had initial indications from them  
10 that they could adopt it in mid-September, I frankly  
11 wanted to make sure that they could, and I was not able  
12 to query them in the depth that I thought was  
13 appropriate until after, I think, that second week of  
14 the QA hearing.

15           That is why the motion was not filed until  
16 after the first phase of the QA hearing, at which time I  
17 was satisfied that they could adopt it, and they so  
18 indicated.

19           Just to summarize, no initial contact was made  
20 prior to early July. Initially, the purpose was not to  
21 retain them as witnesses. It became apparent that they  
22 shared views. We asked them to look further into it,  
23 and as soon as we could ascertain that they really in  
24 fact did adopt Mr. Hubbard's testimony and agreed with  
25 it, not every word, we filed the motion to supplement.

1 I will say that in early September I had a  
2 phone call with Don Irwin of Hunton and Williams, in  
3 which I told him that we were considering and I hoped to  
4 have a decision prior to the start of the QA hearing.  
5 He asked who the people were, and I identified them by  
6 name. I did not provide any documentation. So, we were  
7 thinking of it in that time frame.

8 Unless you have questions on that, let me go  
9 through a number of other points.

10 JUDGE BRENNER: Well, let me comment, and you  
11 don't have to respond right away, because I think it  
12 will probably come up in what you already know you have  
13 to address, but it sounds like the exact reverse of the  
14 situation in which we normally had requested or  
15 encouraged or allowed additional witnesses. That is, in  
16 the situation you have described, Mr. Hubbard produced  
17 the testimony, and had knowledge sufficient to put it  
18 together, and then you had two other people in effect  
19 serve as peer reviewers, and do some additional work  
20 after, and then say they were able to agree with Mr.  
21 Hubbard, but they had to take their information through  
22 the course charted by Mr. Hubbard.

23 He is the detail man, in effect, as well as  
24 the final preparer of the testimony. It is the other  
25 way around in almost all of the instances where we ask

1 for additional witnesses. That is, these other  
2 additional witnesses did pretty much as we stated at the  
3 top in the transcript excerpt from 3,136, which LILCO  
4 cites at the top of Page 7 in its motion. That is, they  
5 helped supply a piece of the picture, although they were  
6 not included in the named panel, often, as matters  
7 expressly in the testimony and in all cases matters very  
8 close to being in the testimony, the one exception that  
9 I have in mind arguably is Mr. Thadani, which I think  
10 was a special case, due to the probing and suggestions,  
11 if not an out and out request to the staff to produce  
12 somebody who knew something about the staff's PRA work  
13 beyond the witnesses present.

14           So, I will state that that one maybe doesn't  
15 fit the pattern I described, but I think all of the  
16 others do.

17           MR. LANPHER: Judge Brenner, I think that is a  
18 fair distinction, and I am not trying to -- I made clear  
19 I am not suggesting that these gentlemen didn't work  
20 earlier on the QA materials that Mr. Hubbard supplied in  
21 his testimony.

22           That leads me to a further point. We had been  
23 seeking additional witnesses from an earlier time  
24 period. I advised the board back in March or April, I  
25 don't know exactly when it was, the difficulty which

1 intervenors in these proceedings have in locating  
2 persons that can supplement testimony. These people  
3 were not initially hired for supplementation purposes,  
4 as I described earlier. However, we have been looking  
5 diligently during that earlier time period to find  
6 people to assist Mr. Hubbard to answer one of the  
7 questions in Mr. Ellis's letter.

8           We think Mr. Hubbard is fully capable of  
9 sponsoring the entire testimony. At the same time, we  
10 are mindful that this is a big field, and that Mr.  
11 Hubbard would be assisted by having -- you used the  
12 words "peer review." I don't think that is exactly  
13 accurate, what these gentlemen did, but they have a  
14 community of views, people that he can discuss these  
15 matters with, and in addition, on the stand, consider  
16 questions.

17           So, we were diligently looking for people  
18 during this time period. We were not able to locate  
19 people earlier because of the difficulties I personally  
20 believe that the intervenors have in these proceedings  
21 finding the witnesses that will support their views,  
22 witnesses with fine qualifications.

23           Now, the distinction that was drawn in your  
24 statements of the transcript at Page 3, 136 and quoted at  
25 Pages 6 and 7 of the LILCO motion, as I indicated

1 earlier, I think it is a distinction that makes this a  
2 different situation. Our personal view, or the county's  
3 view is that that distinction should not bar the right  
4 to supplement in this instance. These gentlemen are not  
5 offering new testimony, as LILCO asserts. I put in a  
6 motion we filed of the things that they had been looking  
7 at. They were trying to file new testimony. We would  
8 have to obviously prefile that testimony with a motion.  
9 They are here to adopt Mr. Hubbard's testimony.

10           This is not a back door attempt to bring in  
11 new materials. At the same time, they are cognizant of  
12 things that have been discussed in this proceeding. I  
13 don't know if they will come up at a later time when  
14 questions are being posed. They also are cognizant, for  
15 instance, of the I&E reports that are in Appendix 1 or  
16 Appendix I to Contention 12. They have reviewed those  
17 materials. Mr. Bland has spent a good bit of time  
18 reviewing the CAT inspection which forms the basis for a  
19 substantial part of Mr. Hubbard's testimony.

20           So, I disagree rather strongly with the  
21 characterization of our attempt to supplement  
22 testimony. It is to expand the witness panel, to  
23 address the same points that are in the prefiled  
24 testimony, to address a number of other points in the  
25 LILCO motion. They are right that I posed during the

1 spring and have posed repeatedly the supplementation of  
2 witness panels. You have, in effect, established a law  
3 of the case, and given that fact, I am not sufficiently  
4 hopeful that this board will be reversed on those  
5 supplementations such that when I see what I believe is  
6 in my client's interest an opportunity to supplement  
7 that I should avail myself of that.

8           So, I don't think that this action is anything  
9 -- well, it is certainly inconsistent with the views  
10 that I had from the start. If we hadn't had any of  
11 those supplementations, I wouldn't have asked for this  
12 now. But given the board's history in this matter, I  
13 think it is easy to understand why I would try to avail  
14 myself of it, if I had what I considered the right  
15 witnesses.

16           JUDGE BRENNER: Don't spend much time on that.  
17 You are not estopped from asserting a view contrary to  
18 your earlier view after you lose on the earlier view.  
19 But the one point which you did address already is that  
20 at your behest, we did adopt what we consider that  
21 important limitation which we just discussed, and what I  
22 said at that transcript page was in response to your  
23 arguments, and that portion of your arguments we did  
24 agree with.

25           MR. LANPHER: Well, Judge Brenner, let me

1 address that in some more detail. I think, as you point  
2 out, Mr. Thadani was such an instance where views that  
3 were not previously in the testimony were subsequently  
4 allowed to come in. Similarly, when the board asked for  
5 subsequent testimony on water hammer and some other  
6 areas, I think, on SRV's, too, there were additional  
7 views that were brought to bear.

8 I did not have an opportunity to go back  
9 through the transcript to try to pull together each of  
10 those instances where in effect new materials were  
11 brought to the proceeding. Admittedly, those were at  
12 the board's behest, and the board feeling that they  
13 needed the additional information. We are not here  
14 trying to bring in new testimony, but I think it is  
15 important, and the reason I think there is a  
16 distinguishing factor is that the QA area is extremely  
17 broad and complex, and it is a massive task, I will be  
18 blunt, for Mr. Hubbard to handle it alone. He is an  
19 extraordinarily capable individual, but at the same time  
20 he will be assisted and assisted materially by having  
21 persons that we think are eminently qualified to support  
22 him in this effort, and support him on the stand.

23 JUDGE BRENNER: Maybe it would be helpful, if  
24 you can, and you don't have to, but if you can, and I  
25 don't mean line by line, but subsection by subsection,

1 if necessary, you tell me which portions of Mr.  
2 Hubbard's testimony Messrs. Inskip and Bland can supply  
3 the more detailed information for as a result of their  
4 efforts in the time frame you indicated.

5 MR. LANPHER: Judge Brenner, I am prepared to  
6 do that. If you look at the table of contents, I went  
7 through that last night with the same thought in mind.

8 JUDGE BRENNER: I am glad I asked that.  
9 What is the matter, Mr. Ellis?

10 MR. ELLIS: We erred in not bringing down  
11 that. We are doing that now. There is no need to  
12 delay.

13 JUDGE BRENNER: Okay. If you want, I could  
14 let Mr. Lanpher complete whatever remarks he had in  
15 mind, and then come back to going through the  
16 testimony.

17 MR. ELLIS: No, sir.

18 MR. LANPHER: Judge Brenner, looking at the  
19 table of contents, they have, both Messrs. Inskip and  
20 Bland have views on the importance of QA. That is the  
21 section of the testimony from Pages 14 to 16. They  
22 would not be particularly testifying relating to the  
23 earlier materials regarding the evolution of the NRC's  
24 QA requirements.

25 Looking at the next section, the CAT



1 inspection section, Pages 16 through 45, I think, as I  
2 indicated earlier, Mr. Bland has spent considerable time  
3 reviewing the CAT inspection, and those materials, and  
4 he would be prepared to address that and supplement Mr.  
5 Hubbard in that area.

6           Section 5 of Mr. Hubbard's testimony is that  
7 concerning the NRC staff review. Both Messrs. Inskeep  
8 and Bland would be prepared to address that, and they  
9 have particular views if inquired into regarding the  
10 Three Mile Island experience and what that indicates  
11 regarding the NRC Region 1 program. And if you look at  
12 Page 58 of the prefiled testimony, in fact, we footnoted  
13 an article by Mr. Inskeep about the Three Mile Island  
14 matter, and they worked on that Commission task force,  
15 which is quoted at Page 59, a portion of that. I  
16 believe, and don't hold me to this forever, that Mr.  
17 Bland in fact wrote those portions that are quoted there.

18           And so, in this NRC section, the particular  
19 area that they would be best able to supply views on is  
20 the President's Commission review, but there were on --  
21 the Kemeny Commission report gives some views relating  
22 to that.

23           Turning to Section 6 of the prefiled testimony  
24 about the operational QA program, both gentlemen have  
25 reviewed or maybe I should say are in the process of

1 reviewing LILCO's whole QA program, and have views  
2 relating to that.

3           Finally, Section 7, the need for a complete  
4 physical inspection, as I indicated in earlier comments,  
5 these gentlemen were initially retained by the county  
6 for the purpose of assisting in a physical inspection  
7 effort, and thus have views on what should be in a  
8 physical inspection and on the need for -- Mr. Bland  
9 particularly has views relating to the design oriented  
10 portions of a physical inspection program, while Mr.  
11 Inskeep more on the construction aspects.

12           Looking at the list of attachments, do you  
13 want me to address those also?

14           JUDGE BRENNER: Where is the list?

15           MR. LANPHER: That is at VI, the list of  
16 attachments.

17           JUDGE BRENNER: Yes, why don't you address  
18 that?

19           MR. LANPHER: Attachment 4 is the CAT  
20 inspection. I have addressed that already. Attachment  
21 5 is the summary of the I&E violations, and as I  
22 indicated, these are violations that form the basis for  
23 Contention 12. Both of them have reviewed those I&E  
24 reports, and the summaries thereof.

25           Attachment 6 is the staff report of the

1 President's Commission, and again, they both have very  
2 direct personal experience related to that. They have  
3 reviewed Attachments 7 and 8 and 9 and 10, and those  
4 relate to -- well, 7 relates to the utility assessment  
5 of LILCO. They both reviewed that, particularly from  
6 the whole QA point of view. And 8, 9, and 10 relate to  
7 the physical inspection aspect which I addressed  
8 earlier.

9           Judge Brenner, I do have one or two other  
10 points to make.

11           JUDGE BRENNER: Let me ask you one thing about  
12 one aspect of this subject. The main focus, I think, of  
13 the motions and the response has been whether to permit  
14 the panel to be supplemented in terms of what these  
15 gentlemen did, and it hasn't focused very much on  
16 qualifications. I don't recall anything from the papers  
17 as to what these gentlemen know in terms of the needs or  
18 requirements or scope of the physical inspection of a  
19 nuclear power plant as distinguished from their QA  
20 knowledge in the other areas which I do recall from the  
21 papers.

22           So, maybe I just don't recall something in  
23 there. Is there?

24           MR. LANPHER: Well, it's not laid out in  
25 detail, but their qualifications is one thing I didn't

1 know if you wanted me to address at this point. My  
2 initial view was that that would be something that  
3 certainly would be fair game to look into on cross  
4 examination.

5 JUDGE BRENNER: Well, no, because if you had  
6 had these witnesses identified earlier, it could have  
7 come up at the motion to strike stage, and possibly in  
8 the first instance, at the option of the mover.

9 MR. LAMPHER: In terms of qualifications, both  
10 gentlemen have, aside from -- let me address their  
11 general QA background -- both have had years of  
12 experience in the aerospace related industry, which I am  
13 informed is probably the closest parallel to the  
14 disciplined kind of QA requirements which are required  
15 in the nuclear power plant field since 1979.

16 They have both been -- they both were involved  
17 in the QA review portion of the Kemeny Commission  
18 efforts on QA, and that is where they get their direct  
19 knowledge related to QA in the nuclear field.

20 JUDGE BRENNER: That is an overall criticism,  
21 and I will give you my personal opinion now. What the  
22 Kemeny Commission did, while pertinent as a foundation  
23 for inquiry into what is being done here, is somewhat  
24 collateral, and we are not going to get into any great  
25 detail as to what it did, but in any event it was

1 focused in the area leading to the conclusion  
2 essentially that the staff QA program was too far  
3 removed in the way it approached its audit function, and  
4 not sufficiently involved to really know what was  
5 happening, and the lack of priorities and so on.

6           There was nothing in there that I recall  
7 involving these matters of physical inspections and  
8 verifications which has come up somewhat in 7-B, and is  
9 also pertinent to this inquiry.

10           MR. LANPHER: Let me address two points.  
11 First of all, I have admitted that in connection with  
12 the Kemeny Commission, the Kemeny Commission did focus  
13 on staff involvement to a great extent. The Kemeny  
14 Commission staff, particularly Messrs. Inskip and  
15 Bland, in order to assess the staff aspect, were  
16 required to go into great detail into the utility  
17 programs, so that a basis for comparison could be  
18 made.

19           In that effort, they were not doing so-called  
20 full physical inspection and design review, and so of  
21 personal knowledge I don't know if they had addressed  
22 that in prior experience or not.

23           JUDGE BRENNER: My comment was solely directed  
24 to your inclusion of Section VII of Mr. Hubbard's  
25 testimony. That is the section which they could add

1 something, and you haven't made that argument very well  
2 in that section. That is my only point.

3 MR. LANPHER: I think their work for the  
4 county since July is where they are developing their  
5 views on how that would be beneficial. They do not have  
6 prior experience in physical inspection of nuclear  
7 plants except for their work at TMI, where they assessed  
8 the QA program. They did not do a physical inspection  
9 and full design review at TMI.

10 JUDGE BRENNER: Why don't you complete your  
11 remarks on whatever else you wanted to address?

12 MR. LANPHER: There is only one other remark,  
13 and I guess it is something that I don't fully  
14 understand from LILCO's papers, and that is the sense  
15 that having waited until after two weeks of testimony,  
16 and I explained why that timing was -- this somehow  
17 prejudices LILCO. I don't understand that argument. I  
18 can't respond to it because I don't understand where the  
19 prejudice lies.

20 JUDGE BRENNER: Well, it was good you ended on  
21 that note, because I was going to turn to LILCO  
22 beginning with that note, except not limited just to the  
23 two-week period.

24 Aside from the fact that you don't think the  
25 county played by the rules we established in terms of

1 the time frame, and I am not denegrating that argument,  
2 it is just that we understand it, how are you prejudiced  
3 by adding witnesses now as distinguished from the time  
4 period when we were adding witnesses to other panels,  
5 and if we had added these witnesses to the QA-QC panel  
6 back then, I guess the time frame was roughly June and  
7 July at the latest?

8 MR. ELLIS: Yes, sir, we are prejudiced, and I  
9 think to explain why I need to put the whole thing into  
10 context. I think that LILCO is prejudiced in the QA  
11 matter first of all, and I say I am putting this in the  
12 context not directly related to the witnesses, but we  
13 have now spent two -- we will now spend three weeks  
14 talking about a massive mass of documents that were  
15 nowhere mentioned in the direct. I thought that was  
16 prejudicial, and that was prejudicial to us. I believe  
17 that the supplementation of this panel is prejudicial in  
18 much the same sense in that these witnessses are now  
19 going to be brought on to talk about the same mass of  
20 documents and other things as well.

21 You indicated that you understood the  
22 timeliness argument. I will come back to that, because  
23 I want to make a few comments about that, but I think  
24 that timeliness is intimately and inextricably bound up  
25 with prejudice. Had it all been done in a timely

1 manner, the way in which the board announced it ought to  
2 be done, it would have been diminished.

3 I think another aspect of the prejudice is  
4 this.

5 JUDGE BRENNER: Well, what would you have done  
6 differently if those gentlemen had been added to the  
7 panel in June or July, that is, after the testimony was  
8 filed, but back in June or July, if the request to add  
9 them had been made then?

10 MR. ELLIS: When you ask me what I would have  
11 done differently, it is very difficult for me to be able  
12 to tell you exactly what I would have done differently.  
13 I am sure I would have thought about taking their  
14 depositions, seeking to take their depositions. I am  
15 sure I would have done many things differently had I  
16 known that we were going to have this mass of testimony,  
17 documents that we have been going through, and if I had  
18 known that these witnesses were going to be offered, I  
19 think I would have done things differently, but I think  
20 that the board appreciates that it is hard for me to say  
21 that I would have done this and I would have done that.  
22 I don't know, but I'm sure that my perspective would  
23 have been different, and I would have considered many  
24 different things.

25 Another aspect of prejudice, Judge Brenner, is



1 the fact that these are not like our witnesses. These  
2 are not fact witnesses. They don't know facts in the  
3 sense that the supplemental witnesses of the LILCO  
4 panels knew facts. These are opinion witnesses, and Mr.  
5 Lanpher, I think, has emphasized that on several  
6 occasions in his remarks, when he keeps referring to  
7 their views, their views on things, and we are going to  
8 be hit with their views on things without having had  
9 adequate opportunity to explore those views, prepared to  
10 counter them.

