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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING  BOARD

In the Matter of

LONG ISLAND LIGHTING COMPANY

Docket No. 50-322 OL

(Shoreham Nuclear Power Station,  
Unit 1)

(Emergency Planning)

*Exhibit*  
*Clearance*  
*25/1/11*

ORAL ARGUMENTS

Location: Bethesda, Maryland

Pages:  
586 - 714

Date: Friday, June 22, 1984

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A P P E A R A N C E S

1  
2 Administrative Judge:

3 Marshall E. Miller

4 Nuclear REgulatory Commission Representatives:

5 Edwin J. Reis  
6 Robert Perlis

7 On Behalf of Intervenor Suffolk County:

8 Karla J. Letsche, Attorney at Law  
9 Lawrence Coe Lanpher, Esq.  
10 Cherif Sedky, Esq.  
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12 1900 M. Street, N.W.  
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14 On Behalf of the State of New York:

15 Thabian Palomino

16 On BEhalf of Long Island Lighting Company:

17 Robert Martin Rolfe, Esq.  
18 Hunton & Williams  
19 PO Box 1535  
20 Richmond, Virginia 23212  
21  
22  
23  
24  
25

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

1  
2 MR. MILLER: Good morning, gentlemen. You were noti-  
3 fied, I think, telephonically and probably by telefax yester-  
4 day afternoon, this prehearing conference meeting with  
5 counsel and parties, whatever you want to call it, was  
6 called by the Board following the receipt of various motions  
7 including one for protective order dealing with apparently  
8 ongoing discovery matters.

9 Inasmuch as the period of discovery, I believe,  
10 ends in one week, Friday of next week, the Board deemed it  
11 its duty as well as an effort to be helpful to the parties  
12 to monitor the ongoing proceedings, including discovery,  
13 whatever other motions. Therefore, this prehearing confer-  
14 ence is set for the purpose of taking up whatever motions  
15 there are pertaining to discovery or anything else that  
16 might have a bearing upon the schedule or conduct of a  
17 hearing.

18 I assume that, first of all, we'll have counsel  
19 identify for the record themselves and the persons who are  
20 with them at counsel table, starting with

21 MR. LANPHER: Lawrence Coe Lanpher, for Suffolk County  
22 and with me at the table is Cherif Sedky and Karla J.  
23 Letsche. They noticed their appearances this morning and I  
24 believe their envelope's up there for the Board, indicating  
25 their appearance.

1 MR. MILLER: Thank you.

2 MR. PALOMINO: Thabian Palomino for the State of  
3 New York.

4 MR. ROLFE: Robert M. Rolfe, for the applicant LILCO.

5 MR. REIS: Edwin J. Reis for the NRC staff and with  
6 me is Robert Perlis who has a prior appointment and will  
7 have to leave at 10:00.

8 MR. MILLER: He'll be given leave to depart at 10.  
9 All right. I guess the motion for protective order filed by  
10 LILCO on June 21, 1984, and any matters that are pertinent  
11 thereto can be our first item for discussion to move on.  
12 LILCO desire to go forward?

13 MR. ROLFE: Yes, Your Honor, thank you.

14 MR. MILLER: You might give us a background, since  
15 these documents, I suppose, were filed rather recently to  
16 or by all parties, given the nature of things, so you might  
17 give us some background if you would, please.

18 MR. ROLFE: I will do that. Judge Miller, LILCO has  
19 moved for a protective order prohibiting the deposition  
20 on George Sedaris, who is a vice president of LILCO dealing  
21 with financial matters. Also, we'd moved for a protective  
22 order of any other LILCO employees prohibiting the depo-  
23 sition of any other LILCO employee or consultant concerning  
24 the questions of financial qualifications to operate the  
25 Shoreham plant at low power and the question of whether it

1 is prudent to engage in low power testing absent any assur-  
2 ance that a full power license will be granted and thirdly,  
3 concerning any possible uncertainty arising from LILCO's  
4 financial health on its ability to operate the plant.

5 In its application for exemption at pages 20 and  
6 21, among the public interest considerations which LILCO  
7 posited in support of its application for exemption was an  
8 economic consideration and that was that there might be a  
9 potential economic benefit from early commercial operations  
10 at the plant, which might be facilitated through the early  
11 completion of low power testing. All of that is potential,  
12 obviously, because no one knows exactly when the licensing  
13 proceedings will run their course.

14 Nevertheless, that was a potential benefit which  
15 LILCO cited. I might add right now, so that there won't be  
16 any confusion, the figures of 90 million to 135 million  
17 which LILCO had in its application for exemption are a bit  
18 misleading.

19 Those are the actual cost per month of the plant  
20 and that represents the two to three month costs of the  
21 plant. The actual savings from early low power testing  
22 would be somewhat less than that, so that figure is not  
23 exactly accurate, but that's not germane to the motion LILCO  
24 has before the Board today.

25 MR. MILLER: Let me stop you just a moment there.

1 You're telling us what was in your application in this  
2 regard, that's perfectly proper. You might also include  
3 now, however, what if anything the Commission has said in  
4 its orders and I suppose that the May 16, 1984, order at  
5 page 3, at least does bear somewhat upon the subject that  
6 you are now discussing. So, to have the record complete,  
7 at one point, I suggest you might describe that as well.

8 MR. ROLFE: The Commission, in its May 16, 1984, order  
9 asks that any application for exemption address exigent  
10 circumstances that favor the granting of an exemption under  
11 10 CFR Section 5012A. Among those exigent circumstances,  
12 the Commission suggested a number of things that might be  
13 taken

14 MR. MILLER: Keep your voice up so the reporter gets  
15 accurately what you're saying, particularly if you choose  
16 to quote.

17 MR. ROLFE: I'm sorry if I haven't. In footnote 3,  
18 the Commission said, and I will quote this for the record,  
19 a finding of exceptional circumstances is a discretionary  
20 administrative finding which governs the availability of  
21 an exemption, a reasoned exercise of such discretion should  
22 take into account the equities of such situations, of each  
23 situation. These equities include the stage of the facili-  
24 ty's life, any financial or economic hardships, any internal  
25 inconsistencies in the regulations, the applicant's good

1 faith efforts to comply with the regulations from which  
2 an exemption is sought, the public interest in adherence  
3 to the Commission's regulation, and the safety significance  
4 of the issues involved.

5 The economic, potential economic benefit which  
6 LILCO has posited in its application for exemption fits  
7 in, actually in two places here. One, any financial or  
8 economic hardships and also the public interest in general.  
9 And the public interest might be benefited, as LILCO will  
10 show in its proof, to the extent that there are savings  
11 which might accrue from bringing Shoreham on line to commer-  
12 cial operation early. These savings, for example, might be  
13 in such things a fuel costs.

14 LILCO will present that evidence at the hearing,  
15 through Anthony Nozzolillo, who has been identified as a  
16 witness and whose deposition is scheduled to be taken on  
17 June the 28th.

18 MR. MILLER: How do you spell that name?

19 MR. ROLFE: N O Z Z O L I L L O.

20 MR. MILLER: Thank you.

21 MR. ROLFE: In any event, the issue which LILCO has  
22 raised by its citing of this potential economic benefit is  
23 the question of to what extent will there be a benefit from  
24 early low power testing. It's not an issue of whether low  
25 power testing ought to go forward or whether LILCO is

1 financially qualified to engage in low power testing. It's  
2 simply a question of economics and time.