11           It is in our view, in effect, rebuttal  
12 testimony, contrary to what Mr. Lanpher said in his  
13 remarks. It is, we believe, and I don't mean to say  
14 this, that it is deliberate or intentional or in any way  
15 suggesting that it is improper in some sort of -- some  
16 sort of other than procedural sense, but whatever label  
17 Mr. Lanpher chooses to put on it, it still seems to us  
18 to amount in the end to supplementing the direct and  
19 getting in through the back door, essentially rebuttal  
20 testimony of opinion witnesses whose opinions we have  
21 not had an opportunity to explore, and we have not  
22 prepared for.

23

24

25

1           JUDGE BRENNER: What if Mr. Lanpher had said  
2 that he had two witnesses he wants to put on in  
3 rebuttal, and he told us that now or a week from now,  
4 and these were the two witnesses? Would he have been  
5 able to do that?

6           MR. ELLIS: Well, rebuttal is only appropriate  
7 -- I would think that rebuttal is only appropriate after  
8 you have heard all of the direct and all of the  
9 cross-examination and you make a case for determining  
10 whether rebuttal is appropriate.

11           May I go on? I think if we go through all of  
12 the direct testimony and the cross-examination testimony  
13 and, as Mr. Lanpher said, they think that Mr. Hubbard's  
14 testimony, that he can support all of his own testimony,  
15 they don't need, in effect, in answer to my Question 5,  
16 they don't need it. It would be nice to have it, but  
17 they don't need it for his testimony.

18           In fact, what is needed, I think, is they want  
19 the opinions of these experts and they want these  
20 experts' views on all of the documents, the EAs and the  
21 FQCs and everything else.

22           JUDGE BRENNER: Let me suggest this. I think  
23 his focus was different than the LILCO audits, and if it  
24 is not, it would be because by the time we have finished  
25 with the County's cross-examination and examination by

1 the Staff and redirect, all directed through LILCO's  
2 witnesses, we are not going to want to hear any more  
3 about the audits because there will have been a full  
4 record. And we are certainly not going to want to hear  
5 the detail of these audits again rehashed through other  
6 witnesses. These are the direct witnesses who are  
7 getting those.

8           As I understand the focus that Mr. Lanpher had  
9 in mind for these witnesses, it would be that they, as a  
10 result of their study, have a reasonably detailed  
11 knowledge of the NRC inspections, including the CAT  
12 inspections report, and would respond in that area. And  
13 while Mr. Hubbard prepared the testimony and addressed  
14 it, there are a lot of facts in there and questions  
15 might come up that one person could get a detail on or a  
16 fact in the inspection on, and these witnesses would be  
17 there to assist in that regard.

18           That is the main section of the County's  
19 testimony. The County didn't address, as you stated,  
20 the LILCO audits, hardly at all, if at all, in its  
21 testimony in terms of any particular audits. Rather it  
22 is organized around the CAT report than Roman IV. That  
23 is the main portion, I think, that he is talking about  
24 needing his witnesses for, given what we have said about  
25 the physical inspection portion.

1 MR. ELLIS: Two points. If what they are  
2 needed for is solely to aid him, to aid Mr. Hubbard on  
3 those, I don't see why they can't perform that function  
4 just being here without testifying, just as some  
5 others. In other words, I really don't believe that is  
6 what they are for.

7 Number two, I also think -- I am trying to be  
8 as candid as I can -- that I am just as sure, just as  
9 sure as God made little green apples, that they are  
10 going to tie up, they are going to say, oh, that CAT  
11 inspection may look trivial but that is a breakdown  
12 because we reviewed 25 FQC audits and we reviewed 22  
13 LILCO audits, and this is what they all say.

14 JUDGE BRENNER: Well, maybe we shouldn't be  
15 deprived of that information.

16 Well, let me let you finish your argument, so  
17 I will stop Mr. Lanpher from interrupting you.

18 MR. ELLIS: I think in the best of all worlds  
19 there is an infinite amount of information on almost any  
20 subject, and I think we have to draw limitations and  
21 lines, and I think the Board in the procedures that it  
22 has outlined and in the process that it has pursued to  
23 date has really bent over backwards to admit information  
24 of this sort, and I think this crosses the line  
25 substantially.

1           Let me return, if I may, to the beginning.  
2 They were contacted in early July. They were hired for  
3 independent inspection. At the time, to my knowledge, I  
4 suppose the County was pursuing its independent  
5 inspection ideas. At the time, independent inspection,  
6 I think, was part of the QA contentions, and there were,  
7 to my knowledge, and I may be wrong about this, there  
8 were, to my knowledge, at that time no independent  
9 inspection proposals being pursued at that time.

10           It seems to me and also Mr. Lanpher says they  
11 were seeking witnesses in QA for a long time. I think  
12 it is important to point out they have been in the case  
13 for years. QA has been in people's minds for years,  
14 including independent inspection, and to say that they  
15 have been seeking witnesses for a long time for QA and  
16 then say that these were not sought for that purpose at  
17 that time seems to me to be a little inconsistent.

18           But in any event, I do think that the  
19 untimeliness of it is irrefutable, and I would also  
20 point out that there were some negotiations or  
21 discussions in connection with OQA, and it is my clear  
22 understanding that in those negotiations, though experts  
23 or consultants were never identified, the County  
24 declined our request to put the consultants or experts,  
25 whoever they might be, together.

1 MR. LANPHER: Do you want to explain why we  
2 declined? I mean that is an unfair statement.

3 JUDGE BRENNER: Mr. Lanpher, let him finish.  
4 And I don't off-hand think it is terribly essential to  
5 what we have to decide on this question, but I will  
6 reluctantly let you go one more round, given the fact  
7 that I have cut you off now, if you still want to in a  
8 few minutes.

9 MR. ELLIS: Judge, I don't personally know why  
10 or I would tell the Board right now. I think I have  
11 adequately covered the point of timeliness. I think I  
12 have also adequately covered the remarks of my views  
13 concerning the fact that I believe it is to supplement  
14 the direct, that is, to go beyond the direct that is  
15 already filed. I think I have already indicated that  
16 these are not fact witnesses but opinion witnesses.

17 On the issue of what expertise they have, as I  
18 have pointed out, they are opinion witnesses and not  
19 fact witnesses. These witnesses -- other than  
20 presumably the documents that they reviewed, and I don't  
21 know whether they have reviewed testimony, I assume they  
22 have reviewed transcripts -- don't have any direct  
23 knowledge of Shoreham or Shoreham QA matters, and on  
24 several occasions Mr. Lanpher talked about a right  
25 supplement.

1 I do not believe that that right is  
2 unconditional. I believe the right to supplement is a  
3 privilege is timely exercised. I think I have indicated  
4 the ways which I think it is prejudicial. It is going  
5 to draw out the proceeding, and we see now reason nor  
6 has the County offered any reason other than it would be  
7 nice to have these people support Mr. Hubbard. In that  
8 sense it would be nice in many instances to have many  
9 more support, to have it go on endlessly, but I don't  
10 think it is that simple because I do think that these  
11 witnesses will ultimately be supplementing or going  
12 beyond the direct testimony.

13 JUDGE BRENNER: Mr. Bordenick, do you have any  
14 views? I know you didn't interpose an objection on  
15 behalf of the Staff.

16 MR. BORDENICK: That is correct, Judge  
17 Brenner. We have no objection to the motion.

18 JUDGE BRENNER: It sounds like if added to the  
19 panel they would be talking quite a bit about the NRC  
20 Staff inspections, and that is one reason why I was  
21 wondering if you had any views, given the arguments we  
22 have heard.

23 MR. BORDENICK: I really don't have any views  
24 one way or the other. I think in the final analysis the  
25 Board is going to determine whether these gentlemen will

1 help the Board in advancing the inquiry.

2 JUDGE BRENNER: What about the prejudice to  
3 other parties given the situation?

4 MR. BORDENICK: Staff has not perceived any  
5 prejudice to its position.

6 JUDGE BRENNER: Mr. Lanpher, I don't think we  
7 need any more but I won't stop you if you insist.

8 MR. LANPHER: I am concerned that when the  
9 statements I have made are not being believed, I don't  
10 know what I have to do to say that the purpose is to  
11 adopt this testimony. I have heard an awful lot that  
12 these witnesses are being brought in to supplement, to  
13 go through all of the FA audits or other audits. They  
14 are to adopt Mr. Hubbard's testimony. They are not  
15 providing supplemental testimony. And I hope that is  
16 believed.

17 JUDGE BRENNER: I will state it so we don't  
18 have to go one more round. I don't think it is that you  
19 are being disbelieved. I think it is a matter of what  
20 your view of supplementation of the testimony would  
21 involve. I incorporated one of your arguments and put  
22 it to Mr. Ellis, and in his response was it may sound  
23 like that but invariably it is going to lead to these  
24 other things. I think that was the spirit in which he  
25 said what he said.



1           MR. LANPHER: The example he gave was what if  
2 these witnesses are asked a question about CAT and they  
3 say, yes, we think that is a breakdown, and what is  
4 more, we have seen it in these other things. Mr.  
5 Hubbard can make that comment or would be free to make  
6 that comment, so in that sense -- and the Board said  
7 that would be relevant. So for these witnesses, I don't  
8 know what questions they are going to be asked. They  
9 are not there to file new direct testimony; they are to  
10 support Mr. Hubbard's direct testimony. Depending upon  
11 what the questions are, they will answer and they will  
12 be instructed to answer as directly as possible, like  
13 all of the other witnesses.

14           [Board conferring.]

15           JUDGE BRENNER: We want to take more than not  
16 our usual but our sometimes two or three minutes. Why  
17 don't we take a 15-minute break now, and then we will  
18 run right through until 11:45 after we come back from  
19 the break.

20           MR. LANPHER: Judge Brenner, we had one other,  
21 I think, preliminary matter that I was supposed to get  
22 back to you on, and that was to review the attachments  
23 to the LILCO prefiled testimony to see if anything  
24 should be done on Attachment 10.

25           JUDGE BRENNER: Yes, but I wanted you to talk

1 to LILCO about it first.

2 MR. LANPHER: Let me do that during this break.

3 JUDGE BRENNER: We will resume at 9:45.

4 [Recess.]

5 JUDGE BRENNER: We are going to allow the  
6 witnesses to be added to the panel, with certain  
7 conditions and limitations which I will get into at the  
8 end. I want to start out by saying that we are not  
9 happy about being put in the position of deciding  
10 questions like this unnecessarily, and I mean it in this  
11 sense. The County, if it had exercised the requisite  
12 diligence which it should have, would have met our  
13 procedural requirements as to when and how to supplement  
14 the witness panel. This is very late without good  
15 cause.

16 Much of the timeliness description that Mr.  
17 Lanpher spoke about was more a function of the diligence  
18 of him and his law firm and did not go to the lack of  
19 diligence of his client, which has been involved in this  
20 situation long before May or April and should have had  
21 its witnesses available even beyond that time frame.  
22 These witnesses should have been identified in July or  
23 August at the latest. That would have made a material  
24 difference, given the posture of the proceeding now,  
25 being already heavily involved in these quality

1 assurance/quality control issues.

2           In addition, the situation is distinguishable  
3 from a situation where we encouraged or permitted LILCO  
4 and in some cases the Staff to add witnesses where those  
5 witnesses had knowledge of the facts relied on in the  
6 testimony in support of the conclusions. The exceptions  
7 were areas where we identified further information that  
8 we wanted. The Board's need to tell the parties what  
9 information it desires as the case unfolds cannot be  
10 limited and, in turn, cannot be used as a reason as to  
11 why parties who are heavily immersed in the case  
12 preparation from the beginning and long before the Board  
13 catches up, so to speak, with the knowledge of where the  
14 case is unfolding -- a party cannot use the Board's need  
15 as a reason as to why it should add witnesses, and that  
16 is distinguishable also for that reason.

17           In essence, LILCO's procedural arguments are  
18 correct and we could have denied the supplementation of  
19 these witnesses, of adding these witnesses to the panel,  
20 and distinguished it from the situations where we were  
21 much more liberal in an earlier time frame. In order to  
22 apply, however, some of the precepts argued by the  
23 parties -- that is, to avoid prejudice during the course  
24 of the examination on totally new information and also  
25 to limit it in the area where we think potentially the

1 use of the witnesses, as suggested by the County, comes  
2 closest to the use of witnesses we encouraged who were  
3 added by LILCO and the Staff -- we would limit these  
4 additional witnesses to testifying to the facts already  
5 relied on in the testimony in support of the  
6 conclusions.

7           In Mr. Hubbard's testimony, looking at the  
8 table of contents and attempting to recall, although not  
9 rereading, Mr. Hubbard's testimony, we think it likely  
10 that that would essentially be the area of the CAT  
11 inspections, and the idea is for Mr. Hubbard to have the  
12 help up there of people who also know the details of the  
13 inspections that he once knew and which he may not  
14 recall at the moment he is asked a question.

15           That would make the situation most similar to  
16 that of having the people for LILCO or the Staff who are  
17 more knowledgeable of the details of what was involved  
18 and can supplement the testimony of the previously named  
19 witness who is relying on those same details, either  
20 through conversations with the other witness or through  
21 an overall sense of what was done, but not necessarily  
22 at the moment the question is asked having the detailed  
23 facts at the forefront.

24           The counsel for the County is going to have to  
25 instruct these witnesses to be particularly -- and I am

1 searching for the right word -- particularly attentive  
2 to the question and to answer the question and not to  
3 begin expounding. That difficulty occurs in general  
4 sometimes with all witnesses, but given the limitations  
5 for which we are adding, allowing these witnesses to be  
6 added, we are just going to be more vigorous in order to  
7 avoid the problem of suddenly getting new information of  
8 a nature not being -- other than the detailed facts.

9           So in other words, we are not permitting them  
10 to come on to add their own assessments in addition to  
11 that already in the testimony by Mr. Hubbard based upon  
12 their own opinion and own review. They are to assist  
13 him with the detailed knowledge of the facts already  
14 relied on in the testimony. Now, that doesn't mean  
15 that each fact has to be expressly in the testimony but  
16 is in essence in there through statements that can be  
17 pointed to.

18           In addition, if LILCO wants to depose these  
19 witnesses, they are ordered to be made available very  
20 early next week for deposition. We have in mind that if  
21 they had been named earlier, voir dire of some sort  
22 could have taken place either through formal discovery  
23 of interrogatories or formal discovery or depositions.  
24 But the time is too late for interrogatories now. We  
25 will allow depositions if LILCO wants it, and they are

1 to be scheduled as early as possible next week.

2           When scheduled, the dispositions would not be  
3 limited to voir dire, but that would be one important  
4 purpose. That voir dire wasn't as big a problem when  
5 the LILCO panel was supplemented because it was obvious  
6 as to the connection of the utility personnel having  
7 worked on the plant for matters other than just the  
8 hearing and what their connection was and the nature of  
9 their fact contribution and job position and so on.

10           In making this decision, we are mindful that  
11 any witnesses that a party other than the Staff or the  
12 utility would come with would not be as directly  
13 involved with the facts in applying the same test  
14 because of the necessarily different posture and the  
15 fact that the Staff and LILCO have people working on  
16 this for matters other than hearing.

17           And when an intervenor comes into the hearing,  
18 usually their people are not as directly connected with  
19 what went on. So we apply the definition of a fact  
20 witness a little more broadly in the sense of somebody  
21 who has taken it upon themselves to become knowledgeable  
22 of facts pertinent to the information and the contention  
23 for purposes of the hearing when looking at an  
24 intervenor's fact witness because there is no way an  
25 intervenor's fact witness could have had the months and

1 even years of background facts unrelated to the hearing  
2 for the particular plant. However, even recognizing  
3 that difference, the County could have and should have  
4 identified these witnesses in the time frame I  
5 indicated, July or August, at the latest, and ideally  
6 even before then.

7           Also affecting our decision but more -- well,  
8 I won't weight the reasons, but also affecting our  
9 decision is the fact that we saw the potential for a  
10 justified request for rebuttal depending on what the  
11 examination -- after the conclusion of all of the  
12 witnesses, and the Staff witnesses would have  
13 been last -- had disclosed. And with that potential, we  
14 would rather get the information all in one piece at the  
15 same time the facts are being inquired into, although we  
16 emphasize that is just a potential. We would have the  
17 discretion to see whether more information is needed at  
18 that point, and maybe then we would have ruled against  
19 rebuttal.

20           All right.

21           MR. LANPHER: Judge Brenner, I don't know if  
22 LILCO is going to want a deposition. Maybe I should  
23 hold this question until they make that decision. But I  
24 would like to know what the scope is. For instance,  
25 would it be to essentially go through all of Mr.

1 Hubbard's testimony and do the same thing that would be  
2 done in cross-examination?

3           JUDGE BRENNER: Yes, if they want to. They  
4 may not want to because in preparing their cross before  
5 and in thinking about the case, they could not have had  
6 these witnesses in mind, and I agree with Mr. Ellis that  
7 he cannot state now what he would have done differently,  
8 but I do not have to tell you as a lawyer preparing for  
9 trial that you have a different perspective with  
10 different people in mind even though the testimony is  
11 the same. Your whole approach mind be different. And  
12 he doesn't have to have on-the-job training on the  
13 record in front of us as to how that approach might be  
14 affected by these witnesses, and the distinction here is  
15 unlike the utility witnesses. With the utility  
16 witnesses, it was immediately apparent, to us, anyway,  
17 what their detailed connection with what was done and  
18 what was testified to was, and you don't have that with  
19 your witnesses.

20           We understand why it is unlikely that you  
21 could ever have that, but nevertheless, this adjustment  
22 is necessary, and the main reason for it is a balance to  
23 your very late time frame. He may decide he doesn't  
24 have to impose them given our limitations on their use.  
25 He may not have confidence that the limitations on their



1 use will be able to applied perfectly in every  
2 instance. I don't know. There are a lot of things he  
3 will have to consider. It would be good if LILCO could  
4 tell the County by the end of the day today whether they  
5 want to depose them, but we won't require it. We will  
6 allow them until the end of the day Saturday to inform  
7 counsel for the County as to whether they want to depose  
8 those witnesses.

9 Are the witnesses here?

10 MR. LANPHER: One witness is in Missouri and  
11 one is in Texas.

12 JUDGE BRENNER: Okay. So it doesn't matter  
13 between making that decision today or tomorrow, and we  
14 will give them a little more time, until the end of the  
15 day tomorrow.

16 MR. LANPHER: I have no idea what their  
17 schedule is next week.

18 JUDGE BRENNER: Well, they are going to have  
19 to change their schedule if they are not available and  
20 they want to depose them, if LILCO wants to depose them.  
21 That is a precondition to their being added to the  
22 panel. Anything beyond the beginning of next week is  
23 going to be prejudicial to too great an extent to  
24 LILCO. The deposition might help the efficiency of the  
25 case, too, and we would appreciate that if it does, and

1 I think you would also, meaning you, Mr. Lanpher.

2           Let me add I don't usually have to get into  
3 these details with the parties in this case, and I  
4 appreciate that. I know you can work out things such as  
5 logistics. If LILCO insists, however, I am going to get  
6 involved in logistics here because of the very late time  
7 frame and the fact that they are working on the case. I  
8 didn't realize the witnesses were in two different  
9 places. Witnesses should be made available if LILCO  
10 wishes at a location convenient to LILCO and both  
11 witnesses in one location.

12           Now, if you have to adjust and have the  
13 deposition a little later in the week than you would  
14 prefer in order to get them here as opposed to going out  
15 where they are, that is a decision that competent  
16 counsel can make. I am not going to get involved in the  
17 days. You can get involved in that.

18           Okay, we are prepared to continue with the  
19 cross-examination. Did you want to come back with  
20 another matter, or is that still under discussion?

21           MR. LANPHER: We have started discussions and  
22 LILCO wanted to have through the lunch period to get  
23 back to us.

24           JUDGE BRENNER: Why don't you just tell me  
25 which appendices you had in mind, but no argument or

1 anything. Just the numbers.

2 MR. LANPHER: The question that I posed to  
3 LILCO was, aside from Appendix, or Attachment 10, which  
4 we have talked about, there are other attachments which  
5 appear to be only examples, and the vast majority appear  
6 to be only examples. However, if it is LILCO's  
7 intention to cull out, for instance, a particular  
8 procedure, particular portions which are not cited in  
9 the prefiled testimony but that LILCO believes will be  
10 materially useful in their final arguments on the  
11 contention and that aren't cited in the prefiled  
12 testimony, then we would like those areas of procedures  
13 or manuals or audits to be so highlighted.

14 Now, in the area of audits, I raised that with  
15 LILCO. I don't think, subject to their review, all of  
16 the audit-type materials, except those which I may have  
17 cross-examined on, I believe are only as examples, but  
18 again, they are going to check that. My concern is  
19 things that aren't -- the portions of documents that  
20 aren't specifically identified in the testimony later  
21 being used for findings because they have some important  
22 -- as opposed to saying we do have a program, in  
23 Attachment 4, 5, 11 and 16 are our manuals.

24 JUDGE BRENNER: I understand. It is similar to  
25 what we had in mind with regard to parts of the FSAR and

1 so on. So I will leave it to the parties. It strikes  
2 me that -- all right. Well, I won't comment on it. I  
3 will leave it with the parties for now.

4 Whereupon,

5 T. TRACY APRINGTON,  
6 FREDERICK B. BALDWIN,  
7 WILLIAM M. EIFERT,  
8 T. FRANK GERECKE,  
9 JOSEPH M. KELLY,  
10 ARTHUR R. MULLER,  
11 DONALD G. LONG and  
12 WILLIAM J. MUSELER,

13 the witnesses on the stand at the time of recess, having  
14 been previously duly sworn, resumed the stand and were  
15 examined and testified further as follows:

16 CONTINUED CROSS EXAMINATION ON BEHALF OF SUFFOLK COUNTY

17 BY MR. LANPHER:

18 Q Gentlemen, yesterday we finished the  
19 discussion of Storage Group 4. I would like to turn  
20 your attention to what the County has called Storage  
21 Group 5, and it is entitled "Housekeeping  
22 Deficiencies."

23 Am I correct that LILCO procedures required  
24 that storage areas and other areas of the plant be kept  
25 clean and free from debris?

1 [Panel of witnesses conferring.]

2 Q Gentlemen, I guess my question was multiple.  
3 Let me ask it in two parts. Maybe it is easier.

4 Am I correct that LILCO has procedures and  
5 requirements to keep storage areas clean and free from  
6 debris?

7 A (WITNESS KELLY) Yes, that is correct.

8 Q And is one of the procedures implementing  
9 those requirements or constituting that requirement  
10 QC 17.1?

11 A (WITNESS ARRINGTON) That is one of the  
12 implementing procedures, yes.

13 Q Gentlemen, does LILCO also have procedures  
14 that require that other areas of the plant not solely  
15 designated as storage areas but areas where items may be  
16 stored in place or work areas, in fact, that these areas  
17 also to the extent possible be kept clean and free from  
18 debris?

19 A (WITNESS MUSELER) Sir, the entire  
20 construction site is subject to housekeeping  
21 procedures. Those procedures are to minimize the  
22 accumulation of material not directly related to  
23 building the plant. The procedures relate to  
24 housekeeping practices. It was designed to prevent an  
25 unsuitable accumulation of items in various areas.

1 Q And these procedures that implement those  
2 goals you were just describing, Mr. Museler, are a part  
3 of LILCO's Appendix B program, Part 50 Appendix B  
4 program?

5 A (WITNESS MUSELER) To the extent that those  
6 procedures cover portions of the plant and portions of  
7 the storage areas relating to safety-related equipment,  
8 they would be part of our implementation of Appendix B  
9 requirements. The program is obviously applied across  
10 the board. At least there are not two programs for  
11 safety-related and non-safety-related equipment. So  
12 that the programs that are in place for housekeeping on  
13 the job site, to the extent that they do affect  
14 safety-related equipment, are part of our commitment to  
15 Appendix B.

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1 Q Gentlemen, turning your attention to Field  
2 Audit 470, Finding (4.1), do you agree that this is an  
3 example or an instance where there were accumulations of  
4 trash in a level B storage area in violation of QC 17.1  
5 and ANSI standard N-45.2.2?

6 (Panel of witnesses conferring.)

7 A (WITNESS KELLY) We do not consider that a  
8 violation of the ANSI standard. What it is is a  
9 situation. The goal of the ANSI standard is to maintain  
10 the equipment in a suitable condition. The accumulation  
11 of trash in no way affected any of the items that were  
12 discussed. Otherwise, it would have been so noted in  
13 the order.

14 Q Mr. Kelly, from your answer should I infer  
15 that you agree with the rest of my question that the  
16 facts as stated in the audit or correct, or as I've  
17 summarized them that this did violate QC 17.1, this  
18 situation?

19 (Panel of witnesses conferring.)

20 A (WITNESS KELLY) The fact that trash was there  
21 was correct.

22 Q The auditor found that it also violated QC  
23 17.1, correct?

24 A (WITNESS KELLY) He indicated it was contrary  
25 to that, but I do not have that procedure here to verify

1 that.

2 Q Am I correct that QC 17.1 implements the  
3 requirements of the ANSI standards or the of the ANSI  
4 standard? I mean I believe that was the testimony  
5 yesterday.

6 A (WITNESS BALDWIN) It complies with the ANSI  
7 standard.

8 Q So it is your testimony that even though --  
9 well, the auditor found that it violated the ANSI  
10 standard also, correct?

11 (Panel of witnesses conferring.)

12 A (WITNESS KELLY) He indicated that he felt it  
13 was contrary to the ANSI standard. However, as I said  
14 before, the purpose of it is to assure that the  
15 equipment is maintained in a suitable condition, and  
16 there was no indication that this had any detrimental  
17 effect to the equipment whatsoever.

18 Q Mr. Kelly, ANSI standard 6.2.2, which I will  
19 note is somewhat different than the one cited -- not  
20 standard but section 6.2.2 of the referenced ANSI  
21 standard provides in the first sentence "Cleanliness and  
22 good housekeeping practices shall be enforced at all  
23 times in the storage area," correct?

24 A (WITNESS KELLY) Could you give me a moment to  
25 look at it?



1 (Panel of witnesses conferring.)

2 A (WITNESS KELLY) That does state that  
3 cleanliness and good housekeeping practices shall be  
4 enforced at all times, and we do enforce them at all  
5 times.

6 Q Where there is an accumulation of trash in a  
7 storage area do you not agree that that violates  
8 cleanliness and good housekeeping practices?

9 A (WITNESS MUSELER) Mr. Lanpher, if someone  
10 opens a box, a cardboard box, and doesn't immediately  
11 put it in the appropriate garbage can, I don't believe  
12 that violates the intent of either the ANSI standard or  
13 the QC instructions we have referred to here. In the  
14 particular instance we were discussing we were able to  
15 find out what the source of the trash in this particular  
16 instance was, although that is difficult to do in a lot  
17 of them.

18 But in this particular case what was occurring  
19 is that an extension was being put on the building over  
20 the time period involved here, and the construction  
21 activities, as you might expect, were resulting in an  
22 accumulation of some materials that were being used in  
23 the construction. We don't know exactly what they  
24 were. I could speculate that they may have been boxes  
25 that contained insulation or items such as that perhaps,

1 pieces of lumber; but that is what was going on at this  
2 point in time. You can't build anything and have  
3 somebody standing there to pick up every single piece of  
4 the building process that winds up on the floor.

5           There are instances where the accumulation of  
6 foreign material in storage areas in our judgment was  
7 excessive. I don't believe those were numerous, but  
8 there were instances of that. This is another instance,  
9 just as we discussed in the end cap area where part of  
10 the normal construction process of building the plant  
11 will ensure that you will have these kinds of situations  
12 throughout the building process of the plant. It  
13 doesn't indicate that it is a violation of something to  
14 protect the equipment. It indicates that these are the  
15 kinds of things one expects when one is building a power  
16 plant.

17           And in this particular instance, in my  
18 judgment, there was no alternative but for the process  
19 to proceed the way it was proceeding. We have regular  
20 inspections of these areas. They are cleaned up  
21 regularly. And I think that is what constitutes  
22 adherence to the standard; that we do have crews  
23 regularly assigned to keep the areas clean, to clean it  
24 up, but we will not say that every time somebody drops a  
25 cup on the floor or leaves an unopened cardboard box

1 some place it gets picked up right away. We are guilty  
2 of that, but we certainly believe we meet the ANSI  
3 standard, and we meet our procedures.

4 Q Mr. Museler, the auditor found that this was a  
5 repeat violation from Field Audit 425, Finding (4.2),  
6 correct? And I refer you to the last sentence of  
7 Finding (4.1) of Field Audit 470.

8 (Panel of witnesses conferring.)

9 A (WITNESS KELLY) What that audit finding  
10 indicates is that that same area had some trash in it  
11 again. It had been cleaned up, and there was some trash  
12 back in that area that would have been picked up by the  
13 normal inspections that occur as Mr. Museler described.

14 Q Mr. Kelly, referring back again to Section  
15 6.2.2 of the ANSI standard, the second sentence of that  
16 section, as I correct it provides that the storage area  
17 shall be cleaned as required to avoid the accumulation  
18 of trash, discarded packaging materials and other  
19 detrimental soil?

20 A (WITNESS KELLY) Yes. I think the ANSI  
21 standard quite clearly reinforces the fact of what Mr.  
22 Museler said. It says it shall be cleaned. That means  
23 that you're going to have discarded package materials  
24 and trash lying around. And we do on a periodic basis  
25 go around and clean those up just as the ANSI standard

1 specifies.

2 Q You don't interpret the ANSI standard as  
3 prohibiting you from having accumulations?

4 A (WITNESS KELLY) It says you shall clean  
5 them. The only way you can clean a situation is to have  
6 discarded packages and other detrimental stuff around.  
7 It tells you you have to clean it. In this case that  
8 was done.

9 A (WITNESS MUSELER) Mr. Lanpher, there is  
10 obviously a level of what is considered an acceptable,  
11 if we have to talk about it, an acceptable accumulation  
12 of trash. Obviously, we are not saying that someone  
13 could flood an area with garbage and that that would be  
14 acceptable. And certainly when it comes to trash that  
15 actually was placed on equipment and might have had some  
16 effect on it. And we have noted through our counsel to  
17 you that there are a few of those, and that constitutes  
18 a different category in our estimation. But certainly  
19 those are differentiated from areas that have what a  
20 normal human being using his common sense would identify  
21 as something that ought to be cleaned up but was not  
22 really a problem. And that is the differentiation we  
23 are trying to draw here.

24 We are not saying that it is acceptable to  
25 accumulate trash in an area. We are saying that it is

1 acceptable for a normal accumulation of construction  
2 material or material that comes out of the construction  
3 process to be present at any one point in time. And  
4 without looking at the material and looking at the  
5 situation involved, it is very, very difficult to draw  
6 that line; but that is what this discussion is about.

7           We are not saying that the ANSI standard  
8 doesn't require you not to allow accumulations of trash  
9 in an area. What we are saying is if there is a paper  
10 cup on the floor -- and some of these are paper cups --  
11 if there is a paper cup on the floor, that is not a  
12 violation of the ANSI standard.

13       Q     Mr. Museler, the auditor in this case found  
14 that the accumulation was sufficient to cite the  
15 organization for a violation, correct?

16       A     (WITNESS KELLY) Regardless of the quantity,  
17 our auditors would have cited that; so what we're  
18 saying, a very small quantity would have been cited.

19       Q     Do you know what the quantity was in this  
20 specific instance?

21       A     (WITNESS KELLY) No, I do not.

22       Q     Gentlemen, turning your attention to Field  
23 Audit --

24           JUDGE MORRIS: Excuse me, Mr. Lanpher.

25           Mr. Kelly, you seem to imply that there was a

1 difference in the trash between that found in FA 425 and  
2 this one, FA 427. Do you know that?

3 WITNESS KELLY: Sir, on note 7 -- well, let me  
4 read the note on Audit 470 that relates to that: "Trash  
5 accumulation was still noted despite evidence of cleanup  
6 activity. No evidence of food consumption was seen."  
7 So it indicated that there had been cleanup activity.  
8 There was additional trash, and the food materials that  
9 were discussed had been removed.

10 JUDGE MORRIS: Thank you.

11 (Counsel for Suffolk County conferring.)

12 BY MR. LANPHER: (Resuming)

13 Q Gentlemen, now maybe we can turn to Field  
14 Audit 740 and audit Finding (4.1). And I would like to  
15 focus your attention particularly on the last portion of  
16 the first paragraph. Am I correct this was an instance  
17 where several lengths of conduit were bent due to debris  
18 and ductwork being piled on top of the air conditioning  
19 unit?

20 A (WITNESS MUSELER) Yes, sir.

21 Q Mr. Museler, is this an example of a situation  
22 you alluded to in an earlier answer where it gives rise  
23 to a different concern where actual damage is indicated?

24 A (WITNESS MUSELER) Yes, sir.

25 Q But this is another instance in a broader

1 category where housekeeping or storage requirements were  
2 not being fully satisfied.

3 A (WITNESS MUSELER) Sir, I think this is a  
4 narrower category with very few examples in it of  
5 housekeeping and accumulation of foreign material where  
6 there was an effect on a piece of equipment.

7 Q And this does violate your procedures?

8 A (WITNESS MUSELER) Yes, sir, it does.

9 Q Gentlemen, turning your attention to Field  
10 Audit 1275, finding (4.1), please, in this instance  
11 we're dealing with a pipe storage area, I believe. The  
12 auditor found that there was excessive litter and debris  
13 in that area, correct?

14 (Panel of witnesses conferring.)

15 Q This is Field Audit 1275, Finding (4.1).

16 A (WITNESS KELLY) This audit finding relates to  
17 what was in the auditor's mind, excessive amount of  
18 litter and debris in outdoor storage area. But again,  
19 no indication of any damage to the items as a result of  
20 that as indicated in the audit.

21 Q And the auditor also found that it violated  
22 paragraph 5.2.2 of the ANSI standard we have been  
23 discussing.

24 (Panel of witnesses conferring.)

25 A (WITNESS KELLY) That was the auditor's

1 opinion. I think we went into that particular paragraph  
2 of the ANSI standard and what is the intent of that,  
3 requiring that the areas be cleaned up on a periodic  
4 basis.

5       A       (WITNESS MUSELER) Mr. Lanpher, what was  
6 occurring in this instance is that debris, actually  
7 mostly paper and cardboard, was blowing into the area  
8 under a fence that surrounded the area. So what we were  
9 dealing with here was generally pieces of paper or cups  
10 or items of that nature blowing into the area on an  
11 ongoing basis when the wind was blowing. And one of the  
12 things that was done in order to frankly make  
13 everybody's life easier, our own and the auditor's, was  
14 to build a wooden floor in this particular external area  
15 which, among other things, sealed the line along the  
16 fence line and prevented the paper from blowing in.

17               But this is an instance very much like the  
18 first one we discussed where this is exactly what goes  
19 on in the normal course of building the plant.

20       Q       Mr. Museler --

21               MR. ELLIS: Excuse me, Mr. Lanpher. I think  
22 your earlier question -- and I wasn't quick enough.

23               Judge Brenner, the earlier question I think  
24 Mr. Lanpher indicated that the auditor had found a  
25 violation of the ANSI standard of paragraph 6.2.2. Was



1 there language in there that you were referring to  
2 relating to violation of the ANSI standard 6.2.2?

3 MR. LANPHER: Judge Brenner, this isn't --

4 JUDGE BRENNER: Wait a minute. I can't tell  
5 from the tone of your voice, Mr. Ellis, whether this is  
6 a legitimate inquiry or whether it's your way of raising  
7 an objection. I am reading Finding (4.1) just as I  
8 assume you are, and the ANSI standard is in there, and  
9 there are some words preceding it. Mr. Lanpher asked  
10 the question he asked, and the witness also had the  
11 benefit of the finding in front of him when he answered  
12 it.

13 MR. ELLIS: Well, I think I --

14 JUDGE BRENNER: Do you object because the word  
15 "violation" is not expressly in there?

16 MR. ELLIS: That's right. Then I think I am  
17 tardy with my objection. I think it was a  
18 mischaracterization of what the auditor found.

19 JUDGE BRENNER: Well, the question was -- I  
20 don't recall the exact language of the question. The  
21 spirit of the question was did the auditor also find a  
22 violation of ANSI standard 6.2.2 or Section 6.2.2, and  
23 we got the answer. The question was not do the words of  
24 the audit state expressly that this was a violation.  
25 And I think Mr. Lanpher asked his question for the

1 reason partially that you indicate, and we have already  
2 given our opinion on the difficulty of coping with cold  
3 words that were not written with this audience in mind.

4           Let's ask the witness again just to make  
5 sure. I don't want to penalize Mr. Ellis for just being  
6 a minute or two late or in his difficulty to keep up as  
7 we are running through the findings. I think if you had  
8 made the objection timely, I would say the witness can  
9 answer it; but as a quality assurance check, so to  
10 speak, let's make sure that the form of Mr. Lanpher's  
11 questions -- and there have been many along those same  
12 lines, and I think they are proper questions -- let's  
13 make sure that form is not confusing the witness. So  
14 that ought to alleviate you from making future similar  
15 objections now that we have keyed the witnesses in to  
16 what they should think about.