3 As the Board knows in the partial initial deci-  
4 sion which was rendered in this case previously, all matters  
5 incident to low power testing were favorably resolved to  
6 LILCO but for the diesel generator issue.

7 The purpose of this application for exemption is  
8 to allow low power testing prior to resolution of the  
9 diesel generator issue. Once that issue is favorably resol-  
10 ved to LILCO, LILCO would have the right to engage in low  
11 power testing, without any consideration of whether a full  
12 power license might ultimately be granted, without any con-  
13 sideration of financial qualifications.

14 So by raising the potential economic benefit, all  
15 LILCO is raising is the question of whether there might be  
16 a benefit from engaging in the low power testing in advance  
17 of resolution of the diesel generator issue.

18 Suffolk County, through its discovery request,  
19 which I'll go into in a little bit more detail in a  
20 moment

21 MR. MILLER: Which discovery request now are you  
22 alluding to?

23 MR. ROLFE: Well, Your Honor, it initially started  
24 with the second discovery request which were served on  
25 June the 11th, 1984. I think the issues were sharpened



1 somewhat through the depositions of Messrs. Dirmier and  
2 Madden, and I'll describe that for the Board. Generally  
3 what Suffolk County appears to want to do, is to turn  
4 these hearings into a full scale inquisition into LILCO's  
5 financial health and whether the plant should be operated  
6 at all.

7 In the June 11 second discovery request, which  
8 was a combination of interrogatories and requests for  
9 documents, a multitude of questions and document requests  
10 were posed concerning virtually every financial piece of  
11 information which LILCO has. I won't make an attempt to  
12 go through all of them, I think if the Board has looked at  
13 them, you can see the breadth of these requests.

14 LILCO objected to the discovery requests on  
15 several grounds. One that they included interrogatories  
16 and this Board had already ruled that interrogatories were  
17 not a suitable means of discovery in this proceedings. But  
18 more importantly for today's consideration, LILCO objected  
19 that the requests were not relevant to the subject matter  
20 of this proceeding and were not reasonably calculated to  
21 lead to the discovery of admissible evidence.

22 Subsequently, the depositions, actually, before  
23 the objections were filed but after the discovery requests  
24 were filed, the depositions of two Suffolk County consul-  
25 tants, Messrs. Madden and Dirmier, were taken and in those

1 depositions, although those gentlemen had not reached any  
2 opinions yet, they testified that the areas they were looking  
3 into were, and I believe I'm quoting, economic matters,  
4 financial matters and public interest matters. When pressed  
5 as to what exactly that consisted of, my interpretation of  
6 what they said was

7 MR. MILLER: You don't have the depo before you, I  
8 assume.

9 MR. ROLFE: Your Honor, the transcript was due into  
10 my office today and because of the hour at which I had to  
11 come up here, I haven't seen it yet.

12 MR. MILLER: Well, we'll take your best recollection  
13 as well as that of all other counsel. We will give you  
14 leave now to supply direct quotations from pertinent  
15 portions of the transcript. Supplement the record in that  
16 record if you will.

17 MR. ROLFE: Thank you, Your Honor. In any event, my  
18 interpretation of what Messrs. Madden and Diemeier said  
19 that they were looking into were basically three areas  
20 and there were some more particular issues subsumed in  
21 these three areas.

22 But they were, first of all, given LILCO's finan-  
23 cial situation and its financial problems that they had  
24 read about in the press and through other documents, can  
25 LILCO operate the plant safely and does LILCO's financial

1 condition impact upon its ability to engage in the low  
2 power testing.

3 SEcondly, they wanted to look at the potential  
4 benefits from low power testing versus the potential detri-  
5 ment from ultimately having to decommission the plant in  
6 the event that a full power license were not granted. In  
7 other words, they wanted to factor in the uncertainty re-  
8 lating to a full power operating license and, as I under-  
9 stand it, render some opinion taking into account the pro-  
10 babilities that a full power operating license might ulti-  
11 mately be granted. They wanted to render some opinion as  
12 to whether it was prudent to engage in low power testing  
13 early, given this uncertainty.

14 And, thirdly, they mentioned an area, which I  
15 think relates really to the first area of financial  
16 qualifications, but that is, what impact on LILCO's  
17 ability to engage in low power testing might the thread of  
18 bankruptcy or reorganization have.

19 Further, in the depositions, Messrs. Madden and  
20 Dirmeier testified that they had been instrumental in  
21 drafting or suggesting the discovery requests which comprised  
22 the County's second discovery request to LILCO. When ques-  
23 tioned as to what the purpose of of those requests was,  
24 they said that the requests were all calculated to get infor-  
25 mation dealing with those areas of inquiry which I just

1 described, although in all fairness I must say that in  
2 their testimony they tried to keep the areas a bit broader  
3 perhaps than I just described and they kept coming back and  
4 saying they were germane to financial matters, economic  
5 matters and public interest matters. That didn't have a  
6 whole lot of meaning to me because those terms were so  
7 broad. But I think, and I'm sure the County's attorneys  
8 will correct me if I'm wrong, it's fair to say that what  
9 they intended to get through those discovery requests was  
10 information pertinent to the three areas of inquiry I just  
11 mentioned.

12 Your Honor, it's LILCO's position that those areas of  
13 inquiry are simply not relevant here. The financial quali-  
14 fications matter and the question of whether LILCO's finan-  
15 cial condition will impact upon its ability to operate the  
16 plant is a question which the commission, through its  
17 regulations, has removed from consideration in operating  
18 license proceedings. In 5057A4, it states that no finding  
19 of financial qualifications are necessary for a utility  
20 seeking an operating license, that's paraphrasing it.  
21 There was the D.C. Circuit opinion which required reconsi-  
22 deration of that regulation and the Commission issued its  
23 financial qualifications statement on policy on June 12,  
24 1984, which is at 49 Federal Register 24111, which, in  
25 effect, continues the policy under 5057A4 with respect to

1 operating license proceedings.

2 In short, the question of financial qualification  
3 is not a properly pending issue in this proceeding. And  
4 what's more, even if it were subject to litigation under  
5 the regulations, there is no pending contention in these  
6 operating license proceedings concerning LILCO's financial  
7 qualifications. And it would be too late to try to raise  
8 that type of contention now given that LILCO's financial  
9 problems have been discussed in the press an elsewhere, at  
10 least since 1983.

11 Indeed, in Messrs. Dirmeier's and Mr. Madden's  
12 affidavits, they stated that the financial problems began  
13 in 1983. So any attempt now to introduce that as a new  
14 contention would not only run afoul of the Commissions  
15 regulations, but it would be untimely. So for that reason,  
16 the financial ability of LILCO to engage in low power  
17 testing is not an issue and should not be the subject of  
18 discovery.

19 SEcondly, the question of the cost of decommis-  
20 sioning the plant similarly should not be an issue. What  
21 you're really looking at, if you try to get into that issue  
22 you're trying to take into account the uncertainty that  
23 as to whether LILCO will ever receive a full power license.  
24 The Commission has already ruled twice in this proceeding  
25 that the uncertainties relating to a full power license are

1 not germane to whether LILCO ought to be able to engage in  
2 low power testing. The Commission made that ruling with  
3 respect to the emergency planning proceeding and that  
4 opinion is at 17 NRC 1032 and then just recently the Commis-  
5 sion ruled in similar veins concerning the necessity of an  
6 environmental impact statement for low power testing. Again,  
7 they stated that the uncertainty attendant to whether you  
8 receive a full power license is not germane to whether you  
9 ought to be allowed to engage in low power testing.

10 What's more, the question here is not a question  
11 of whether LILCO ought to be able to engage in low power  
12 testing. As I stated earlier, and I won't belabor the  
13 point, the question is one of timing. When the diesel  
14 generator issue is favorably resolved, LILCO will have the  
15 right to engage in low power testing. Nobody would dispute  
16 that these issues simply wouldn't be germane. All we're  
17 asking for here through this application for exemption is  
18 the ability to engage in that low power testing early, so  
19 the question is simply what might be the potential economic  
20 benefits from engaging in that low power testing now versus  
21 waiting until when the diesel generator issue is resolved.

22 And for those reasons, Your Honor, we ask that  
23 the protective order LILCO seeks be granted.

24 MR. MILLER: Very well. Intervenors?

25 MR. SEDKY: Yes, Your Honor. I will address the

1 points raised by Mr. Rolfe in his presentation this morning  
2 in a minute. One of the problems we have as the Board  
3 pointed out, is that the motion for a protective order  
4 filed yesterday sometime, I think we received it around  
5 3:00 in the afternoon. We have not had an opportunity  
6 to prepare a written response to the motion and anticipate  
7 filing something more definitive on it early next week.  
8 Having said that, of course, we do have some views on the  
9 motion just from looking at it on its face without having  
10 really had a chance to talk with our experts

11 MR. MILLER: Let me interrupt you just a moment for  
12 clarity. The Board called this hearing or meeting this  
13 morning in contemplation of the very fact that you point  
14 out as to time, and also in contemplation of the fact that  
15 the discovery period ends in one week.

16 Now, we can waive and exchange documents and  
17 so forth and in view of the large number of documents  
18 already filed in this case, I don't think we really need  
19 many more. We think that experienced counsel such as  
20 yourself and your colleagues and other counsel should be  
21 able right here and now to look at the guts of this objec-  
22 tion, and it's pretty clear what it is and you would know  
23 yourself the breadth and scope and nature of the interroga-  
24 tories and request for documents, whatever it is you filed.

25 We think that you should be able to do it right

1 now. You don't need to file anything next week. But this  
2 meeting is for the purpose of moving along in an expeditious  
3 and prompt fashion, consistent with our other circumstances  
4 and a fair hearing of this case.

5 We've had a schedule established which was con-  
6 sistent with, in fact a little more liberal than that  
7 suggested by the Commissioners who are the preeminent auth-  
8 ority in our Agency. We therefore want to make clear not  
9 only to you but to all counsel, we expect you to do your  
10 thinking right here and now, give us your points and we,  
11 in all probability, will rule from the bench after we  
12 hear you fully and had a chance to confer.

13 So we wanted to give you the background of the  
14 kind of hearing that you're participating in so that you  
15 can cover whatever it is you wish as fully as you wish.

16 MR. SEDKY: Well, I'm sure, Judge Miller, you under-  
17 stand, we have a duty to protect our record and there's a  
18 situation here where the other side has had an opportunity  
19 to think and research and write up something and we're

20 MR. MILLER: Well, you had the same opportunity when  
21 you filed. Remember, you started this, this is a protec-  
22 tive order to discovery requested by you on behalf of your  
23 client.

24 MR. SEDKY: This is an exemption sought by LILCO.

25 JUDGE MILLER: Pardon me?



1 MR. SEDKY: This is an exemption which was sought by  
2 LILCO.

3 JUDGE MILLER: Sometime ago, consistent with the Commis-  
4 sion's order or suggestion, whatever it was, of May 16.  
5 And this is June something, so. We're all aware of the  
6 dates, we know the documents filed, now we're just direc-  
7 ting you, don't give us excuses, anybody, not just you per-  
8 sonally, get right into it because you should know, you  
9 filed these things. Proceed.

10 MR. SEDKY; Very well, Your Honor. I do have to pro-  
11 tect their rights here and I do object to having to not  
12 have an opportunity to file a written response. I think we  
13 have a right to file a written response and unless instruc-  
14 ted by the Board specifically not to file a written res-  
15 ponse, we will file one as soon as we're able to.

16 JUDGE MILLER: Let me rule. Objection is of record,  
17 your objection is overruled. You re directed to the por-  
18 tions of the regulations which give the presiding officer,  
19 meaning the Board, the power and the right to change times.  
20 And we've changed this time, in view of the circumstances  
21 and in view of the fact that the underlying issues of dis-  
22 covery are and should be well known by you and by your  
23 client and we don't want to have any pretext. Your record  
24 is protected by your statement, but we don't expect to have  
25 any less than full compliance. Proceed.

1 MR. SEDKY: Secondly, Judge Miller, the objection that  
2 they filed, the motion for protective order appears to now  
3 be changing one of the bases on which the application is  
4 sought. They had asserted economic benefits of 90 to 135  
5 million dollars.

6 Mr. Rolfe now tells us for the first time that  
7 that number is wrong. This begins to smell of trial by  
8 ambush. I don't know what it is that

9 JUDGE MILLER: Let's not get into personalities ad  
10 hominem or invective, I say it because that's a rather mild  
11 approach but we've had experience with all counsel here  
12 and all parties here and we just simply want to avoid any  
13 personalities and keep everything objective. Proceed,  
14 please. Never mind the order, in other words.

15 MR. SEDKY: Very well, Your Honor, I won't characterize  
16 the fact. The fact is that there is now apparently a change  
17 for the basis underlying the application and again we are  
18 uncertain at this point just what it is that LILCO is con-  
19 tending is the economic benefit or public interest attendant  
20 to the granting of this exemption. And, again, just to  
21 protect our record, I would make that point and request that  
22 they forthwith amend their application so that we would  
23 have an opportunity to address the amended application.

24 Now, having said that, I will get to the issues  
25 before the Board, which is the relevance of financial

1 information that is being sought in the pending discovery  
2 request.

3 As the Board is well aware, I'm sure relevance  
4 is basically a question of whether or not the information  
5 sought is probative of an issue that's in dispute in a  
6 proceeding. The issue that's in dispute here is whether  
7 the granting of an exemption is in the public interest.  
8 This is a criterion which is mandated by Section 5012A  
9 under which LILCO must operate in this phase of the hearing

10 To the extent other Boards or the Commission has  
11 acted in other phases of this proceeding, to our knowledge,  
12 at least to my knowledge, this is the first time 5012A has  
13 been before the Commission and this Board.

14 JUDGE MILLER: In this case, you mean.

15 MR. SEDKY: In this case.

16 JUDGE MILLER: Yes.

17 MR. SEDKY: The discovery requests, of course, speak  
18 for themselves. The information that is sought in the  
19 request must speak for itself. We do not adopt LILCO's  
20 characterization of what those requests seek.

21 JUDGE MILLER: Well, what do you contend they seek?

22 MR. SEDKY: They do seek financial information con-  
23 cerning the status of LILCO's operations, projections as  
24 to its future, cost estimates associated with low power  
25 testing, cost estimates associated with the replacement

1 diesels and a number of other items. But I think it is  
2 fair to say that if the included among the discovery  
3 requests are some general requests concerning the overall  
4 financial condition of LILCO.