17           MR. ELLIS: Thank you, Judge.

18           JUDGE BRENNER: So if that was probably your  
19 purpose, you have achieved that.

20           All right. I don't remember who answered the  
21 question. In Field Audit 1275, Finding (4.1), the  
22 question is does that indicate to you that the auditor  
23 believed the situation was a violation of Section 6.2.2  
24 of the ANSI standard?

25           WITNESS MUSELER: The finding, the audit

1 finding is that the auditor noted what he considered to  
2 be excessive litter and debris. The reference to the  
3 ANSI requirements indicate that the ANSI requirement  
4 being quoted was the requirement for cleaning of the  
5 storage areas. The auditor did not know that the areas  
6 were not being cleaned. He noted that there was, in his  
7 judgment, an excessive accumulation of material in that  
8 area which should be cleaned. But as a matter of fact  
9 in our review of these audit findings I don't believe we  
10 have seen any instances where the auditors have  
11 established or even had a finding that the areas were  
12 not being cleaned. They thought that the accumulation  
13 was, in their judgment, excessive in many instances.

14           The auditor noted that there was excessive  
15 litter and debris. I certainly would interpret it that  
16 the ANSI standard was being met, the areas were being  
17 cleaned. Although he doesn't specifically say that, he  
18 notes there is excessive litter and debris.

19           JUDGE BRENNER: Well, I should ask Mr. Kelly,  
20 I guess, since he approved the audit -- I could go  
21 through the exercise you just went through, too, Mr.  
22 Museler with the language of the audit, and that was in  
23 part Mr. Ellis' point perhaps.

24           Mr. Kelly, does this way of writing things  
25 mean to you that the auditor thought that the ANSI

1 standard was not being met with respect to this  
2 instance? It's not just the requirement of cleaning the  
3 storage areas. Mr. Museler left out the portion "to  
4 prevent accumulations of trash." And the auditor found  
5 that there was excessive litter and debris. So putting  
6 those two together, what do you think?

7           WITNESS KELLY: I would say what we have here  
8 is a situation where it is referenced a procedure  
9 requires that you not have trash, free trash. The  
10 auditor was emphasizing the requirement for these areas  
11 to be cleaned, and that is why the reference to the ANSI  
12 standard. And there is a periodic cleaning program, but  
13 that was -- that is the reason that is there  
14 specifically against the Courter procedure as referenced  
15 in that finding.

16           JUDGE BRENNER: I read this to say that the  
17 auditor thought this was excessive and should not have  
18 reached the point that it had reached when he found the  
19 situation. Is that a wrong interpretation?

20           WITNESS KELLY: Yes. I believe that would  
21 have been the auditor's opinion, since he used the word  
22 "excessive."

23           BY MR. LANPHER: (Resuming)

24           Q     Mr. Kelly, the auditor noted that this same  
25 basic finding had been identified in an earlier field

1 audit, namely 1237, performed in January 1981, I guess  
2 three months earlier, correct?

3 A (WITNESS KELLY) I have not reviewed that  
4 referenced field audit. It simply states that there was  
5 a condition in January of '81 I presume relating to  
6 litter and debris, and that does not imply that that  
7 litter and debris was not cleaned up. It is stating  
8 that on this particular occasion when he went back to  
9 that storage area he found litter and debris.

10 Q Would it be fair to state then that this was a  
11 problem which had recurred?

12 A (WITNESS KELLY) I don't know if I would  
13 categorize it as a problem that recurred. I think, as I  
14 said before, with the packing and unpacking of items you  
15 are going to have what we will call debris created. In  
16 this condition you're going to have wind -- we do have  
17 wind on Long Island -- blowing paper around. And I  
18 don't know how you stop the wind from blowing paper  
19 around.

20 Q Mr. Kelly, the auditor found that the same  
21 deficiency has occurred at least twice, correct?

22 (Panel of witnesses conferring.)

23 A (WITNESS KELLY) I noticed two cases where the  
24 auditor said in that particular audit, in 1237, he must  
25 have indicated that he found some sort of litter and

1 debris. We have in this occasion during this audit 1275  
2 a situation where he is now identifying that the time he  
3 went back there litter and debris was there. It in no  
4 way implies that it was the same litter or debris.

5 Q Mr. Kelly, turning your attention to Field  
6 Audit 1325, Findings (3.2) and (4.1), this again  
7 involves Courter Company and the same storage area. And  
8 does it involve the same storage area as addressed in  
9 Field Audit 1275?

10 (Panel of witnesses conferring.)

11 Q Mr. Kelly, just two questions. It's Courter  
12 Company, and it's the same storage area?

13 (Panel of witnesses conferring.)

14 A (WITNESS KELLY) I need some time to review  
15 this. Other than the fact that it is the same storage  
16 area, I can't make any other categorizations until I  
17 have time to look at it.

18 Q That was all my question was so far. It is  
19 the same storage area, and it involves Courter Company,  
20 correct?

21 A (WITNESS MUSELER) Understood, Mr. Lanpher.  
22 Unfortunately, our numbers, our storage areas sometimes  
23 change and retain the same number, and it will take us  
24 just a moment to verify whether it was physically the  
25 same area.

1 Q Fine. Take whatever time you need.

2 (Panel of witnesses conferring.)

3 MR. LANPHER: Judge Brenner, there is some  
4 conversation going on between the witnesses and someone  
5 in the audience. I don't know what is happening  
6 personally.

7 JUDGE BRENNER: All right. I was going to say  
8 something before but I thought you knew what the  
9 situation was better than me, and since you didn't see  
10 fit to object, I figured I would let you run your own  
11 case for a few minutes at least.

12 MR. LANPHER: Well, a piece of paper was just  
13 handed up this time.

14 JUDGE BRENNER: What's going on, Mr. Ellis?

15 MR. ELLIS: I didn't see it.

16 JUDGE BRENNER: Well, what let me tell you  
17 what I saw for the record. There was another gentleman  
18 earlier who I don't know who came up and conferred with  
19 the witnesses while they were conferring, and then  
20 somebody just came up now. And we don't sequester the  
21 witnesses, and they are free to talk to people during  
22 the breaks, but if there is somebody directly supplying  
23 answers to questions, usually we would like them up  
24 there and limited to the panelists. Otherwise, I could  
25 deny all the motions to supplement, and they could be

1 supplemented anyway. Maybe this is the procedure you  
2 thought Mr. Hubbard should follow.

3 MR. ELLIS: Judge, I don't know what the  
4 incidents were. We can ask the witnesses. But I will  
5 also instruct them not to do it any more.

6 JUDGE BRENNER: All right. That is the  
7 answer, and if the witnesses need some information that  
8 they believe somebody else has, I want that identified  
9 for the record. And we may allow it, but it is just a  
10 matter of having identified for the record what it was  
11 that was supplied and by whom, and then we will take it  
12 from there.

13 BY MR. LANPHER: (Resuming)

14 Q Do you have an answer, Mr. Kelly?

15 A (WITNESS KELLY) Yes. That is the same  
16 storage area and it does involve Courter Company.

17 Q And in Field Audit 1325 the auditor concludes  
18 that the preventive action provided by Courter and  
19 Company responding to the earlier audit 1275 had not  
20 been effective. Is that correct?

21 A (WITNESS KELLY) This is a situation where the  
22 auditor verified that portions of the corrective action  
23 had definitely been implemented, and he appeared not to  
24 be satisfied with the cleaning activity.

25 MR. LANPHER: Judge Brenner, I hate to ask



1 this, but I don't think I'm getting a direct answer.

2 JUDGE BRENNER: Pose the question again, and  
3 we will let the witness give his answer again now that  
4 you've made your comment. And it's usually easier than  
5 having everybody argue.

6 MR. LANPHER: Whatever you wish, sir.

7 BY MR. LANPHER: (Resuming)

8 Q Mr. Kelly, the auditor concluded that the  
9 preventive action provided by Courter Company in  
10 response to the earlier audit, Field Audit 1275, which  
11 we discussed, had not been effective.

12 (Panel of witnesses conferring.)

13 A (WITNESS KELLY) The finding says that it is  
14 the auditor's opinion that it appears not to have been  
15 effective.

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1           MR. ELLIS: Mr. Lanpher, I just inquired, and  
2 Judge Brenner, I am informed that the passing of the  
3 note was a piece of paper left upstairs. It was not an  
4 answer of any sort, and the conference was actually, as  
5 I understand it, someone telling the witnesses they  
6 can't do that and they have to wait until the break.

7           JUDGE BRENNER: I don't want to go into it. I  
8 don't understand your last comment either. My point  
9 remains applicable. If they need something, they can  
10 state it, and then we will adjust.

11          MR. ELLIS: Right. I think my only point was  
12 to make sure that they understood. It wasn't with  
13 respect to an answer, but it was a piece of paper they  
14 left upstairs, and the message that the person gave in  
15 person was, you should wait until the break to do that,  
16 you shouldn't do it this way.

17          JUDGE BRENNER: I don't want to get into a  
18 discussion as to whether that is the same as assisting  
19 or not, because I don't know what it is that you are  
20 referring to.

21          MR. ELLIS: It is a document asking for a  
22 piece of paper. In other words --

23          JUDGE BRENNER: Forget it. From now on, we  
24 will do it the way I said.

25          BY MR. LANPHER: (Resuming)

1 Q Gentleman, referring your attention to the  
2 handwritten sheet that I provided earlier, which lists a  
3 number of audit findings, I would like you to confirm if  
4 you will whether looking at those at the top of the page  
5 under the Item 1, whether -- Now, I have asked you about  
6 five audit findings first, Field Audit 470, Finding  
7 (4.1), 740, Finding (4.1), Field Audit 1275, Finding  
8 (4.1), Field Audit 1325, Findings (3.2) and (4.1).

9 Would you agree that in each of those  
10 instances there were findings that either trash or  
11 debris had accumulated in violation of LILCO's  
12 requirements?

13 JUDGE BRENNER: Mr. Lanpher, forgive me. I am  
14 slow today, also, I guess. Did you include Field Audit  
15 425, Finding (4.2) in your list?

16 MR. LANPHER: Of what I was just asking  
17 about?

18 JUDGE BRENNER: Yes. You listed --

19 MR. LANPHER: No, I did not.

20 JUDGE BRENNER: I guess the only way that came  
21 in was by direct reference in Field Audit 470. All  
22 right. You answered my question.

23 MR. LANPHER: I want to check one thing.

24 JUDGE BRENNER: That finding is the one that  
25 is referenced in Field Audit 470, Finding (4.1).

1 MR. LANPHER: Yes.

2 JUDGE BRENNER: But you didn't include it.  
3 You only listed the four.

4 MR. LANPHER: I didn't ask a specific question  
5 drawing their attention back to that.

6 BY MR. LANPHER: (Resuming)

7 Q Gentlemen, my question was whether each of  
8 these five that we talked about involved accumulations  
9 of trash and debris which the auditor found to be  
10 contrary to LILCO's requirements.

11 A (WITNESS MUSELER) Mr. Lanpher, I am sorry.  
12 We seem to have lost one of your numbers. You said  
13 there were five of them?

14 JUDGE BRENNER: It is five findings, but only  
15 four audits, and that is because Field Audit 1325 has  
16 two findings, and that confused me also, which is why I  
17 thought maybe 425 was the fifth one you had in mind, but  
18 you stated it right. I just didn't follow it along.

19 BY MR. LANPHER: (Resuming)

20 Q To the extent I can, gentlemen, I will talk in  
21 terms of findings, because that is what we are moving  
22 into evidence as we go along.

23 A (WITNESS MUSELER) Mr. Lanpher, we do agree  
24 that in each of those cases the auditors' observations  
25 stated that he believed the requirements of our

1 procedures were not being met. We believe that  
2 requirements of our procedures in terms of providing the  
3 housekeeping services necessary were being met, the  
4 exception being Audit Finding (4.1) of Field Audit 470,  
5 where we concur with the auditor's observations.

6 Q In each of those instances, those five  
7 findings, four audits and five findings, there was a  
8 finding that the auditor found a violation, correct?  
9 (3.2) and (4.1) of Field Audit 425 is really the same  
10 incident.

11 A (WITNESS MUSELER) I believe the auditor's  
12 findings stated that he observed what he considered to  
13 be an excessive amount of materials in the areas.

14 Q Gentlemen, I would like to turn your attention  
15 now to the other audits under Number 1 at the top of the  
16 page, that is, all of the other audit findings except  
17 the FQC 26, K-4, at the bottom of the page. Omitting  
18 that one, are these other audit findings examples of  
19 where the auditor found violations of LILCO requirements  
20 due to accumulations of trash or debris or food, as may  
21 be the case in some instances, but there were multiple  
22 problems?

23 (Whereupon, the witnesses conferred.)

24 A (WITNESS MUSELER) Mr. Lanpher, we agree that  
25 all of those audit findings relate to observations of

1 trash in one form or another. They are in some cases in  
2 my judgment materially different from the discussions we  
3 have been having on the other audit findings that we  
4 have discussed so far. Some are the same.

5 A (WITNESS KELLY) I would like to add that  
6 except for the one that related to bent conduit, none of  
7 these findings indicate any damage to the equipment or  
8 materials.

9 Q Mr. Museler, if I could go back to you, please  
10 identify -- you agree that they all involve  
11 accumulations of trash or other materials like evidence  
12 of food or debris in violation of LILCO requirements?  
13 Was that your answer? Or part of your answer? It  
14 wasn't your entire answer, but do you agree with that  
15 much?

16 (Whereupon, the witnesses conferred.)

17 A (WITNESS MUSELER) They all involve  
18 accumulations of trash, not all relating to the  
19 procedures we have been discussing so far.

20 Q I didn't limit myself to any particular  
21 procedure.

22 JUDGE BRENNER: I don't know if you are asking  
23 a follow-up question or criticizing his answer.

24 MR. LANPHER: I was clarifying. I wanted to  
25 make sure that he understood my question.

1 JUDGE BRENNER: Well, I wanted to note for the  
2 benefit of you and the witness that this is exactly what  
3 I had hoped would happen. That is, you would give the  
4 group, and then the witness can explain whether it fits  
5 within the group or doesn't fit within the group,  
6 without an extensive argument, but just giving his  
7 indication that it doesn't, and then you can decide  
8 whether to follow up or not, and that is what is taking  
9 place now. It was proper for the witness to say that  
10 there are some that he thinks are materially different.

11 MR. LANPHER: Sure. That is what I am trying  
12 to follow up on.

13 JUDGE BRENNER: Okay. Good. Go ahead.

14 BY MR. LANPHER: (Resuming)

15 Q Mr. Museler, I hope you understood my earlier  
16 question not to limit you to, I guess it was QC 17.1 in  
17 particular which we have talked about a lot. I used the  
18 word, I believe, "LILCO requirements" in the storage and  
19 housekeeping area. Are these all examples where either  
20 trash, debris, litter, there were violations or failures  
21 to comply in the auditor's opinion with LILCO  
22 requirements?

23 (Whereupon, the witnesses conferred.)

24 A (WITNESS MUSELER) In the context of storage  
25 and handling of equipment, the answer is no. In the

1 context of the fact that we have housekeeping procedures  
2 throughout the entire site not relating solely to  
3 storage, meaning we have procedures for keeping the  
4 roads clean and policies of keeping the roads clean and  
5 the office areas clean, in that very broad category, the  
6 answer is that all of those audit findings did indicate  
7 that the auditor felt that there were deviations from  
8 the applicable procedures or policies.

9 Q Mr. Museler, do any of these relate to keeping  
10 offices clean?

11 A (WITNESS MUSELER) No, sir, none of them  
12 relate to keeping offices clean.

13 Q Do any relate to keeping roads clean?

14 A (WITNESS MUSELER) No, sir.

15 Q Now, Mr. Museler, could you -- in an earlier  
16 answer -- Well, first, we talked about those five  
17 initial findings. Can you please first tell me which of  
18 the remaining findings you believe are not materially  
19 different?

20 (Whereupon, the witnesses conferred.)

21 Q In other words, I want you to give me an  
22 indication of grouping with those five first in your  
23 opinion.

24 (Whereupon, the witnesses conferred.)

25 MR. ELLIS: Would the court indulge us for a



1 minute?

2 JUDGE BRENNER: Sure, as long as you don't  
3 give him any answers.

4 (General laughter.)

5 (Whereupon, counsel for LILCO conferred with  
6 counsel for Suffolk County.)

7 JUDGE BRENNER: As long as we have got an  
8 interruption, let's go off the record.

9 (Whereupon, a discussion was held off the  
10 record.)

11 BY MR. LANPHER: (Resuming)

12 Q Mr. Museler, do you have an answer?

13 A (WITNESS MUSELER) Yes, sir. The audit  
14 findings I would agree are in the first group that we  
15 discussed.

16 Q You mean those first five findings?

17 A (WITNESS MUSELER) Those first five, although  
18 I disagree that Field Audit 740, Finding (4.1) belongs  
19 in that group. The other findings on this list that I  
20 believe are similar to the other four findings that we  
21 discussed earlier are Field Audit 26, Finding (4.3),  
22 Field Audit 444, Finding (4.1), Field Audit 803, Finding  
23 (4.4), and FQC Audit 40, Finding (1.3), Paragraph A,  
24 Subpart 5.

25 Q And how do you define that group of those four

1 that you just gave me and the previous four, leaving out  
2 Finding (4.1) of Field Audit 740, which is, I believe,  
3 the one that you were leaving out?

4       A       (WITNESS MUSELER) I would characterize that  
5 group as audit observations in which the auditor noted  
6 accumulations of trash or other foreign material in  
7 storage areas unrelated to the equipment in those areas,  
8 and an example of the normal construction process on any  
9 job, on any construction job, and typical of the  
10 improved cleanliness that one finds on a nuclear job  
11 even though one still does find accumulations of foreign  
12 material.

13       Q       Mr. Muselar, in Field Audit 425, Finding  
14 (4.2), would you agree that there are accumulations of  
15 trash and evidence of food and drink consumption found  
16 in storage areas?

17       A       (WITNESS MUSELER) Yes, sir.

18       Q       Looking at Field Audit 470, Finding (4.5), do  
19 you agree that this was an example of an instance where  
20 there was an accumulation of trash in a storage area?

21               (Pause.)

22       A       (WITNESS MUSELER) No, sir. But let me state  
23 just to draw the differentiation between my  
24 interpretation of the groupings of these items. That  
25 audit finding indicates that there was trash and foreign

1 material accumulated either on or directly in the  
2 vicinity of equipment, namely, in a crate. That audit  
3 finding in my judgment is one in which the auditor, in  
4 which I would agree with the auditor, that the condition  
5 was unsatisfactory.

6           The other audit findings we have been  
7 discussing are notations that there is accumulations of  
8 trash in areas, in some cases in outdoor storage areas.  
9 The ones designated D indicate they are outdoor storage  
10 areas, which means in many cases there is some trash  
11 accumulating in a field in which pipes or other  
12 structural material may be stored, or that there might  
13 be trash accumulating in a warehouse, as we discussed  
14 in, I believe, Audit Finding 425.

15           So, Audit Finding 470 -- excuse me, Audit  
16 Finding (4.5) of Field Audit 470 is a different  
17 category, in my judgment, and it relates to what the  
18 auditor considered an unsatisfactory accumulation of  
19 trash and in this instance the auditor was correct. The  
20 programs are designed to keep trash from being stored on  
21 or in equipment. That is the purpose of the program.  
22 The program's objectives are not to keep the fields  
23 clean or the warehouses clean. The program's objectives  
24 are to keep the equipment clean.

25           And in that sense, and in that differentiation

1 between these audit findings, this audit finding does  
2 not belong in the ones we have been discussing to date.  
3 This one is similar to the earlier one we discussed,  
4 Field Audit 740, Finding (4.1), where the trash or  
5 debris was actually in contact with a piece of  
6 equipment, and in one case resulted in an impact on that  
7 piece of equipment.

8 Q Mr. Museler, Field Audit 470, Finding (4.5), I  
9 understand your distinction that the trash was in  
10 contact or associated with some equipment. The trash  
11 was also in a Level C storage area, correct?

12 A (WITNESS MUSELER) That is correct, sir.

13 Q Turning your attention to FQC Audit 21,  
14 Finding (D.13A), am I correct, sir, that this involved  
15 the auditor noting trash accumulation in storage areas,  
16 and I believe these are A and B storage areas of the  
17 main warehouse?

18 (Whereupon, the witnesses conferred.)

19 A (WITNESS MUSELER) Mr. Lanpher, in this audit  
20 observation, and also for Audit Observation FQC 23-K-5,  
21 I have to apologize. In the quick scan I did to put the  
22 remaining audits in the proper category, those two  
23 should have been included in my list.

24 Q Along with the other four?

25 A (WITNESS MUSELER) Yes. The reason I had not

1 is, I had originally broken down your list into  
2 observations relating to outdoor storage activity or  
3 outdoor storage locations and indoor storage locations,  
4 such as warehouses. When I went through my list, my X's  
5 and O's, I am afraid, got me confused. So those, too.

6 Q Mr. Museler, to recap where we are right now,  
7 I think, the following --

8 JUDGE BRENNER: Mr. Lanpher, unless you needed  
9 to ask another question, why don't you hold the recap  
10 until you need to move it, or are you going to move it  
11 into evidence at this point?

12 MR. LANPHER: Yes, as soon as he confirms one  
13 thing.

14 JUDGE BRENNER: All right.

15 BY MR. LANPHER: (Resuming)

16 Q The following field audits and FQC audits,  
17 audit findings identify instances where there was trash  
18 or debris accumulations in storage areas: Field Audit  
19 226, Finding (4.3), Field Audit 425, Finding (4.1), and  
20 I understand your distinction -- excuse me, 425, (4.2),  
21 Field Audit 444, Finding (4.1), Field Audit 470, Finding  
22 (4.1), Field Audit 470, Finding (4.5), FQC Audit 21,  
23 Finding (D-13A), FQC 23, Finding (K-5), Field Audit 803,  
24 Finding (4.4), Field Audit 1275, Finding (4.1), Field  
25 Audit 1225 -- or 1325, Finding (3.2) and (4.1), and FQC

1 Audit 40, Finding (1.3.A.5).

2 (Whereupon, the witnesses conferred.)

3 A (WITNESS MUSELER) That falls in one  
4 category? Is that right?

5 Q Yes, sir.

6 Judge Brenner, maybe that long a question is  
7 too hard. I would like to just move those ones that I  
8 just identified into evidence. I tried to keep careful  
9 notes, and I recognize it is very difficult for the  
10 witness to answer and at the same time keep track of  
11 what he is saying.

12 JUDGE BRENNER: Yes, I think my personal  
13 opinion is that you asked enough about them to move them  
14 into evidence without needing to ask him a further  
15 question.

16 MR. LANPHER: Fine.

17 JUDGE BRENNER: You did not -- in that same  
18 spirit, you could move Field Audit 740, Finding (4.1),  
19 into evidence if you want.

20 MR. LANPHER: Fine. I will move that in. I  
21 was going to do that separately, but fine, I would move  
22 that in now.

23 JUDGE BRENNER: All right, let's admit all of  
24 those identified by Mr. Lanpher, with the addition of  
25 Field Audit 740, Finding (4.1) into evidence.

1 (Whereupon, the following  
2 documents were received  
3 into evidence: Field  
4 Audit 226, Finding (4.3),  
5 Field Audit 425, Finding  
6 (4.2), Field Audit 444,  
7 Finding (4.1), Field  
8 Audit 470, Finding (4.1),  
9 Field Audit 470, Finding  
10 (4.5), FQC Audit 21,  
11 Finding (D.13A), FQC 23,  
12 Finding (K-5), Field  
13 Audit 803, Finding (4.4),  
14 Field Audit 1275, Finding  
15 (4.1), Field Audit 1225  
16 -- or 1325, Finding (3.2)  
17 and (4.1), FQC Audit 40,  
18 Finding (1.3.A.5)., and  
19 Field Audit 740, Finding  
20 (4.1)  
21  
22  
23  
24  
25

1 BY MR. LANPHER: (Resuming)

2 Q Now, looking at FQC Audit 34, Finding N.2.C,  
3 this was an instance where there was debris and dirt  
4 accumulation in a Level B instrumentation warehouse;  
5 correct?

6 [Panel of witnesses conferring.]

7 A (WITNESS ARRINGTON) Mr. Lanpher, that  
8 observation does indicate that there was some debris in  
9 the area.

10 Q Thank you.

11 Gentlemen, looking at Field Audits 721,  
12 Finding 4.1, and 1086, Finding 4.2, do you agree that in  
13 each of these instances there was trash or debris found  
14 associated with or near equipment?

15 [Panel of witnesses conferring.]

16 A (WITNESS MUSELER) Mr. Lanpher, these two  
17 reported observations you referred to, Field Audit 721,  
18 Item 4.1, and Field Audit 1086, Item 4.2, both relate to  
19 similar observations where the auditors noted correctly  
20 that trash had accumulated in the case of 721 in some  
21 large bore pipe, and in the case of 1086, in two air  
22 filters, which are large air filters which contain some  
23 trash and were apparently being used for some workers to  
24 put their hardhats in.

25 Those two audit observations do address



1 situations where the site procedures had resulted in a  
2 condition that was unsatisfactory: that is, that the  
3 items noted by the auditor were in contact with the  
4 equipment. In these cases it did not do any damage to  
5 the equipment. However, as we noted earlier in Audit  
6 Observation 4.1 of Field Audit 740, a similar situation  
7 did result -- I'm sorry -- yes, 740 (4.1) did result in  
8 an impact on a piece of equipment.

9           So those three audit observations are audit  
10 observations together with 470 (4.5) which constitute  
11 trash having accumulated unsatisfactorily on or near  
12 equipment as required in deviation from the procedures  
13 which are designed to do that. There are four instances  
14 in these audit observations we have reviewed where the  
15 trash, in our view, resulted in an unsatisfactory  
16 situation.

17           Q     Gentlemen, there is one last audit observation  
18 we haven't addressed in this top grouping, and it is FQC  
19 Audit 20, Finding D.5. Would you agree this was an  
20 instance where litter and trash accumulated in a work  
21 area of the reactor building?

22           A     (WITNESS MUSELER) Mr. Lanpher, the auditor  
23 observed the same type of material we have been  
24 discussing earlier in work areas or in areas of the  
25 reactor building, and I would like to just relate back

1 to the discussion we had on procedures that do not  
2 relate to storage. This particular audit finding  
3 relates to a general housekeeping requirement throughout  
4 the site, and I had indicated office areas and roads as  
5 examples.

6           The other major area covered by those what I  
7 will say is non-storage area items is the buildings, and  
8 during the construction process we have procedures which  
9 require housekeeping of the general work areas in  
10 addition to the storage areas. This is an instance of  
11 that, and what the auditor was noting was that the  
12 construction process, which involved 3600 personnel at  
13 its peak, was resulting in the accumulation of trash and  
14 construction material in the reactor building which was  
15 under construction at the time.

16           If an area in the reactor building had been  
17 designated as a storage area, that would have been  
18 noted, so this was not an area specifically fenced off,  
19 for instance, to store a specific piece of equipment  
20 that might have required some specific handling.

21           So what was noted here is that the auditor  
22 believed that we could do a better job than we were  
23 doing in our overall housekeeping of the construction  
24 process. And he may well have had a valid observation  
25 that we could have done a better job at that particular

1 point in time. I can't personally recall what was going  
2 on at that juncture.

3           But we continuously clean the reactor building  
4 in question here, as well as the rest of the plant.  
5 Again, when you are building a power plant, there is  
6 going to be an accumulation of people's lunch material,  
7 even though they are not supposed to do that, and of  
8 construction trash, of newspapers, a lot of copies of  
9 News Day, and the normal types of material that  
10 accumulates on a construction job. I have been through  
11 at least eight nuclear plants and worked at various  
12 times in two others, and Shoreham is not different and,  
13 in my opinion, is better than the other plants I have  
14 visited and the plants I have worked at. So this is not  
15 an instance of anything related to equipment storage; it  
16 is simply the normal housekeeping that relates to the  
17 building of a plant such as Shoreham.

18           MR. LANPHER: Judge Brenner, I hate to repeat  
19 a problem I have got. I am very mindful of my time. I  
20 am trying to ask narrow questions to get the answers  
21 that I need, and I am getting very long answers in some  
22 instances. That was one of the longer ones, and I am  
23 noting it for the record in the event I have run out of  
24 what I consider time and have to ask the indulgence of  
25 the Board for some additional time. That is all. It is

1 not my habit to cut these witnesses off ever.

2 JUDGE BRENNER: Mr. Ellis, do you agree with  
3 me and Mr. Lanpher that that question was answered in  
4 the first two sentences and the rest of it was  
5 unnecessary to answer the question?

6 MR. ELLIS: I agree it was answered in the  
7 first two sentences. I don't agree that it was  
8 unnecessary to add the remainder.

9 JUDGE BRENNER: All right. Well, you have got  
10 my view that it was, so that can guide you and the  
11 witnesses in the future. That was redirect and not an  
12 answer to the question anymore after the first part.  
13 Mr. Museler very capably got his point across in  
14 answering the question and distinguishing, giving his  
15 distinction of this as a work area as distinguished from  
16 a storage area, and also his characterization of the  
17 nature of this as being similar to the other kind of  
18 miscellaneous, what I guess I would call light litter as  
19 distinguished from some of the other situations.

20 MR. LANPHER: Judge Brenner, I would like at  
21 this time to move these remaining findings into evidence  
22 that we have just been talking about, and I will start  
23 at the top of this list that I have not previously moved  
24 in. FQC 20, Finding D.5; Field Audit 721, Finding 4.1;  
25 Field Audit 1086, Finding 4.2; and FQC Audit 34, Finding

1 N.2.C.

2 JUDGE BRENNER: All right, those will be  
3 admitted into evidence.

4 [The documents referred to, being  
5 FQC 20 (D.5); FA 721 (4.1),  
6 FA 1086 (4.2); FQC 3- (N.2.C),  
7 were received into evidence.]

8 MR. LANPHER: Judge Brenner, I am going to  
9 move to the document control area unless the Board has  
10 questions at this time in this area.

11 JUDGE CARPENTER: Mr. Lanpher, I would like to  
12 ask just a couple.

13 MR. LANPHER: Sure.

14 QUESTIONS BY THE BOARD

15 BY JUDGE CARPENTER:

16 Q Mr. Kelly, I would like your help in giving me  
17 some perspective. I see these field audits having  
18 numbers up in the four digits. Am I correct in assuming  
19 that if I see a number like Field Audit 1325, that that  
20 was preceded by 1324 field audits? What I am trying to  
21 say is can I easily surmise how many field audits were  
22 conducted by looking at these numbers?

23 A (WITNESS KELLY) Yes, Judge Carpenter, they  
24 are sequentially numbered for all types of audits,  
25 regardless of subject matter. In other words, your

1 example, 1324, could have very easily been an audit of  
2 the welding activities.

3 Q That leads directly to my next question. How  
4 many of these audits was the auditor looking for the  
5 characteristics that we have just been looking at for  
6 the last hour and a half in the general area of  
7 cleanliness?

8 [Panel of witnesses conferring.]

9 A (WITNESS KELLY) I guess the problem is, Judge  
10 Carpenter, I had a piece of paper that had some numbers  
11 on it, and unfortunately I don't have it with me, but we  
12 have an extensive part of our audit program covers  
13 storage of various types, and during each of these,  
14 cleanliness or housekeeping would be looked at, and the  
15 County has selected, obviously, only those that have  
16 deficiencies, and there are many, many audits that  
17 indicate perfection.

18 Q Well, I'm trying to get quantitative values  
19 for what you just implied by "many, many." In your mind,  
20 "many, many" might be -- I don't know what that means.  
21 If you are not prepared to answer at this time, I would  
22 be glad to wait until after lunch; but once again, what  
23 I need to understand is whether these audits are a  
24 sampling or whether the whole site was looked at by the  
25 auditor, and I think it is fairly clear from the

1 material the County has brought forth that the auditors  
2 simply noted what they saw without trying to interpret  
3 it in many cases. So we have got an adequate record on  
4 that. But I think someone in looking at this record  
5 doesn't have perception as to what population the things  
6 that we have been talking about for two hours, the  
7 previous two hours, have come from, and that is what I  
8 am trying to get on the record.

9       A       (WITNESS KELLY) Okay. I can attempt to work  
10 those numbers up during lunch in the audit proper. As  
11 far as the other part of the audit, as far as the  
12 checklist, it would indicate in there what areas had  
13 been looked at, and as I say, during indoor storage, in  
14 any one particular audit usually there is a fairly large  
15 number of different areas that come under indoor storage  
16 that are looked at, and I will try to give you a better  
17 feel for that after lunch.

18       Q       Yes. The only great precision is to indicate  
19 the accuracy of what you have told me, if you think it  
20 is approximately 100, if you think it is approximately  
21 1000. In other words, this is the number of items that  
22 came from some population. I would like to have an  
23 estimate to at least one significant figure of what that  
24 population was.

25       A       (WITNESS KELLY) I will try to do that.

1 JUDGE CARPENTER: I might also comment, Mr.  
2 Lanpher, Judge Brenner indicated the Board this morning  
3 probably wouldn't have any interest in looking at these  
4 in any detail with the County's witness. We haven't had  
5 a chance to discuss it yet. I certainly am trying to  
6 understand the safety significance of these things I am  
7 listening to, and obviously there is a difference of  
8 opinion between these witnesses and the County's expert.  
9 So to that extent I am asking some questions so that I  
10 can have a foundation for asking some questions of the  
11 County's witness in terms of interpretation. Rather  
12 than waiting, I am going through the redirect to get to  
13 questions like I just put on the table, and I want you  
14 to understand that I was asking questions like this only  
15 for the sake of efficiency.

16 MR. LANPHER: Judge Carpenter, I can tell you  
17 that Mr. Hubbard will be prepared and willing to address  
18 exactly what you just raised there if you want to pose  
19 the question as to what significance, for instance, he  
20 would draw from this kind of finding.

21 JUDGE CARPENTER: Well, I didn't want to go  
22 that far. I just simply wanted to indicate that I think  
23 the record is going to need to be fleshed out more with  
24 respect to just what is the significance of this group  
25 of items in terms of the license.



1           JUDGE BRENNER: Okay, good. Stay with this  
2 group when Mr. Hubbard comes on and separating out the  
3 ones that Mr. Museler said he found significant --  
4 "significant" is my word -- the ones where he thought it  
5 was of a noteworthy concern by the auditor, whatever  
6 language you want to use. Putting those aside, I want  
7 Mr. Hubbard to tell us when he comes on what he thinks  
8 the other findings as to the litter found in the area  
9 which the auditor said should be cleaned up are  
10 significant and what he means by significant in the  
11 context of practices such that we should then draw the  
12 conclusion that the utility has been performing matters  
13 inadequately or improperly such that something related  
14 to safety has been adversely affected in the  
15 construction process or such that it reflects on their  
16 competence to perform matters important from the  
17 protection of the public health and safety.

18           And in effect, another way of asking that, one  
19 additional way would be what relief, corrective,  
20 preventative action in denying conditioning and not  
21 approving -- approving licenses should be taken even if  
22 we find that they were slow in some instances in  
23 cleaning up the type of litter involved here, because I  
24 am beginning to get concerned personally, and I am not  
25 technically oriented enough and I would, of course,

1 await the findings, but I am beginning to get concerned  
2 that the County has not sifted out the significant from  
3 the insignificant in presenting this material to us.

4           I understand your argument that you look at it  
5 in the totality and not each and every one, but even  
6 granting you the benefit of making that argument, I just  
7 don't see it on the items we have heard in the last hour  
8 and a half. So Mr. Hubbard can tell us why. And  
9 besides that, even giving you the benefit of the way you  
10 want to argue the examples, I think you will agree that  
11 that doesn't preclude an argument that you have some  
12 ones that by themselves or with just a few others are  
13 very significant, and if you do, I would sure like to  
14 hear those up front or somehow have them highlighted by  
15 you when you get to them, saying that this is to be  
16 distinguished from your argument that looking at a lot  
17 of them together shows sufficient inadequate attention  
18 on the part of LILCO and its agents so that we should  
19 draw adverse inferences leading to certain action by us.

20           I did want to ask one question in follow-up to  
21 Judge Carpenter's questions and Mr. Kelly's response.

22           MR. LANPHER: So do I.

23           JUDGE BRENNER: Okay, I will ask my line and  
24 then you can ask and then we will break.

25           BY JUDGE BRENNER:

1 Q Mr. Kelly, you mentioned that, looking at  
2 these, you would find that there are others that in your  
3 view are where the good things, so to speak, would be  
4 found. I take it that you mean going back to the backup  
5 materials such as checklists. And the reason I say that  
6 is that my impression of the audit reports have been  
7 that the auditor only reports things for which he feels  
8 corrective, preventative or some sort of remedial action  
9 is necessary rather than noting, gee, they did a good  
10 job.