5 The real issue here is whether, well, let me take  
6 the requests that deal with the overall financial condition  
7 of the company.

8 JUDGE MILLER: Yeah, which ones are those, please?

9 MR. SEDKY: Well, for example, the first one, request  
10 number one. Basically is a request designed to elicit  
11 information as to the kinds of financial information that's  
12 available. Not being privy to their internal operations,  
13 we're not able to identify report by report, model by  
14 model, financial statement by financial statement, other  
15 than those that we know are periodically reported to the  
16 SEC or other regulatory body.

17 But the first one basically is a request that's  
18 designed to elicit from LILCO information concerning what  
19 kinds of financial reports that you people generating  
20 internally, what kinds of financial reports are your manage-  
21 ment looking at and to ask them to furnish copies of the  
22 most recent of those reports, just so that we can have a  
23 fix on the universe of the kinds of documents that we  
24 believe, if their management is looking at, they must  
25 believe that those documents are important enough that we

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1 ought to be looking at them.

2 Now, so concededly, those kinds of documents,  
3 there is a set of documents that call for information con-  
4 cerning LILCO's over all financial condition. And the  
5 relevance of that is ultimately it's a question of whether  
6 it's in the public interest to have an insolvent or bankrupt  
7 company engage in an inherently hazardous activity, even  
8 at low power testing.

9 In testimony to the County and the State of New  
10 York proposals have met, we will endeavor to show that due  
11 to its financial condition, LILCO will more likely than  
12 not, and perhaps to a virtual certainty, be insolvent,  
13 bankrupt and/or in a reorganization proceeding by the time  
14 it would have been permitted, if permitted by the Commis-  
15 sion, to be engaged in low power testing. We simply want  
16 to make a comprehensive record on that point.

17 Let me give the Board the tip of the iceberg.  
18 We have a situation that as of its most recently publicly  
19 disclosed information, a company that has spent \$100 million  
20 in the first three months of this year. A company that, by  
21 its own admission, will have no cash or liquid assets by  
22 August 31st, 1984, a company that on September 1st, 1984,  
23 owed \$90 million in bond that are maturing on that day. A  
24 company that can default, by its own admission, on its pay-  
25 ments to nine mile point two. It paid \$11½ million this

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1 year out of \$114 million payment. It still has to pay  
2 \$63 million this year of interest on nine mile point two.

3 This is a company that is living month to month  
4 at the grace of its lenders. Its lenders have already aler  
5 ted it to the possibility that the company might be in  
6 default in its principal financial obligations and have  
7 given, in effect, a rotating 30-day rate period.

8 Any holders of one third or more of the outstand-  
9 ing debt of nine mile point two can accelerate all of its  
10 obligations and as the company's auditors points out,  
11 because of cost default provisions in the loan document,  
12 an aggregate of almost \$700 million of LILCO that could be  
13 called due anytime now, it could happen on June 27th, it  
14 could happen on July 27th, it could happen on August 27th,  
15 and it'll certainly happen by August 29th.

16 JUDGE MILLER: What do you base that on, you say it  
17 will certainly happen. Do you have some information that  
18 you haven't discussed?

19 MR. SEDKY: No, Your Honor, I told you that on  
20 August 31st, if I said the 29th, I meant the 31st.

21 JUDGE MILLER: Okay.

22 MR. SEDKY: Now, most important of all, about three  
23 weeks ago, Long Island Lighting Company presented a position  
24 paper to the Governor of New York. In that position paper  
25 they make clear for the first time the following. That it's

1 not only that they're gonna run out of cash on August 31st,  
2 it's not only that they've got a \$90 million payment due  
3 on September 1st, but, and this is for the first time  
4 known publicly, that the viability of this company, in order  
5 to avert bankruptcy, two things have to happen.

6 One, some governmental agency, or somebody else,  
7 have to bail them out of nine mile point two. They have  
8 conceded that in the language of their white paper. A  
9 condition of their averting bankruptcy is that somebody  
10 bail them out of a \$911 million obligation, by my compu-  
11 tation. And this is evidence we want to put in.

12 Now, they don't control that. They're suggesting  
13 that the New York Power Authority bail them out, a billion  
14 dollar bail out.

15 In addition to that, they require as a condition  
16 of averting bankruptcy that the prudency proceeding that's  
17 ongoing in New York, of which their entitlement with respect  
18 to Shoreham costs is challenged at a minimum of \$1.8 billion  
19 by the Public Service Commission.

20 JUDGE MILLER: Pardon me. Describe for us what you  
21 call the prudency, whatever it is.

22 MR. SEDKY: There is an investigation, Judge Miller,  
23 before the New York Public Service Commission concerning  
24 whether, because of "serious mismanagement and inefficiency  
25 over the whole project" LILCO should be entitled to rate

1 relief if and when it applies for it, for the full, at  
2 that point they were asking for about 3.8 billion based on  
3 estimated costs at that time. Now the estimate, of  
4 course, if 4.1 billion, but for the full amount.

5 The PSC staff has taken the position and recom-  
6 mended that \$1.8 billion of LILCO's costs be excluded.

7 JUDGE MILLER: And that the balance be what?

8 MR. SEDKY: I'm sorry?

9 JUDGE MILLER: If you exclude 1.8 billion, what about  
10 the balance?

11 MR. SEDKY: That they would recommend, that the  
12 balance would be put into the rate base. But the point  
13 I'm trying to make is that our testimony would show that  
14 as a condition for LILCO's economic survival, and this is  
15 they're talking about averting bankruptcy, is the billion  
16 dollar bail out by the New York Port Authority, and a settle-  
17 ment of the prudency issue which I just discussed before  
18 the New York Public Service Commission in which it would  
19 not cost LILCO more than 250 million, as opposed to the  
20 1.8 billion that the staff is seeking.

21 I might add that there are other intervenors

22 JUDGE MILLER: That's the staff

23 MR. SEDKY: The staff of the PSC in New York. There  
24 are other intervenors, I might add, who are arguing that  
25 anything over 1.9 billion in Shoreham expenses, costs,



1 should be excluded from the New York rate base. So under  
2 that formulation, of course, LILCO would have to absorb  
3 itself the difference between 4.1 billion and 1.9 billion  
4 which I guess is 2.2 billion dollars.

5 JUDGE MILLER: In this matter that you're describing  
6 now, what position has your client taken?

7 MR. SEDKY: That one of the intervenors

8 JUDGE MILLER: Your client.

9 MR. SEDKY; Yes, one of the intervenors in the Shore-  
10 ham, I'm sorry, in the New York Public Service Commission  
11 is Suffolk County and I believe that Suffolk County, or  
12 the intervenors of the group.

13 JUDGE MILLER: I'm interested, you can speak perhaps  
14 better, pardon me.

15 MR. SEDKY: I'm not sure I could, we're not representing

16 JUDGE MILLER: Hold it, we can't both talk and the  
17 reporter get it. What I would like, since you're talking a-  
18 bout your client and properly so, I would suppose that you  
19 would have at least some information as to the position  
20 that your client, Suffolk County, has taken in that matter  
21 that you told the Board is very important. And I'm inquir-  
22 ing now what's the position.