11 A (WITNESS KELLY) That is correct. Audits  
12 typically express the negative and very little positive.  
13 My statement regarded specifically the audits themselves  
14 plus also the general population of the audits. The  
15 audits that the County selected from the total  
16 population provided to them were audits that had  
17 quantities of findings, okay, they averaged double the  
18 number of findings of the average population of all of  
19 the audits relating to the subject matter. So it was  
20 specifically as to the actual audits themselves and also  
21 as to the general population of this audit subject  
22 material.

23 Q Okay. Well, the key to my question, as you  
24 said, there would be some that would show perfection,  
25 and I thought that there wouldn't be any such thing in

1 an audit report because, as I said, they wouldn't state  
2 a good job was done.

3       A       (WITNESS KELLY) The checklist would indicate  
4 which areas were looked at. You very seldom see us  
5 writing the word "perfect." I think QA guys have a hard  
6 time doing that.

7       Q       I think what I inferred is the case you have  
8 to look at what was looked at and then compare that with  
9 audit findings that were not made in areas that were  
10 looked at. Is that what you mean?

11       A       (WITNESS KELLY) Yes, that is correct, Judge  
12 Brenner.

13               BY JUDGE CARPENTER:

14       Q       To be perfectly clear, Mr. Kelly, this is  
15 precisely my question. We are looking at a set of data  
16 that has certain characteristics. There is another set  
17 of data, which I presume is larger but I don't know how  
18 big it is, that has the other characteristics, in which  
19 cleanliness was found, and I am trying to get the  
20 balance between the deficiency reports and the reports  
21 that there was no reportable deficiency. Without going  
22 beyond that in terms of interpretation, just no  
23 reportable deficiency in the area of cleanliness.

24       A       (WITNESS KELLY) As far as specific numbers,  
25 as far as adding up in the checklist which areas were

1 looked at for those, these particular audits, I can very  
2 easily do that for those audits that I don't have with  
3 me, which represent the total population of storage  
4 audits. This is by far not representative of all of my  
5 audits in the subject area. Without having those  
6 available, I cannot add those up for you and throw those  
7 into that list to say this is also how many more items  
8 were found to be correct. But we will develop that list  
9 as best we can right after lunch for you.

10       A       (WITNESS MUSELER) I think what we are saying,  
11 Judge Carpenter, is that as we understand your question,  
12 you would like to know, in the area of storage audits  
13 that we have audited specifically, where one of the  
14 attributes of the audit, whatever else it covered, was  
15 the cleanliness of the storage areas or the cleanliness  
16 of the equipment, how many of those had observations as  
17 against how many of those had no observations. And it  
18 will take us -- we will try. I have a feeling that  
19 because we need to look at every one of the however many  
20 there are, some subpopulation of the 1500 or 1700 total  
21 audits, field audits, we will cull those out that refer  
22 to storage and get the number of the total audits that  
23 were done that referred to storage and the total number  
24 of audits that observed no findings, having looked for  
25 those cleanliness requirements.

1 Q If this is burdensome, I need not know the  
2 answer today if you want to wait until after the break.  
3 And I would also take this opportunity to remind you  
4 that there are some other questions that you were going  
5 to respond to, both of Mr. Lanpher's and of mine, which  
6 we still haven't heard an answer to that I think would  
7 be helpful.

8 A (WITNESS MUSELER) Yes, sir. We have those  
9 questions in process and we will certainly get the  
10 answers to those questions.

11 JUDGE CARPENTER: Thank you.

12 JUDGE BRENNER: I wouldn't do it over lunch if  
13 I were you. We don't need it today, so don't feel as if  
14 we are pushing for it today.

15 WITNESS MUSELER: I don't think we can, Judge  
16 Brenner.

17 JUDGE BRENNER: I don't think you can either.

18 WITNESS KELLY: I appreciate that. I will  
19 have a nicer lunch.

20 MR. LANPHER: Judge Brenner, the Board's  
21 questions obviated the need for me to pursue another  
22 question. I misspoke earlier when I said I was going to  
23 move on to document controls, with one caveat that you  
24 have heard about the so-called stipulation related to  
25 storage surveillance reports which LILCO is reviewing

1 something from us, so we may have to return to the  
2 storage materials at a later time but not today.

3 JUDGE BRENNER: Okay. We will break for lunch  
4 now. But having diverted you, I don't want you to  
5 forget your other checklist, so I will audit you. You  
6 had one entitled "Other FQC 26 (K.4) before you were  
7 going to move to the other area.

8 MR. LANPHER: No, I'm not going to pursue that  
9 one.

10 JUDGE BRENNER: I wanted to make sure our  
11 jumping in didn't cause you to forget it.

12 All right, let's break until 1 o'clock and  
13 then we will come back just for an hour from 1:00 to  
14 2:00.

15 [Whereupon, at 11:45 a.m. the hearing was  
16 recessed, to reconvene at 1:00 p.m. the same day.]

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AFTERNOON SESSION

1

2

(1:00 P.M.)

3

JUDGE BRENNER: Good afternoon.

4

Let's launch right into continuing the cross  
5 examination. At 2:00 o'clock, I have one matter I want  
6 to bring up very briefly, but the witnesses can get  
7 going. So I trust that there were no counsel that  
8 couldn't stay past a few minutes past 2:00. Mr.  
9 Lanpher.

10

MR. LANPHER: We may want to report about our  
11 discussions, and we can do that after 2:00 o'clock also  
12 very briefly.

13

JUDGE BRENNER: If you think it could wait, I  
14 think it would be better.

15

MR. LANPHER: That is what I am suggesting.

16

JUDGE BRENNER: Yes, I agree with you.

17

MR. LANPHER: Judge Brenner, I have passed out  
18 a document which is a Xerox from my Monday pleading  
19 which has all of the document control summaries which  
20 previously have been provided. Please disregard in the  
21 upper righthand corner the statement, Exhibit 7. That  
22 was Exhibit 7 of the pleading, and we attempted to  
23 number the pages, and they start with Page 2, because  
24 there was a Page 1 which unfortunately was from a  
25 previous group. So we have Pages 2 through 39, and



1 consistent with before, I suppose we ought to mark this  
2 for identification, and I think we are at 66.

3           JUDGE MORRIS: Sixty-seven. Sixty-six was  
4 your field audits. All right, it is so marked for  
5 identification. For the three copies that will be kept  
6 with the file, perhaps the typed exhibit references can  
7 be lined through in some fashion.

8   (Whereupon, the document  
9   referred to was marked  
10                                        for identification as  
11                                        Suffolk County Exhibit  
12                                        Number 67.)

13 Whereupon,

14                                 T. TRACY ARRINGTON,  
15                                 FREDERICK B. BALDWIN,  
16                                 WILLIAM M. EIFERT,  
17                                 T. FRANK GERECKE,  
18                                 JOSEPH M. KELLY,  
19                                 ARTHUR R. MULLER,  
20                                 DONALD G. LONG,  
                                  and WILLIAM J. MUSELER,

21 the witnesses on the stand at the time of recess, having  
22 been first duly sworn, resumed the stand, and were  
23 examined and testified further as follows:

24 CONTINUED CROSS EXAMINATION ON BEHALF OF SUFFOLK COUNTY

25 BY MR. LANPHER: (Resuming)

1 Q Gentlemen, as I advised your counsel before, I  
2 would like to start with Document Control Group Number  
3 4, and just as preliminary, gentlemen, do you agree that  
4 activities affecting quality must be prescribed by  
5 documented instructions, procedures, or drawings?

6 (Whereupon, the witnesses conferred.)

7 A (WITNESS MUSELER) In that very broad sense,  
8 yes, sir.

9 Q Do you agree further that activities covered  
10 by such instructions, procedures, and drawings must be  
11 carried out or should be carried out in accordance with  
12 those instructions, procedures, and drawings, that you  
13 should implement those instructions, procedures, and  
14 drawings?

15 A (WITNESS MUSELER) The documents that are use:  
16 to construct the plant and to maintain the plant, the  
17 procedures and the documents and the drawings should be  
18 followed. I think that is the question you asked, and I  
19 am sorry.

20 Q You interpreted my question correctly.

21 You also agree, gentlemen, that measures must  
22 be instituted to ensure the documents, and I use that  
23 broadly, that the documents affecting quality are  
24 reviewed for adequacy?

25 A (WITNESS MUSELER) Yes, sir.

1 Q Do you agree also that such a review for  
2 adequacy should ensure that for instance the documents  
3 are legible?

4 A (WITNESS MUSELER) Yes, sir. It should ensure  
5 that the documents are legible and more particularly  
6 that they are legible at the point where they are of  
7 importance to the process, and that is in the end use  
8 area.

9 Q You would include in that also, I assume, Mr.  
10 Museler, that even after a document is used, it is put  
11 in your permanent files. You would want that document  
12 in your files to be legible also, so that if you ever  
13 have to go back to it, you could trace what was done,  
14 correct?

15 A (WITNESS MUSELER) Yes, sir. We agree that  
16 the permanent plant file copies of design documents  
17 should be legible.

18 Q Thank you. And you would make an attempt to  
19 assure all documents are legible. Is that correct?

20 A (WITNESS MUSELER) Yes, sir, we do.

21 Q Gentlemen, turning your attention to Document  
22 Control Group 4, I would like to turn your attention  
23 first to FQC Audit 23, Finding (F.3). First, Mr.  
24 Museler, would you define what a sepia is, s-e-p-i-a?  
25 Is that the right pronunciation?

1           A       (WITNESS MUSELER) Yes, it is, Mr. Lanpher. A  
2 sepia is one type of a reproducible document. Actually,  
3 depending upon the process, you can reproduce almost  
4 anything, but one of the more common ways of having  
5 copies of drawings that are reproducible so that they  
6 can be made into many prints for distribution to whoever  
7 needs them is to use this particular type of what is  
8 called a reproducible master.

9           There are others, some of which are used on  
10 Shoreham. This is a very common type of reproducible  
11 master used on Shoreham.

12          Q       At Shoreham, then, are sepias a document from  
13 which multiple copies may be made to distribute to  
14 people who are supposed to be holders of that document?

15          A       (WITNESS MUSELER) Yes, sir. They are used  
16 after review for their suitability. They are used for  
17 the purpose you state, after they have been reviewed for  
18 adequacy.

19                 JUDGE BRENNER: Mr. Lanpher, excuse me. I  
20 can't find my copy, if I ever had one, of your  
21 handwritten sequence for Document Control Group 4.

22                 MR. LANPHER: Judge Brenner, I apologize. I  
23 should have mentioned before we advised LILCO that we  
24 believe that all of the findings in this group fall into  
25 the same category.

1 JUDGE BRENNER: Thank you.

2 MR. LANPHER: So we didn't list them  
3 separately.

4 JUDGE BRENNER: Okay. Thank you.

5 BY MR. LANPHER: (Resuming)

6 Q Mr. Museler, and any other member of the  
7 panel, this again in FQ 23, Finding (F.3), am I correct  
8 that the auditor has identified nine illegible sepias  
9 that were, I guess, previously -- this wasn't an initial  
10 identification. They had been identified previously by  
11 someone in the inspection process, I suppose. Is that  
12 correct? I guess they were identified previously on the  
13 document corrective action list.

14 (Whereupon, the witnesses conferred.)

15 A (WITNESS MUSELER) Mr. Lanpher, that is  
16 correct. The audit observation identified a number of  
17 sepia documents which were not adequate for reproduction  
18 and distribution. I think Mr. Baldwin can add a brief  
19 explanation of what that means.

20 A (WITNESS BALDWIN) Mr. Lanpher, the auditor  
21 indicates that, as you have just mentioned, that certain  
22 -- as were stated in certain lists dated 6/2/77 and  
23 8/8/77, that were reviewed indicated a similar situation  
24 with Stone and Webster sepias. These are identified on  
25 what we call our document corrective action list, which

1 is a list where we enumerate those sepias or drawings  
2 that have a problem with reproducibility or microfilming  
3 quality, if you will. Although it is mentioned here  
4 that characterized as illegible sepias, this is a very  
5 difficult process to follow, Mr. Lanpher, and to give  
6 you an idea of where --

7 Q Let me just interrupt for a second. What  
8 process is difficult to follow?

9 A (WITNESS BALDWIN) The document control  
10 process at the construction site relative to  
11 reproducibility and microfilming of drawings. In this  
12 case, what we are seeing is that two lists that were  
13 generated indicating that there was a question with  
14 illegibility or the reproducibility, rather, and that  
15 this would have to be corrected. At this point in time,  
16 one would have to understand within the process that  
17 there are several checks from the receipt of the  
18 manufacturer's drawing, the original drawing, say, in  
19 headquarters, and the reproducing of that drawing at the  
20 project level, and making distribution to the  
21 construction site.

22 Now, at that point in time a review for  
23 reproducibility and microfilming quality is made, and it  
24 may be at that time that the decision is made to  
25 recycle, if you will, that document back to get a better

1 copy. If that is not the decision, then it is  
2 reproduced and sent to the job site. At the  
3 construction site, it is captured by the document  
4 control center and once again it is reviewed for  
5 legibility, because they have to start making additional  
6 copies.

7           Now we are into our -- probably our third  
8 generation, and again, a decision has to be made on  
9 whether the quality of that document or the  
10 reproducibility of it is such that that can be made. If  
11 it can be made, well, then it is reproduced again. If  
12 it can't, again, it is identified on this document  
13 corrective action list, which sort of recycles back up  
14 to the project, and back out to the vendor.

15           If the decision at that point in time is that  
16 the document has sufficient quality for reproducibility  
17 or microfilming, then it is reproduced and set up for  
18 distribution. Now, we are into our fourth rendition,  
19 and a review is made at that time whether the  
20 distribution ought to be made based upon the quality of  
21 the document. If the quality of the document isn't such  
22 that that can be understood, then again it is identified  
23 on this corrective document action list and cycled back  
24 through to the project, back to the manufacturer.

25           The last step in the chain of events, if that

1 document coming out of document control after  
2 reproduction is good, it is then sent to the user, and  
3 after the reproduction of that, if the user feels that  
4 he has a problem with the document, that it is unclear,  
5 then again it would be turned back in, captured on what  
6 we call this document corrective action list, and sent  
7 back through the cycle, again, back to the project and  
8 back to the manufacturer.

9           This particular observation here in Site Audit  
10 23 actually extends out almost through -- does extend  
11 out through Site Audit 31, and although this one  
12 identifies reproducibility conditions with Stone and  
13 Webster drawings, as we look forward, we find from this  
14 audit out to Site Audit 31 that we are largely talking  
15 about vendors' drawings.

16       Q     Mr. Baliwin, focusing first just on the Stone  
17 and Webster sepias, am I correct that if you follow the  
18 history as it relates to these nine sepias which are  
19 identified in (F.3), that there are still -- the problem  
20 regarding those sepias still has not been fully resolved  
21 as of FQC Audit 27 in September, 1978, a year later,  
22 where one of those drawings was again determined to be  
23 illegible, and that is Finding (K.2)

24       A     (WITNESS BALDWIN) (K.2) of what, sir?

25       Q     FQC 27.



1           A       (WITNESS BALDWIN) I don't have that right in  
2 front of me, but in reviewing all of these documents in  
3 a group last evening with the others, I believe that to  
4 be true, but the point here is --

5           JUDGE BRENNER: He wants to ask you about that  
6 particular one, and he is entitled to do it.

7           WITNESS BALDWIN: Give us some time, and we  
8 will pull it out.

9           BY MR. LANPHER: (Resuming)

10          Q       FQC 27, Finding (K.2).

11                   (Whereupon, the witnesses conferred.)

12          Q       My question, Mr. Baldwin, is simply that as of  
13 that finding, (K.2) of FQC 27, whether there were still  
14 problems with at least one of the sepias that had  
15 originally been identified as being illegible in FQC  
16 Audid 23, Finding (F.3).

17          A       (WITNESS BALDWIN) Mr. Lanpher, the  
18 observation in 27, (K.2), I would not characterize that,  
19 first, as a problem. What I was trying to detail for  
20 you in the process a little while ago was how the  
21 manufacturer comes into Stone and Webster's project and  
22 goes through several checks and balances for the  
23 reproducibility of these drawings and how they are  
24 captioned on the list.

25                   In this particular case, we are talking about

1 a period later. We are talking about in 27 (K.2) -- we  
2 are talking about a timing situation. It is not a  
3 problem. The cycle that I talked to you about takes  
4 relatively months once it is captured to make its way  
5 back to the vendor, getting copies from the vendor and  
6 recycling totally again the closeout of or the  
7 identification of this (K.2) drawing or the Stone and  
8 Webster drawings previously referred to, they are the  
9 same.

10 A (WITNESS ARRINGTON) Mr. Lanpher, can I  
11 clarify the observation in Observation (F.3) of Site  
12 Audit 23? That is the one we started with.

13 Q Well, insofar as Stone and Webster sepias?

14 A (WITNESS ARRINGTON) Yes. The observation  
15 that is cited here by the auditor is a condition that  
16 had already been picked up in the normal review cycle at  
17 the site. It wasn't something that the auditor found  
18 that no one else had found. It is a normal review that  
19 takes place every time a new generation of the drawing  
20 is reproduced. We are not saying and the auditor is not  
21 saying there is a problem. He is simply -- he is  
22 reciting something that already had been picked up in a  
23 normal review process.

24 That is why we are saying it is not a  
25 problem. If it was something that was captured, this

1 drawing, the document issued to the field as a result of  
2 the situation that was identified on that audit  
3 observation, it was already captured. The drawing had  
4 not been issued.

5 Q Thank you, Mr. Arrington. I shouldn't have  
6 used the word "problem" in my question. The same, at  
7 least as it relates to one of those sepias which had  
8 originally been identified as illegible in September,  
9 September of 1977, in September of 1978, one of those  
10 was still not fully corrected. Am I correct in that?

11 A (WITNESS ARRINGTON) What that means, sir, is  
12 that it had not been resubmitted as a result of the  
13 corrective action list that had been sent back.

14 Q And in Finding (F.3) of Audit 2J, the  
15 recommendation was to expedite or take expedient action  
16 to resolve the discrepancies. Do you know why it had  
17 taken a year to, and you still had one discrepancy  
18 left?

19 A (WITNESS BALDWIN) Yes, sir. In addressing  
20 this particular drawing, as contrasted to many of the  
21 other sepias, whether they be Stone and Webster or  
22 manufacturers' prints, it is not unusual when, through  
23 the chain of events that I described before to identify  
24 one of these items, to capture it, to send it back on  
25 its way to the vendor for correction, that several

1 months or a year would take place until that drawing  
2 reappeared at the Stone and Webster project and started  
3 through the cycle again.