23 MR. SEDKY: If I may, Your HOnor, have Mr. Lanpher  
24 address that issue, he's more familiar with it that I am.

25 JUDGE MILLER: Yes, yes.

1 MR. LANPHER: In the prudency case, my understanding  
2 is that Suffolk County's position is that, to use a short  
3 hand, there's been a great deal of imprudency in that  
4 approximately \$2 billion of the costs that have been incurred  
5 by LILCO in the construction and in efforts to start up  
6 the Shoreham plant, should under all circumstances be deemed  
7 to have been imprudently incurred and should never be in-  
8 cluded in the rate base.

9 I don't have the exact dollar figure, but it's on  
10 the order of the same amount as the Public Service Commission  
11 staff or a little bit more, I believe. It's not too far  
12 off from the amount which the New York Public Service  
13 Commission staff has concluded were imprudently incurred.

14 JUDGE MILLER: I'm not sure which of you, then, would  
15 care to direct this question. We'll hear from Mr. Palomino  
16 I'm sure. But what position has been taken in that pruden-  
17 cy proceeding issue chartered by the State of New York,  
18 can reserve that until Mr. Palomino addresses the Board,  
19 if you wish, but if you have information by being intimatel  
20 involved, I take it, gentlemen and ladies of counsel are,  
21 you can tell us

22 MR. SEDKY: Your Honor, we're not representing SUFFolk  
23 County in that prudency proceeding.

24 JUDGE MILLER: Who does?

25 MR. SEDKY: The lawfirm of Paul Weis, Rifkind and

1 Garrison in New York is representing them. Mr. Lanpher  
2 obviously is keeping up with it, but we don't certainly  
3 have the details.

4 JUDGE MILLER: Well, it's going to incline us, inside  
5 proceedings are being alluded to here and I don't know  
6 whether it has any significance or not, but I'm trying  
7 to get the facts as we go along. I therefore assume that  
8 there is some communication between and among you ladies  
9 and gentlemen as the members of one Washington law firm  
10 and other law firms, whether they're Washington, New York,  
11 or elsewhere, on these matters. And so since we're trying  
12 at one point to get as much information as we can, we  
13 shouldn't have to stand on protocol I wouldn't think and  
14 guess about it. I'd like to know at an appropriate time.

15 If you want to leave it to Mr. Palomino when  
16 he addresses us, that's all right. I like to know what  
17 position's been taken in that proceeding by the State of  
18 New York.

19 MR. PALOMINO: I'll address it now. Judge Miller, as  
20 far as I know, the Chairman of the Consumer Protection  
21 Board of the State of New York is a party to that proceed-  
22 ing. They have made an extensive study as to prudence.  
23 They have put in evidence in the proceeding and I don't know  
24 the exact dollar amount they're claiming should not go  
25 into the rate base due to waste and mismanagement by

1 LILCO's operators.

2 JUDGE MILLER: Well, do you or your client, the Gover-  
3 nor of New York, I guess, at least I see Governor Cuomo's  
4 name from time to time in these pleadings, do you have any  
5 position, do either of you or both of you as to this  
6 matter?

7 MR. PALOMINO: Well, no, the Consumer Protection  
8 Chairman is a member of the executive branch of government.  
9 They have their own counsel.

10 JUDGE MILLER: Pardon me, what does that mean?

11 MR. PALOMINO: What?

12 JUDGE MILLER: Member of the executive branch, does  
13 that mean that he represents the Governor, do you represent  
14 the Governor, what's your status?

15 MR. PALOMINO: Well, he represents the consumers of  
16 the state, but it is an executive agency.

17 JUDGE MILLER: Well, is it under the control of the  
18 Governor?

19 MR. PALOMINO: I would assume it is under the control  
20 of the Governor.

21 JUDGE MILLER: That's Governor Cuomo whose name we've  
22 seen here in these pleadings from time to tome?

23 MR. PALOMINO: Yeah, his name, yes, same Governor.

24 JUDGE MILLER: Same Governor, okay. And you, now,  
25 what's your status with that Governor, sir? You may have

1 explained it before, but I'm not clear.

2 MR. PALOMINO: I know they're in the proceeding, I  
3 know.

4 JUDGE MILLER: No, I mean you as counsel here. What's  
5 your status a, with the Governor of New York and b, with  
6 the State of New York? I'm just asking you to clarify  
7 it for the record, your role, because I see your name and  
8 I'm not totally certain.

9 MR. PALOMINO: I'm special counsel to the Governor.  
10 It's my official position.

11 JUDGE MILLER: To the Governor.

12 MR. PALOMINO: And I've been designated by the  
13 Governor to intervene in these and to represent him.

14 JUDGE MILLER: Represent him or the State of New York  
15 or both?

16 MR. PALOMINO: Him and the State of New York in this  
17 proceeding.

18 JUDGE MILLER: Right, okay. Thank you. Proceed.

19 MR. SEDKY: The final, thank you, Your Honor, Judge  
20 Miller. The point of all this, Judge, is that given, and  
21 all we've seen is the tip of the iceberg that I described  
22 to you and of course our experts will want to explore that  
23 in further detail and yes, certainly we have asked for  
24 additional information to look and see, for example,  
25 whether, you know, things are as horrible as they look on

1 the surface. Maybe they've got contingency plans, maybe  
2 they've got a line of credit. All indications indicate  
3 that they don't, and so forth, but we're trying to figure  
4 out whether, in fact, this is a company that is predictably  
5 insolvent or even bankrupt by August.

6 JUDGE MILLER: Well, while we're on that subject and  
7 since we're looking at equities as the Commission has  
8 pointed out in its decision of May 16, 1984, CLI-84-8,  
9 beginning as a foot note and then page 2, the counsel has  
10 alluded to, which would be foot note number 3, within that  
11 portion which you have read, I believe, into the record, or  
12 someone has, the reasoned exercise of such discretion to  
13 take into account the equities of each situtaion.

14 And these equities, including, among other things  
15 any financial or economic hardships, which I take it you're  
16 describing with the discussions of insolvency or bankruptcy  
17 and the like. So I'd like to ask, therefore, what if  
18 anything, have the activities through the years have your  
19 client Suffolk County done either to contribute to such  
20 bankruptcy or to seek to ameliorate it?

21 MR. SEDKY: Well, I don't know. I don't think we had  
22 anything to do with the buying of the diesels.

23 JUDGE MILLER: No, I'm talking about the same picture  
24 you're looking at, financial. What has the County done to  
25 try to help this utility, if anything?

1 MR. SEDKY: Well, I think actually the County has  
2 made a proposal under which it might be considered applying  
3 the plant that's been rejected by the utility.

4 JUDGE MILLER: The County wants to buy the plant or

5 MR. SEDKY: I think it's made a proposal, they did a  
6 study, I guess, so it's probably

7 JUDGE MILLER: Looking towards the possible purchase  
8 of the plant by the County of Suffolk?

9 MR. SEDKY: Well, I don't want to overstate it because  
10 this little

11 JUDGE MILLER: You're not stating it at all, I'm  
12 getting very little information, but I wish, you can confer  
13 with your colleagues if you want, I'd like to know what  
14 the status of it is. This is Suffolk County, it comes in,  
15 give us the whole story.