4 Q In fact, in this instance, if you look at FQC  
5 25, Finding (K.1), FQC 26, Finding (K.3), don't you find  
6 that there were attempts to resubmit these sepias, but  
7 in each instance certain of the sepias were illegible  
8 again? In other words --

9 A (WITNESS MUSELER) Mr. Lanpher, what is on  
10 observation (K.2), it states that --

11 Q (K.2) of which audit?

12 A (WITNESS MUSELER) Of FQC 27, that states that  
13 those two drawings were touched up and sent to the site,  
14 but those particular two somehow got lost and never got  
15 there.

16 Q Well, in FQC 25, (K.1), which I have  
17 referenced earlier, it indicates that sepia drawing  
18 replacements were submitted, does it not, but they were  
19 also illegible?

20 (Whereupon, the witnesses conferred.)

21 A (WITNESS MUSELER) Mr. Lanpher, we are now  
22 discussing Audit 25, Finding (K.5)? Is that correct?

23 Q (K.1).

24 A (WITNESS MUSELER) (K.1). Excuse me.

25 (Whereupon, the witnesses conferred.)

1           A       (WITNESS BALDWIN) Mr. Lanpher, we are a  
2 little confused. In some cases, here, you started  
3 talking about Stone and Webster drawings, and now it  
4 appears you are shifting over to manufacturers' sepias.

5           Q       No, I think I am talking only about the Stone  
6 and Webster sepias.

7           A       (WITNESS BALDWIN) We thought you shifted on  
8 us.

9           Q       I am going to shift in a moment.

10          A       (WITNESS ARRINGTON) Could you go with your  
11 question again, just so we understand it?

12          Q       In FQC 25, doesn't the auditor relate -- in  
13 FQC 25, Finding (K.1), doesn't the auditor relate that  
14 there had been an attempt to replace the nine sepias  
15 that had been illegible, but that the replacements were  
16 illegible?

17                   (Whereupon, the witnesses conferred.)

18          A       (WITNESS ARRINGTON) Mr. Lanpher, the  
19 corrective action in Observation (K.1) of that  
20 particular audit which is 25 simply stating the same  
21 condition as we cited with Audit 23, whatever the  
22 observation, (F.3), it means that the review to that  
23 particular drawing indicated that the drawing was still  
24 not acceptable. I am repeating myself, but it is a  
25 normal review cycle. This drawing, if it were needed, I

1 am sure it would have been expedited, and in the early  
2 stages of the job sometimes the drawings are sent down  
3 in advance of the work.

4           What we are trying to imply here is that the  
5 work is not being done to these drawings. This is a  
6 normal reproduction process where review is made on  
7 these drawings as they come from one station area to  
8 another station area. What we are saying here is, they  
9 were sent down a second time. There may have been more  
10 than two times, and they were not acceptable, and they  
11 were sent back again to be reprocessed.

12           The observation is simply citing something  
13 that has already been picked up by a site system.

14       A       (WITNESS MUSELER) Mr. Lanpher, unfortunately,  
15 this particular observation, I don't think we can get  
16 the numbers of all of the drawings to add up. The only  
17 thing I think in response to, I believe, the question  
18 you asked, which went to Stone and Webster drawings, in  
19 the last paragraph, the only thing that is clear, at  
20 least in my mind, is that three of the S&W sepias given  
21 by the numbers there in the last paragraph that were  
22 illegible on the June list, the June 2nd, '77, list,  
23 that those three have not been replaced with legible  
24 reproducibles.

25           Some of the other comments above are, I think,

1 unless we were able to talk to the people involved, we  
2 would not be able to interpret for you because it said  
3 all of the legible sepia replacements received by the  
4 site, and I am referring to the paragraph directly above  
5 now, were again illegible, and the response was that  
6 these were manufacturers' drawings, and your question  
7 went to the Stone and Webster drawings, so we can't draw  
8 any inferences from that. At least the last sentence in  
9 the last paragraph says that three S&W drawings had not  
10 had new acceptable sepias sent to the site at the time  
11 this audit follow-up was conducted.

12 A (WITNESS BALDWIN) Mr. Lanpher, could I add to  
13 that?

14 Q Mr. Baldwin, I understand the answer now. And  
15 if it is real important, go ahead.

16 JUDGE BRENNER: Why don't you go ahead and ask  
17 another question in this instance, and I will tell you  
18 why. I think some of your questions were confusing at  
19 first in mixing up manufacturers' and Stone and Webster  
20 drawings, and I think the witnesses have now  
21 straightened it out, given the answer we just received,  
22 and if you want to ask about it some more, I think it is  
23 best to ask another question. It is a multiple audit  
24 finding within that finding, and you will have to try to  
25 sort it out some more.

1 MR. LANPHER: I understand it now.

2 BY MR. LANPHER: (Resuming)

3 Q Mr. Baldwin, in an earlier answer, you stated  
4 that between FQC Audit 23 and FQC Audit 31 there were a  
5 series of observations related to illegible documents.  
6 I want to turn your attention to vendor documents or  
7 manufacturers' documents during that time frame or that  
8 audit frame between FQC 23 and FQC 31.

9 The auditors were reporting on the status in  
10 each of the audits, FQC 23, 25, 26, 27, 28, 29, 30, and  
11 31. In each of those audits they were reporting on the  
12 status of correction of vendors' documents that had been  
13 deemed unacceptable because of legibility problems,  
14 correct?

15 A (WITNESS BALDWIN) Correct.

16 Q And that is a two-year time period that the  
17 auditors were reporting on a more or less regular basis,  
18 it seems, on the status of getting those documents into  
19 a legible form. Does that seem to you to be an  
20 unusually long time period? Earlier you had said  
21 several months or even a year.

22 A (WITNESS BALDWIN) No, sir, it is not an  
23 unusual time period, and I would like to explain why.  
24 Back in 23, and even a couple of audits before that, it  
25 was identified by the auditors that there were audit



1 observations relative to legibilit., primarily the  
2 reproducibility of the documents and the sepias we are  
3 talking about. Back in that time frame, our engineering  
4 assurance division became involved with the project and  
5 performed a review of the situation, back in the fall of  
6 '77, and they concluded that, Number One, they didn't  
7 have any specification problems, and it was a somewhat  
8 inadequate review upon receipt of manufacturers' sepias  
9 by project people, but they also concluded that the  
10 corrective action and preventive action had been taken  
11 to prevent the reoccurrence.

12           Now, that doesn't match up with Audit 24  
13 through 31, but what we see there is a situation where  
14 we are dealing with the timely resolution of these  
15 illegible drawings, and at that time, back around 23,  
16 what we had was a population, if you will, of, I think  
17 about six or seven pages of listings of illegible  
18 drawings that were known at that point. From that point  
19 on, early '78 out through the summer of '79, in Audit  
20 Reports 24 through 31, we are seeing a situation with  
21 the timely resolution of getting these drawings back  
22 from the vendors and back into our cycle, and I think  
23 that is what is depicted in those audit reports which  
24 are identified by the K series, which is corrective  
25 action or follow-up.

1           On Audit 31 (K.2) in 1979, we, Stone and  
2 Webster and Long Island Lighting, decided to conduct a  
3 review of all of the current vendor sepias in Boston,  
4 and take even further action, not that action hadn't  
5 been taken until then. Many letters and teletypes and  
6 communications with the manufacturers had taken place,  
7 but not totally successful.

8           Now, we are talking in population figures, we  
9 are talking total population of 30,000 manufacturing  
10 prints since Day One until today. This review that  
11 Stone and Webster and LILCO decided upon in management  
12 meetings in further action with the manufacturers was to  
13 take into account a complete review at that time of  
14 12,000 manufacturers' drawings, and those that were  
15 identified that had a condition where it would affect  
16 the reproducibility of the microfilming, the decision  
17 was made that the project would upgrade, if they weren't  
18 totally successful with the manufacturers, that the  
19 project would upgrade the drawings themselves if  
20 necessary, and in April and May of '79, the project  
21 started to do that, actually putting our own people on  
22 these drawings to bring them up to top quality for  
23 reproducibility.

24           That brings us to a conclusion in 31, and  
25 based on the auditor's knowledge of what took place

1 between 23 and 31, the audit -- that particular audit  
2 observation, the tracking of all of that statusing  
3 report was closed out.

4 I might point out that we have talked in the  
5 last day or two of the causes of some of these problems,  
6 you know, why the manufacturers couldn't give us really  
7 what we needed, and some of the basic causes were that  
8 the drawings, although they were coming in and decisions  
9 were made on the project, that they felt they were  
10 acceptable, as we cycled through the first review on the  
11 project and went through several subsequent reviews and  
12 reproductions, we were losing the quality, getting down  
13 close to where the user had to get the document, because  
14 once it comes on site, it is reviewed, and it goes  
15 through document control, and goes through other cycles  
16 before it actually gets to the user.

17 Because of the situation where manufacturers'  
18 drawings have very thin black lines and the printing is  
19 small, they often sent us odd size prints, and some of  
20 the detail is congested. This is some of the basic  
21 sub-reasons of the causes we were having.

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1 FQC, Finding (F.3); FQC  
2 25, Finding (K.1); FQC  
3 26, Finding (K.3); FQC  
4 27, Finding (K.2); FQC  
5 28, Finding (K.2); FQC  
6 29, Finding (K.2); FQC  
7 30, Finding (K.2); FQC  
8 31, Finding (K.2), were  
9 received in evidence.)

10 JUDGE BRENNER: The cross-reference in the  
11 transcript could now start off with Reference 2, Suffolk  
12 County Exhibit 67.

13 BY MR. LANPHER: (Resuming)

14 Q Gentlemen, turning your attention to document  
15 control area group 5, we previously talked about the  
16 review of documents for adequacy, and Mr. Museler, I  
17 believe, you had stated that one of the review elements  
18 was to make sure that they were legible or usable.

19 Is another of the review elements to insure  
20 that documents are up to date; that is, the current  
21 version?

22 A (WITNESS MUSELER) The requirements are that  
23 the latest revisions be used to perform the work and  
24 that the final inspections and procedures developed for  
25 the plant and any facet of the plant that depends upon

1 using the latest information is in fact performed in  
2 accordance with that latest information or drawing  
3 revision.

4 Q In your answer, Mr. Museler, you said the  
5 requirements. Are you referring to LILCO's Appendix B  
6 compliance program?

7 A (WITNESS MUSELER) Our requirements to utilize  
8 the latest revisions or the latest information where  
9 using the latest revision is applicable apply to the  
10 entire project with respect to our compliance with  
11 Appendix B. Our compliance with Appendix B in this area  
12 of utilizing the latest applicable revision where the  
13 latest revision is required for the process that is in  
14 question affects or is applicable to the safety-related  
15 portions of the plant only.

16 Q Gentlemen, turning your attention to the  
17 handwritten sheet I previously provided for your benefit  
18 and the Board's and other participants, I'm going to  
19 start with Group B, the righthand side. Turning your  
20 attention to Engineering Assurance Audit 19 --

21 (Discussion off the record.)

22 MR. ELLIS: Judge Brenner, usually when Mr.  
23 Lanpher leaves an area he mentions it. I take it you've  
24 left legibility?

25 MR. LANPHER: Yes.

1 BY MR. LANPHER: (Resuming)

2 Q Engineering Assurance Audit 19, and I would  
3 direct your attention, and this is really Section  
4 2.B.2. In this audit am I correct that the auditor  
5 determined that three of the five engineering assurance  
6 manuals or procedures -- the procedures manuals, excuse  
7 me, do not contain all of the current procedures?

8 (Panel of witnesses conferring.)

9 Q Mr. Eifert, am I correct that the auditor  
10 determined that three of the five manuals -- these were  
11 EAP manuals -- did not contain all of the current  
12 procedures?

13 A (WITNESS EIFERT) Yes, that is correct.

14 Q So this would be an instance where a manual  
15 was not maintained in an up-to-date condition, correct?

16 A (WITNESS EIFERT) Yes, it would.

17 Q Turning your attention to Engineering  
18 Assurance Audit 22 and Audit Observation 021, item 2, do  
19 you have that available, sir?

20 A (WITNESS EIFERT) Yes.

21 Q Mr. Eifert, this audit observation first  
22 refers to project manuals. When that term is used,  
23 project manuals, what is being referred to?

24 A (WITNESS EIFERT) The project manual is a  
25 specific set of procedures, instructions and memoranda

1 that are issued by and controlled by the project  
2 engineering teams, Stone and Webster, under the  
3 authority of the Stone and Webster project engineer. So  
4 it is a set of procedures and instructions and memoranda  
5 unique to the Shoreham project in this situation.

6 Q And am I correct that the auditor determined  
7 that most of the project manuals were not being  
8 maintained up to date?

9 A (WITNESS EIFERT) Yes, Mr. Lanpher, the audit  
10 did indicate that, that there were some deficiencies in  
11 the methods being applied by the people who hold the  
12 manuals in, keeping their specific manuals up to date.

13 The audit report identifies also that the  
14 specific deficiencies had been identified to the project  
15 separate from the actual audit.

16 Q Mr. Eifert, turning your attention to  
17 Engineering Assurance Audit 23 and Observation 037, am I  
18 correct that the project engineering assurance manuals,  
19 an audit of those manuals revealed that approximately 40  
20 percent were deficient and that they were not maintained  
21 up to date or that they had out-of-date materials in  
22 them?

23 A (WITNESS EIFERT) Mr. Lanpher, I believe you  
24 have properly characterized this audit. The percentage  
25 figure of 40 percent refers to the number of manuals



1 audited and not a percentage of the degree to which  
2 individual manuals were maintained up to date.

3           What it is indicating is that 40 percent of  
4 the manuals audited had some sort of a discrepancy. The  
5 type of discrepancy would have been the situation where  
6 someone had received an updated procedure and kept the  
7 old procedure, had not yet filed the new material yet,  
8 and possibly had not indicated an index change where  
9 that was warranted.

10           I might explain that the situation with the  
11 engineering assurance manuals that we have had over the  
12 years, we have been able to identify many cases where  
13 people who were not maintaining the procedures manuals  
14 up to date are typically people who do not need those  
15 manuals for use in the daily work -- manuals that may be  
16 typical of engineers -- they all think they need their  
17 own procedures manuals, but they don't want to  
18 specifically keep them up to date. They refer to them  
19 not on a daily or several times a day, and they don't  
20 really need their own copy of the manual.

21           What we have done several times or at least  
22 twice is had supervisory people review them to establish  
23 that only those people who needed their EAP manuals have  
24 them and others, we have taken steps to ensure that  
25 there is one maintained in their area so that they had

1 ready access, not necessarily on their desk.

2           In the years after say '79, I believe, when we  
3 performed that kind of assessment of exactly who had the  
4 distribution, the number of manuals that we found were  
5 not being maintained specifically up to date was  
6 significantly reduced.

7           Q     Mr. Eifert, would you agree that in  
8 Engineering Assurance Audit 27, Finding (078), the same  
9 basic finding was made, namely that engineering  
10 assurance procedure manuals were reviewed, and five of  
11 the eight that were reviewed were in need of some  
12 updating?

13           JUDGE BRENNER: Off the record.

14           (Discussion off the record.)

15           WITNESS EIFERT: Mr. Lanpher, as we indicated  
16 on the Audit Observation 078, this is a situation  
17 similar to that which we reported in 037, and this again  
18 was occurring in the time frame where we undertook to  
19 see that the people who actually needed and used manuals  
20 had them and others had ready access to them.

21           BY MR. LANPHER: (Resuming)

22           Q     Gentlemen, turning your attention to FQC Audit  
23 14, Finding (A.1), am I correct that this was an  
24 instance where two FQC manuals and one concerning  
25 nondestructive testing needed to be updated?

1 (Panel of witnesses conferring.)

2 A (WITNESS ARRINGTON) Is that Observation (A.1)?

3 Q That is what I wrote down.

4 A (WITNESS ARRINGTON) That number is four FQC  
5 manuals.

6 Q Thank you.

7 Mr. Arrington, would you agree that this is  
8 similar to the previous findings that we've talked about  
9 concerning manuals not being maintained in an updated  
10 condition?

11 A (WITNESS ARRINGTON) Mr. Lanpher, these  
12 manuals are issued as information only manuals. They  
13 are issued to the LILCO personnel. They are not the  
14 same personnel that implement these manuals. It does  
15 indicate that they were not completely up to date. I  
16 don't know what aspects of the manual itself, whether it  
17 was a table of contents of whether it was a change to  
18 the procedure that was not up to date, but it does  
19 indicate that they were submitted to the LILCO  
20 personnel, which is strictly submitted to them for  
21 information only.

22 Q Are they supposed to be maintained up to date?

23 A (WITNESS ARRINGTON) Control copies of them  
24 are, yes.

25 Q And that was the reason the audit observation

1 was written, correct?

2 A (WITNESS ARRINGTON) That is correct.

3 Q So this was a violation of the LILCO  
4 requirement in that these copies were supposed to be  
5 maintained up to date.

6 A (WITNESS ARRINGTON) This observation here is  
7 a deviation from the Stone and Webster requirement that  
8 is responsible for this particular manual, the field  
9 quality control manual. The individuals that were cited  
10 here were LILCO personnel who received these manuals for  
11 information only.

12 There are various organizations on site such  
13 as accounting or other organizations that have these  
14 manuals even though they are not required to work with  
15 the manuals or use the manuals. And in this particular  
16 case LILCO does not work with or use the manuals. They  
17 are simply given to them as information. Yet, the same  
18 requirement exists for everyone, but I just wanted you  
19 to understand that these are manuals that were given to  
20 someone for information only.

21 MR. LANPHER: Judge Brenner, I had better stop  
22 here.

23 JUDGE BRENNER: You're telling me it would  
24 take more than a minute or two to get to the point where  
25 you want to move things in evidence?

1 MR. LANPHER: Well, I am going to go probably  
2 to what you might call the global questions, and that  
3 usually takes about five or seven minutes. We need time  
4 for the witnesses to review things.

5 JUDGE BRENNER: Okay. We will stop here then  
6 for the sake of the witnesses catching their plane.

7 Why don't you ask them the question, and we  
8 will get the answer when they come back, if you don't  
9 have any objection to that since they do have to  
10 consider all of the items and so on. Unless you're not  
11 willing to phrase it.

12 MR. LANPHER: I will try to convey that  
13 question to them along with other information. It was  
14 going to take me a minute or two to group these in just  
15 the right way. That won't be a problem.