16 MR. LANPHER: With respect to Mr. Sedky's previous  
17 statement that Suffolk County did a study considering  
18 whether to exercise powers of eminent domain to in effect  
19 take over the Shoreham plant. That study, to my knowledge,  
20 was commissioned by the Suffolk County legislator. It's  
21 referred to as the Daverman study

22 JUDGE MILLER: Pardon me, as what?

23 MR. LANPHER: The Daverman, I believe the spelling is  
24 D A V E R M A N. And that it has not been acted on  
25 subsequently. So it was a study, it was not a proposal,

1 just to correct that.

2 JUDGE MILLER: Has that study been made public in any  
3 way? Or is it available?

4 MR. LANPHER: I believe that it's a public document,  
5 yes.

6 JUDGE MILLER: And was the study considering at all  
7 the possibility and I realize it was simply a study, of  
8 future operation of this Shoreham plant by the County of  
9 Suffolk or its designee?

10 MR. LANPHER: I can't answer that.

11 JUDGE MILLER: Anybody who can answer that? Is there  
12 anyone who can answer that?

13 MR. LANPHER: There's no one here. I've looked at  
14 that study a long time back, I just don't recall.

15 JUDGE MILLER: Well, was the study to demolish the  
16 plant or to operate it? Can we put it in that broad a  
17 term? You don't even know that?

18 MR. LANPHER: The study was for the County to exercise  
19 the powers of eminent domain to take over the plant. My  
20 best recollection is that the plant would not be operated  
21 under that condition.

22 JUDGE MILLER: Would not be operated?

23 MR. LANPHER: Would not be.

24 JUDGE MILLER: Not be.

25 MR. LANPHER: My memory is fuzzy on that, though I can



1 go and check and I certainly will, to make sure I haven't  
2 misstated something here on the record.

3 JUDGE MILLER: Okay, fair enough.

4 MR. LANPHER: In terms of that proposed, that study,  
5 that's all the information I presently had.

6 JUDGE MILLER: Okay, that's fine. You can supply  
7 information if and when you obtain it. Now I want to go  
8 back to counsel who's entitled to continue his discussion,  
9 but I had, you recall, asked about equities and what if  
10 anything the County had done to help the economic situation,  
11 or the contrary, whatever they've done. You were starting  
12 to tell me, I guess, is how this study came up.

13 MR. LANPHER: Judge Miller, we can, I'm sure LILCO  
14 and the County have diametrically opposite views as to  
15 whether the County has been helpful or not in trying to  
16 resolve this situation. I can say from my personal involve-  
17 ment with Suffolk County we've done alot of economic analy-  
18 ses which led my client, Suffolk County, to believe that  
19 the citizens of Suffolk County would be better off economi-  
20 cally if the plant were abandoned, never operated.

21 JUDGE MILLER: Yes, but that's looking at something  
22 a little different. I wish you'd address now still the  
23 point out what, if anything, Suffolk County has done to  
24 assist or ameliorate this financial distress that's being  
25 described.

1 MR. LANPHER: Well that's what I was attempting to do,  
2 Judge Miller.

3 JUDGE MILLER; Well, get right to it.

4 MR. LANPHER: I gotta say it the way I know it.

5 JUDGE MILLER: Well, I know, but you don't have to  
6 give me derogatory remarks about the good people of Long  
7 Island. I've heard that a long time and I'd just like to  
8 get you directed to the point here. You are asked are there  
9 specific things

10 MR. LANPHER: Judge Miller, we proposed to LILCO that  
11 they abandon the plant, that we would sit with them and  
12 negotiate an economic solution with them. We do not favor  
13 the bankruptcy of any company on Long Island, including  
14 LILCO. We commissioned economic studies for ESRG, Energy  
15 Systems Research Group of Boston, Georgetown Consulting  
16 Group, and others. We thought and continue to believe  
17 that these were sound economic studies that offered a  
18 solution out of the potential insolvency and bankruptcy  
19 situation which was looming. The discussions with the  
20 LILCO have not been fruitful.

21 JUDGE MILLER: Thank you. You may continue with that  
22 line of discussion until you feel you've exhausted it, if  
23 you will, please.

24 MR. SEDKY: I'd like, if I may, Your Honor, to refocus  
25 on the public interest issue, which is at stake, which is one

1 of the criteria of Section 5012A.

2 JUDGE MILLER: That's why we're seeing what is the  
3 public interest in the bankruptcy you've described of  
4 record. And so we're seeing what's the public interest in  
5 not as a County trying to do something to help rather than  
6 the contrary.

7 MR. SEDKY: The point is that given a company that is  
8 headed in that direction, it is the County's position that  
9 the issue of whether a utility in that condition should,  
10 consistent with the public interest, be engaged in this kind  
11 of hazardous activity. Such a utility cannot be trusted to  
12 engage in a hazardous activity. There can be no assurance  
13 that it can even cope with the hazard.

14 JUDGE MILLER: You're off the point now, you're getting  
15 into the results of the alleged insolvency that you've des-  
16 cribed very poignantly and I'm asking you what brought  
17 it about, did the County help to bring it about and regard-  
18 less of that, what, if anything, is the County doing to try  
19 to alleviate it and not to use it as a

20 MR. SEDKY: I really have nothing to add to what Mr.  
21 Lanpher said.

22 JUDGE MILLER: All riht.

23 MR. SEDKY: And so what we're saying is that a utility  
24 in that condition or in the condition that LILCO's projected  
25 to be at he time it receives that low power license, if it

1 receives one, is such that it can't be trusted to engage  
2 in a hazardous activity, that it can't be reasonably  
3 assumed to be able to cope with it and several of our re-  
4 quests for discovery address that very issue. How are you  
5 going to pay for the testing, what costs are you going to  
6 incur in the testing. Just so that the record is clear  
7 specifically I'm talking about items 2A1, I'm talking  
8 about 6C and D, I'm talking about 9, I'm talking about 11,  
9 I'm talking about 12 and I'm talking about 23. I'll be  
10 happy to go through each one of those and show that that  
11 goes to whether or not a company that is in precarious  
12 financial condition can cope with hazards associated with a  
13 nuclear facility.

14           There would be no reasonable assurance that such  
15 a company can operate and maintain a plant, that there'd  
16 be adequate testing, that health and safety standards would  
17 be met. In fact, there's an enhanced risk of merely han-  
18 dling hazardous nuclear materials, where you don't have the  
19 financial capabilities of assuring safety.

20           Finally, of course, such a company has no means  
21 with which to deal with any contingencies and accidents,  
22 a fire, storm, earthquake, something that, you know, some  
23 act of God that's just not in that program could have tre-  
24 mendous public impact that would not have, of a nature  
25 that wouldn't occur with a solvent company.

1 JUDGE MILLER: I suppose that's true now of any such  
2 act of nature or act of God and it could happen in Long  
3 Island with its problems as you pointed out of nonevacuation  
4 and the like. How would the County handle this? What  
5 would the County do?

6 MR. SEDKY: Precisely. The County, fortunately, is  
7 not insolvent, so that's the whole point. I mean, you've  
8 highlighted exactly the public interest we're talking  
9 about.

10 JUDGE MILLER: So you can buy emergency planning and  
11 evacuation with money, is that what you're telling me?

12 MR. SEDKY: The point, Your Honor, is that if you've  
13 got resources, you can react to the kinds of contingency  
14 you've identified as being very much in the public inter-  
15 est and here you've got a company that is not going to be  
16 able to react to those kinds of contingencies.

17 JUDGE MILLER: So the County has it and the company  
18 doesn't and the County's telling us how bankrupt the  
19 company is, is that the position?

20 MR. SEDKY; The County is not seeking an exemption  
21 to handle hazardous nuclear materials.

22 JUDGE MILLER: What is the County seeking overall?

23 MR. SEDKY; The County wants to protect its citizens.

24 JUDGE MILLER: I know that, what else?

25 MR. SEDKY: That's all it seeks.

1 JUDGE MILLER: Well, that's very general, broad state-  
2 ment. I suppose

3 MR. SEDKY: In so doing, obviously, it is protecting  
4 its position in these proceedings.

5 JUDGE MILLER: Well, yes.

6 MR. SEDKY: And it believes that the granting of an  
7 exemption which requires a consideration and a finding that  
8 the exemption serves the public interest for the very  
9 reason, Judge Miller, that you pointed out two minutes ago,  
10 would not be in the public interest to give this exemption,  
11 because this company wouldn't have the resources to react  
12 to the contingencies that you yourself identified.

13 JUDGE MILLER: Would it not then be sound public  
14 policy for the County to help to try to contribute towards  
15 those resources or obtain them in some way in order to pro-  
16 tect both the utility and that aspect of the public  
17 interest? Has that ever occurred to the County?

18 MR. SEDKY: Judge Miller, Mr. Lanpher has already  
19 addressed that issue and I have no further.

20 JUDGE MILLER: Very well.

21 MR. SEDKY: Anything to address to that. I have a  
22 couple of more points.

23 JUDGE MILLER: Go right ahead.

24 MR. SEDKY: For purposes of analysis, I think what  
25 this Board ought to focus on is, supposing LILCO were

1 bankrupt today, and they had filed a petition this morning,  
2 or its creditors had done it on its behalf, would there  
3 really be any question in anybody's mind that in that con-  
4 dition, this utility ought to be engaging in a hazardous  
5 activity like loading fuel and testing a nuclear plant. I  
6 think the answer simply has to be no.

7           Let me see if I can analogize it, to get back to  
8 Mr. Rolfe's argument about how, you know, the only issue  
9 here are the diesels and after we get the diesels, why  
10 everything's going to be all right. This is very similar  
11 to a situation where you have a kid who's going to apply  
12 for his first driver's license. And he goes in for a car,  
13 diesel driven, coincidentally. The examiner says, listen  
14 this car doesn't work, diesels don't work or at least  
15 they're defective. The kid says well, listen, tell you  
16 what, give me a learner's license and by the time my learner's  
17 license has expired, the diesels will have been fixed and  
18 in the meantime, I've got this battery rigged, that's gotta  
19 drive the car just as well.

20           Now that issue, of whether the batteries are gonna  
21 work just as well as the diesel engine is an issue here  
22 and other witnesses are gonna address that.

23           Now, what Mr. Rolfe says is that the only  
24 economic issue this Board should consider is this kid who  
25 says you know, if you give me the learner's license now,

1 rather than wait until the diesel's repaired, I will get a  
2 job, I'll pay taxes, I'll save society as a whole money and  
3 so forth and so forth. And Mr. Rolfe says well, that's the  
4 only issue here. That's the only public interest issue  
5 because that's the only one I've identified.

6 Well, we're focusing not on the diesels, we're  
7 not focusing on the car. We're talking about a kid who can't  
8 see, and it's not in the public interest to give a kid who  
9 can't see a learner's license at all. That's the point  
10 that we're focusing on.

11 And it's not a matter of saying gee, let's wait  
12 until the diesels are fixed or not fixed, you've got a com-  
13 pany that cannot be trusted with a nuclear power plant.  
14 That's all I have.

15 JUDGE MILLER: Thank you. Anything further? Is  
16 Suffolk County's representatives through? I say, are  
17 Suffolk County's attorneys finished? Okay. State of  
18 New York, Mr. Palomino?

19 MR. PALOMINO: I'll be very brief, Your Honor.

20 JUDGE MILLER: Take your time, you don't have to be  
21 brief.

22 MR. PALOMINO. I'd like to point out that insofar as  
23 the concern about equitable conduct on the part of the  
24 State and County, the New York State Constitution prohibits  
25 the State or any of its municipalities, including the County



1 of Suffolk, from giving or lending any of its property,  
2 credit or money, to any private individual or organization  
3 for profit purposes. So that if equities were being  
4 sought in that direction, it would be a violation of the  
5 law.

6 SEcondly, I think the question here is really one  
7 of relevance, and I think that that's answered simply in  
8 that since they are not going for their ordinary license  
9 where the ordinary regulations would apply, and they're  
10 here on a waiver, special waiver conditions apply and that  
11 the inquiry into finances is relevant to the public interest.

12 JUDGE MILLER: Do you have anything further?

13 MR. PALOMINO: No.

14 JUDGE MILLER: Thank you. Staff?

15 MR. REIS: Mr. Chairman, I think the first thing to  
16 keep in mind and to focus discussion again, we have to keep  
17 in mind the financial qualifications of the conditions.  
18 You don't ordinarily go into qualifications. You have to  
19 keep in mind the

20 JUDGE MILLER: What is the present status, really you  
21 might just state that for the record.

22 MR. REIS: The Commission has stated in a policy state  
23 ment that Board of Appeal decision does not invalidate the  
24 rules, does not vacate the rule, the rule is still in  
25 effect and the Board, the Commission has a proceeding going

1 to reconsider the ruling and whether it will be

2 JUDGE MILLER: Just a minute, is that based upon, in  
3 part at least, the Federal Register notice of Tuesday,  
4 June 12, 1984, which is Volume 29 Federal Register commen-  
5 cing, if not completely on page 24111?

6 MR. REIS: I believe that you've given the correct  
7 citation. The next point I would point out in the back-  
8 ground of this motion is the Commission's statement in  
9 both 83, CLR 83 17 and recently in 84-9, that we don't look  
10 to whether a full power license will be granted, but we  
11 presume that it will be.

12 Well, we are looking at two things that are in-  
13 volved. Reg one, do the matters sought to be inquired into,  
14 whether it is relevancy, apply to A, exigent circumstances,  
15 or B, into the public interest matters that we have here.  
16 And I think it is only, if it is relevant to one of those  
17 two issues that it can be.

18 In looking at the public interest one first, we  
19 must look and consider what I have said what the Commission's  
20 prior orders on the fact that it will be assumed the plant  
21 operates. And therefore I think it has been essentially  
22 ruled out that you consider the overall financial condition  
23 of the company because it is presumed that you will get to  
24 that stage.

25 I don't think and therefore I don't think it

1 factors into the public interest and is a matter that this  
2 Commission said should be looked into. And when you look  
3 at exigent circumstances, I won't say talked about in their  
4 order and that footnote, it is the financial hardship  
5 that would be suffered by LILCO.

6 JUDGE MILLER: If what?

7 MR. REIS: If they don't get a low power license, in  
8 this circumstance. And that's what that footnote speaks to.  
9 Now, certainly to the extent that LILCO relies on added  
10 costs or exigent circumstances, discovery can take place  
11 in that sense.

12 JUDGE MILLER: Please be specific now. What are you  
13 referring to?

14 MR. REIS: Essentially to what LILCO directs as its  
15 basis on pages 20 and 21 of its application for an  
16 exemption.