16 JUDGE BRENNER: Okay. I'm not requiring it.  
17 I'm just suggesting.

18 MR. LANPHER: I would rather not do it now.

19 JUDGE BRENNER: Surely. As far as the  
20 witnesses are concerned, they can go; and we thank you  
21 again for your time this week, and we will see you at  
22 9:00 on October 26th, which is a Tuesday. Stay well  
23 until then.

24 (The witnesses were excused.)

25 MR. ELLIS: I thought that because the next

1 time was you also had Limerick on Monday that it was  
2 going to be 10:30 on that Tuesday.

3 JUDGE BRENNER: Yes, we did. And let's stay  
4 with the 10:30. Thank you. In general, we will try to  
5 start at 9:00 on Tuesdays as we discussed off the  
6 record, and we do not plan on being at a hearing on  
7 Monday, the 25th, but we may be in hearing up until  
8 10:29 on Tuesday the 26th for all I know.

9 So that is right. We will start at 10:30 a.m.  
10 on October 26th.

11 MR. LANPHER: If you all have the problem of  
12 being in a hearing on that Monday we will start on the  
13 Tuesday, this hearing, unless you push that one over?

14 JUDGE BRENNER: I don't want to contemplate  
15 those possibilities at this time. Suffice it to say we  
16 will get in touch with you as early as we know of any  
17 changes.

18 I have had distributed to counsel a copy of a  
19 memorandum for files dated October 14, 1982 on Licensing  
20 Board letterhead. It was prepared by David L. Prestemon  
21 who is the Atomic Safety and Licensing Board Panel's  
22 legal counsel.

23 I would like to have it bound into the record  
24 at this point, and then I will explain what it is and  
25 why I'm handing it out.

1                    (The memorandum for files dated October 14,  
2 1982, prepared by David L. Prestemon, follows:)

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL  
WASHINGTON, D.C. 20555

INSERT #1

October 14, 1982

MEMORANDUM FOR: FILES  
FROM: David L. Prestemon *DP*  
SUBJECT: TENTATIVE SCHEDULE FOR REMAINING SHOREHAM PROCEEDINGS

The current best estimate for the remainder of the Shoreham proceedings is as follows:

1. Litigation of all contested issues other than those relating to onsite and offsite emergency planning will be completed by the end of December 1982, provided that Staff review of three or four contested issues is completed soon. If Staff review is not completed until late this year, litigation of the affected issues will have to be pushed into 1983.

2. Onsite emergency planning issues will be litigated in January and February 1983.

3. A partial initial decision covering all issues litigated prior to the end of 1982 will be issued in April 1983.

4. A partial initial decision covering onsite emergency planning issues and issues carried over from 1982 because of late Staff review will be issued in May 1983, assuming that it is possible to fit the carried over issues into the hearing schedule without excessive delay.

5. Hearings on offsite emergency planning issues will begin in May 1983 at the earliest. The probable duration of this final phase of the proceedings cannot be accurately estimated at this time.

cc: E. Christenbury, ELD  
J. Austin, EDO  
B. P. Cotter, Jr., ASLBP  
L. Brenner, ASLBP  
J. Carpenter, ASLBP  
P. Morris, ASLBP



1           JUDGE BRENNER: It is a document that was  
2 prepared by Mr. Prestemon, so the language and  
3 phraseology is his, and I did not approve it, although  
4 he did show it to me. But, frankly, I didn't have time  
5 to worry about the particular language. It is, however,  
6 based upon factual information which I supplied to Mr.  
7 Prestemon. So although not necessarily my choice of  
8 language, it represents in substance my opinion as to  
9 the current best estimate of the schedule for things in  
10 this proceeding. It is merely my opinion. I can tell  
11 you the other Board members had no violent objection to  
12 this being my opinion, but they may have had different  
13 estimates in the first instance because there are  
14 variations. And I could go into further detail on the  
15 possibilities, but you know them as well as I.

16           The main reason I'm going into this now is to  
17 resolve what I perceive to be an ex parte problem when I  
18 saw this document after the fact. When I spoke with Mr.  
19 Prestemon I thought he was obtaining oral information to  
20 respond to an inquiry to somebody who was an employee of  
21 the Commission whose name I recognized as being a  
22 Commission staff assistant. And I thought it was  
23 typical of inquiries we sometimes get from Commission  
24 staff assistants over the phone as to the schedule of  
25 the proceeding. And as you know, under the ex parte

1 rule the Commission is entitled to status reports.

2           What I did not know is that this gentleman  
3 unbeknownst to me changed jobs, so he was now in a  
4 different capacity and is in fact a member of the EDO  
5 staff now. It is not the gentleman listed I should say.

6           So when I was supplying the information to Mr.  
7 Prestemon to respond to the inquiry, I didn't know it  
8 was going to be what I deemed to be an ex parte inquiry  
9 from a staff member, and when I found that out after the  
10 fact, I would have wanted to disclose this.

11 Furthermore, it's exacerbated by the fact that the  
12 distribution of this went to Mr. Christenbury who is --  
13 I forget his precise title, but it might be chief  
14 hearing counsel, and a Mr. Austin, who I've never heard  
15 of and do not know who is in the EDO's office.

16           This was prepared in writing by Mr. Prestemon  
17 after I gave him the information at my request because I  
18 wanted to have it in convenient form for myself and the  
19 other Board members and Mr. Cotter, who is the chief  
20 judge of the Licensing Board Panel, simply as a  
21 convenience to us so that Judge Cotter would know the  
22 status and so that I would have a record of what I said  
23 this day. And the schedule changes in my own mind from  
24 week to week.

25           We sometimes do prepare a monthly report to

1 the Commission which indicates the scheduling status,  
2 and I thought I would have this for my own use so my  
3 secretary could prepare a report if necessary in my  
4 absence.

5 I should also tell you that as I understand  
6 it, the reason for the inquiry from this person to Mr.  
7 Prestemon was not any focused interest on Shoreham for  
8 any reasons of Shoreham; rather, they were preparing a  
9 report to Congress which is a regular report, as I  
10 understand it. It is called the Simpson Report after  
11 the Congressman to whom it goes. And I don't know very  
12 much else about it except that they have their figures  
13 in the report wrong. And Mr. Prestemon's information,  
14 which was my information, seemed to surprise them. I  
15 don't know why.

16 Needless to say, it is my view that when Mr.  
17 Christenbury or Mr. Austin or anybody else on the staff  
18 needs information as to the schedule of the case, they  
19 should contact their own staff counsel who has as good a  
20 view, if not better, as to the schedule estimates as we  
21 do.

22 And that is not a message to you, Mr.  
23 Bordenick. It is a message to them which I hope you  
24 will transmit to them.

25 MR. BORDENICK: I certainly will, Judge

1 Brenner. And I should point out, since you raised the  
2 matter, that Mr. Christenbury and I discussed this memo  
3 last night, and I had seen it for the first time last  
4 night. And --

5 JUDGE BRENNER: Well, good. I'm glad he  
6 talked with you about it.

7 MR. BORDENICK: He did talk to me. But the  
8 reason I'm mentioning that particular aspect at this  
9 time is that it is my impression, although I can't point  
10 to anything in my conversation with him as a basis for  
11 this impression, but my overall impression is that he  
12 was going to have further conversations with somebody  
13 today. And I think that the reason he sought my advice  
14 yesterday evening is that our client, which is the  
15 Office of Nuclear Reactor Regulation, apparently also  
16 received a copy of this memo and for reasons which I am  
17 unacquainted, they were somewhat disturbed by the memo.  
18 And, of course, he, as you pointed out, came to me since  
19 I am the one with the most knowledge of the situation.

20 JUDGE BRENNER: Well, I'm really not  
21 interested in what the problem is, frankly. What you've  
22 said reinforces my judgment in filing it in the case,  
23 and if nothing else, having gone through the exercise of  
24 it being prepared, albeit I thought for a different  
25 audience, namely just the Board members and the

1 Commission in their overall role of looking at status  
2 reports.

3           This is my estimate for better or for worse,  
4 and it is an estimate that is subject to change from  
5 week to week and perhaps even day to day. I think it is  
6 consistent with matters we have discussed from time to  
7 time in the case, so I do not mean it to represent any  
8 new information to which I am privy. It is merely my  
9 distillation of what I perceive in the case and what the  
10 parties have stated to me.

11           MR. BORDENICK: Judge Brenner, the only reason  
12 I mentioned what I mentioned a moment ago is because I  
13 am somewhat of the impression that there may have been  
14 further contacts between people on this list, exclusive  
15 of the Board, of course; because like staff counsel the  
16 Board has been sitting over here all day.

17           I will certainly pursue this. Unfortunately,  
18 it will have to wait until Monday because Mr.  
19 Christenbury is off with senior ELD members at a  
20 seasonal gathering over on the Eastern Shore.

21           JUDGE BRENNER: Well, they are improving their  
22 location.

23           (Laughter.)

24           MR. BORDENICK: The only reason I said what I  
25 said is that there may perhaps have been further

1 contacts which might be construed as ex parte, and in  
2 the same spirit you brought this to the parties'  
3 attention, I added what I added.

4 JUDGE BRENNER: I don't think this was a big  
5 deal violation of the ex parte rule, but let me say that  
6 it was with an abundance of caution and also my belief  
7 that as long as a staff member has now become  
8 knowledgeable, that this is my impression of the  
9 schedule.

10 I want every party in the case to have equal  
11 access to that impression for what it's worth, and it's  
12 worth, in my opinion, very little because all of you  
13 should have received the same information.

14 So the purpose of raising this isn't to  
15 castigate anybody; it is merely to ask that things be  
16 done differently in the future along the lines I  
17 indicated, and also so I can get this off my chest, so  
18 to speak, and get it out in the record.

19 But that's the long and the short of it.

20 MR. BORDENICK: Judge Brenner, I will bring it  
21 to my office's attention.

22 Again, just as an impression, the impression I  
23 got from Mr. Christenbury was that he was not under the  
24 impression that you had prepared this or even that you  
25 had given Mr. Prestemon the information.

1 JUDGE BRENNER: If I'd have known that I would  
2 have had less of a problem. I did not prepare it. I  
3 did give Mr. Prestemon the information, and Mr.  
4 Prestemon accurately recorded the factual information.  
5 I might not have phrased it precisely as he did.

6 (Board conferring.)

7 JUDGE BRENNER: Judge Morris raises one good  
8 point. I have stated that Mr. Prestemon did show me a  
9 copy of this, and I didn't have time to fool around with  
10 the language, nor did I care to given what I thought was  
11 the limited distribution. I did make one factual  
12 change, so the version you had yesterday may have  
13 indicated June 1983 as the date in paragraphs 4 and 5.  
14 That was not my estimate. My estimate was and is May  
15 1983, and I made that change. This is not to say that  
16 June or some other month may not turn out to be correct,  
17 and for all I know June will become my estimate two or  
18 three weeks from now.

19 Incidentally, as long as this is out, after  
20 the break if anybody thinks this is violently wrong,  
21 they can tell me because it will help me in terms of my  
22 foreseeing where we are going. I understand there are  
23 possible differences in terms of where things might  
24 shift, and there are a lot of assumptions that I don't  
25 want to go into because you can make your own

1 assumptions as to how long things will last. But if you  
2 think something is really completely wrong in the  
3 sequence or the approximate time frames, maybe we should  
4 all hear about it.

5 MR. EARLEY: Judge, we certainly hope there  
6 are large design margins built into the schedule. But I  
7 do have one question.

8 JUDGE BRENNER: There are not, in my opinion.  
9 There are some margins. I wouldn't characterize them as  
10 large.

11 MR. EARLEY: The indication in paragraph 5  
12 that offsite emergency planning issues aren't estimated  
13 to begin until May, coupled with the indication that  
14 onsite emergency planning issues should be litigated in  
15 January and February of 1983, it looks like you are  
16 anticipating a several month gap there in the hearings.

17 JUDGE BRENNER: Between February and May,  
18 yes. I assume somebody would like us to write a  
19 decision at some point on what we have litigated in the  
20 first part. That is another reason for us to be out.  
21 If parties prefer a decision on all of the matters and  
22 the matters are otherwise ready for hearing, we can keep  
23 going through hearing. For myself, I would rather get  
24 the proposed findings in.

25 Well, we're definitely going to get the



1 proposed findings in, as we indicated; and I want to  
2 start working on the decision before everything becomes  
3 much too stale.

4 MR. EARLEY: That is what I wanted to clarify,  
5 Judge. Thank you.

6 JUDGE BRENNER: That is what I had in mind.  
7 We will entertain requests of the parties for different  
8 approaches.

9 Well, let me give you one indication of an  
10 assumption just to show that -- I'm afraid because it is  
11 on a piece of paper suddenly will be cast in concrete,  
12 and it is only a best guess. For example, I do not  
13 necessarily believe that onsite emergency planning  
14 issues will take two months to litigate. They might,  
15 but I wouldn't make that assumption today. I do believe  
16 they will take at least a month and maybe a little  
17 longer. So perhaps that could have been phrased January  
18 and possibly into February. But the reason I don't  
19 think it is very important is that the estimate of  
20 completing everything else by the end of December is in  
21 my view optimistic, and that may shift into January a  
22 little, and the result might be that the overall  
23 completion date in February of onsite issues is  
24 accurate, even though for reasons other than the fact  
25 that the issues took two months.

1           In addition, I'm still optimistic that there  
2 will be some further narrowing or settling on onsite  
3 emergency planning issues. However, I did not want to  
4 take that into account at this moment.

5           There are other estimates. Whether we can  
6 catch up just a month after issuing the decision on all  
7 of the other issues and get a decision out on onsite  
8 issues depends upon what work was being done in the  
9 overlap in that time frame as we got the findings in and  
10 so on.

11           So it is a guess, and it isn't deserving of  
12 any greater weight than that. Just an educated guess.

13           All right. That is all we have on that. I  
14 want to emphasize I do not consider it a big deal. It  
15 is that simple.

16           Did you want to talk about the other matter  
17 related to QA appendices of LILCO's testimony?

18           MR. LANPHER: I believe that we have resolved  
19 just about all of that, namely that with respect to  
20 Appendices 45 through 50 they are going to attempt to  
21 cull out the portions that they're going to rely upon.  
22 Those are procedures, and they have informed us that  
23 they're going to rely upon full portions of 28, 42 and  
24 43 which are some procedures, but they are relatively  
25 short, and they relate to things in their testimony.

1           My only area of concern concerns the LILCO QA  
2 manual and the Stone and Webster QA manual and the LILCO  
3 engineering QA manual. Those are Attachments 4, 5 and  
4 11, and they are large. And as I understand the  
5 situation, there is not at this time any intention by  
6 LILCO to site specific portions of those manuals for  
7 proposed findings purposes, though they don't feel they  
8 can commit, and thus they do not want to cull out any  
9 portions. They are concerned about saying that they  
10 won't because my cross examination may highlight things.

11           In any event I think that seems a reasonable  
12 position, although if that position changes I would like  
13 to be alerted.

14           JUDGE BRENNER: I will ask first if that is an  
15 accurate summary of the situation.

16           MR. EARLEY: I think that it is not quite  
17 accurate. Our position is we just can't tell whether  
18 we're going to use portions of the QA manual. The  
19 County is asking questions about the LILCO QA program,  
20 and as the cross examination develops, we may find it  
21 necessary on findings to reference a specific portion of  
22 the QA manual for one of the organizations. And the  
23 contention involves the programs set out in the QA  
24 manual and not a specific portion of the programs.

25           And as I say, it's just impossible to tell

1 right now whether there are going to be specific  
2 portions that have to be cited or whether the manuals  
3 just stand by themselves for the fact that we have a  
4 program.

5           JUDGE BRENNER: Okay. We're not going to be  
6 able to do anything further with it. I understand the  
7 situation, and I understand your refinement, Mr. Earley,  
8 of what Mr. Lanpher said.

9           I think, first of all, in the easy case were a  
10 witness references the manual either by subject area or  
11 particular section or subsection number, that is easy;  
12 that is before us on examination, and everybody can  
13 focus on it in the context in which it was raised.

14           To the extent there are some overall program  
15 things that come into play, I think, and it becomes  
16 apparent at the finding stage for the first time that  
17 you need parts of the manual to prove the fact that this  
18 is a program that exists. That is less of a problem to  
19 the County. In other words, the program always exists.  
20 You're not relying on a particular part for something  
21 special. It is not quite that in depth reliance where  
22 you have to cross examine the details of it, and that is  
23 the main thing we're concerned about, that you missed an  
24 opportunity to examine into something that becomes  
25 important.

1           So that is the case where it is most likely to  
2 come up at the latest stage, and also happily the case,  
3 least likely to present a problem if it does come up at  
4 that stage. We are not going to prohibit them from  
5 using portions of it in findings because of just the  
6 large breadth of the quality assurance-quality control  
7 contentions taken in their totality. However, if  
8 something is cited for the first time at the finding  
9 stage and there is a colorable dispute as to what it  
10 means which would be illuminated by some further  
11 information beyond the words of the page, that can be  
12 raised in a counter motion or a counter findings. And I'm  
13 not sure if the sequence would normally allow  
14 counter findings, but we would allow you to do that, the  
15 County, and then we will take a look at that one thing.

16           I think it is unlikely to be a big problem for  
17 the reasons we discussed, and where something is really  
18 important for going into substance, hopefully you will  
19 find it on redirect at the latest stage. So let's leave  
20 it at that.

21           MR. EARLEY: Judge Brenner, I do have one  
22 other thing. We will be passing out when we finish here  
23 today some material on the inadequate core cooling  
24 contention. I believe we submitted some preliminary  
25 reports, and this is the Shoreham specific report plus

1 some BWR Owners Group reports. I believe the Owners  
2 Group report has not been finalized by the Owners Group,  
3 but this is very close to the final version that we will  
4 hand out. And this is, I guess, the sum total of what  
5 we intend to submit on inadequate core cooling.

6 JUDGE BRENNER: Okay. Thank you very much. I  
7 think we can then adjourn for the day. We will see you,  
8 as we said, at 10:30 a.m. on Tuesday, October 26th.

9 (Whereupon, at 2:20 p.m., the hearing was  
10 recessed, to be reconvened at 10:30 a.m., Tuesday,  
11 October 26, 1982.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

in the matter of: Long Island Lighting Company (Shoreham Nuclear Power  
Station)

Date of Proceeding: October 15, 1982

Docket Number: 50-322 OL

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original transcript  
thereof for the file of the Commission.

Ray Heer

Official Reporter (Typed)

Ray Heer

Official Reporter (Signature)