17 JUDGE MILLER: And summarize that part, if you would  
18 please, I bet we have it here somewhere.

19 MR. REIS: That there would be economic benefit if the  
20 low power testing program is completed several months before  
21 it would otherwise be completed.

22 JUDGE MILLER: What page is that?

23 MR. REIS: That is on page 20 and 21 of the applicatio  
24 for exemption. Now, certainly that could be gone into.  
25 Only go to what is asked in the discovery requests and we

1 see the amounts of financial data asked for, it's certainly  
2 way broader and way beyond what is asked for there.

3 It generally deals with not a looking at both  
4 the cost and savings from an early operation or an early  
5 conduct of low power testing, but looks at the general  
6 health and financial viability of the company.

7 These are matters that the counsel for the County  
8 have been stated are being looked to in the Public Service  
9 Commission proceeding and they are matters of the Commis-  
10 sion in adopting its financial qualification rule said,  
11 they really rely on Public Service Commission ruling to  
12 look at it.

13 I agree that we are looking at a different regula-  
14 tion and we will have to find if they qualify and an ex-  
15 emption should be drafted under 5012. And 5012 does talk  
16 about the public interest.

17 But the public interest in 5012 is not, especially  
18 in view of the Commission's former opinion in 83-17 and

19 JUDGE MILLER: What's the name of that case?

20 MR. REIS: That's Long Island Lighting Company, that's  
21 one of the CLI 83-17, I don't have the citation, but it  
22 was decided by the Commission last June. June of '83.

23 JUDGE MILLER: What does it hold? What did it hold?  
24 Commission decision?

25 MR. REIS: I don't have the decision in front of me.

1 But generally it said that in looking at whether to grant a  
2 low power license, you don't look to the likelihood of a full  
3 power licensing.

4 JUDGE MILLER: I recall that decision. Go ahead.

5 MR. REIS: And it was repeated again just in 84-9,  
6 which the Commission issued within the last month or two.  
7 Thus, we feel that a looking into the general financial  
8 well being of LILCO in this very special proceeding, is  
9 uncalled for and without scheme of the Commission's regula-  
10 tions.

11 JUDGE MILLER: That concludes your argument?

12 MR. REIS: Yes.

13 JUDGE MILLER: Any rebuttal?

14 MR. ROLFE: Judge Miller, just a couple of quick  
15 things to clarify the record. First of all, with respect  
16 to the timing of LILCO's motion and whatnot, I would simply  
17 like to point out for the record that LILCO received the  
18 second discovery request on June 12. It served its objec-  
19 tions on June 19. Those objections fully set forth the  
20 basis that ultimately was incorporated into its protective  
21 order so that the County was on notice at least upon  
22 receipt of those objections, of all of the points LILCO  
23 would argue.

24 On June the 20th, LILCO's counsel, I received a  
25 letter in the afternoon, telecopied from Mr. Sedky,

1 requesting the deposition of Mr. Sadiris. It was that  
2 letter which prompted LILCO's motion for a protective  
3 order, which was filed the next day, on June the 21st. So,  
4 with respect to the timing, I don't think that any party has  
5 been at a disadvantage. Especially since the County was  
6 the one that drafted the discovery request in the first  
7 place and presumably had an idea of how they would justify  
8 them if challenged.

9           Secondly, Your Honor, I'd like to point out that  
10 with respect to the equities and what Suffolk County has  
11 done to help this plant or not, I don't intend to go into  
12 that issue. I would point out what Mr. Coe Hallan said on  
13 the day after the Commission's May 16 order was issued.  
14 According to Newsday, Mr. Coe Hallan was quoted as saying  
15 this is a victory in our effort to keep that plant closed.

16           So I don't think we're dealing with a situation  
17 where Suffolk County is attempting to resolve problems with  
18 the plant, but instead to keep the plant closed.

19           And, finally, I would like to summarize my  
20 previous arguments by simply saying that what we have here  
21 is an attempt to broaden the issues which LILCO's applica-  
22 tion for exemption raises. The question here is not,  
23 again, whether LILCO ought to engage in low power testing  
24 or whether it's able to do that. The question is simply  
25 what public benefit, or what economic benefit might be

1 occasioned by the granting of this exemption.

2           And in looking at that, the whole question is one  
3 of timing. Should LILCO be able to engage in low power  
4 testing early? Because once the diesel generator issue is  
5 resolved, LILCO would be able to engage in low power testing  
6 without looking at any of these issues, and by trying to  
7 bring these issues in under the guise of simply a question  
8 of whether low power testing should be performed early,  
9 the County is attempting substantially to expand the scope  
10 of these proceedings beyond anything contemplated in 5012A,  
11 beyond anything contemplated in the Commission's May 16  
12 order and beyond anything suggested in LILCO's application  
13 for exemption.

14           JUDGE MILLER: Anything further? Suffolk County?

15           MR. LANPHER: THANK you, Judge Miller. I have just  
16 one or two clarifications and Mr. Sedky has one or two.  
17 First of all, Mr. Reis was talking about the two previous  
18 NRC decisions. I think one was 8317, the other was 84-9.  
19 We just want to emphasize that 8317 had to do with the  
20 application in the Shoreham low power proceeding of  
21 Section 50.47D of the NRC regulations, which had to do with  
22 whether off site emergency planning findings need to be  
23 made prior to a low power license.

24           And 84-9, the one that came out in I guess either  
25 early this month or late last month, has to do with the

1 National Environmental Policy Act and whether there was  
2 a duty in this case for a supplement to be prepared. Neither  
3 of those cases address at all the question of what consti-  
4 tutes the public interest under Section 5012A, so we just  
5 don't think that they're dispositive at all.

6 Second, I really want to go back to a question  
7 that you raised, Judge Miller and Mr. Rolfe addressed.

8 JUDGE MILLER: Yes, go right ahead.

9 MR. LANPHER: And that has to do with what has the  
10 County done to help. I want it to be clear, the County has  
11 studied this situation. It believes, ad nauseum, and it  
12 believes that the plant should not open. Let there be no  
13 mistake about that. The County is opposed to the opening of  
14 this plant. And we can quote from newspapers and all that.  
15 We don't need to.

16 Since February, 1983, the county's position has  
17 been that the plant should not open and we've been attempting  
18 to pursue our legal remedies in that.

19 The situation has deteriorated. It seems to me  
20 there have been some law suits filed. In fact, yesterday,  
21 I was informed, we haven't been served, but Suffolk  
22 County was sued by LILCO yesterday for an amount of \$4.2  
23 billion.

24 So what has the County done to help? We think  
25 we've done alot. We've attempted to negotiate and to meet



1 LILCO and in the exercise of presumably their own good  
2 judgment, has decided to pursue other courses. We're ready  
3 to meet to resolve the very serious economic issues invol-  
4 ved in this case, but a mutually agreeable format for that  
5 has not been reached.

6 MR. SEDKY: Thank you, Judge Miller, I only have some  
7 just very brief points to make. The question of the finan-  
8 cial qualifications criteria is not before this Board at  
9 this time, and we're not addressing it. We're not presum-  
10 ing to be addressing that issue here. I think everybody  
11 understands and if they don't, let me make clear that we're  
12 talking about financial conditions within the context of  
13 a finding of a public interest, not within the finding of  
14 some regulatory requirement as a precondition to particular  
15 kinds of activities.

16 Not that we concede the Commission's position  
17 ~~that~~ the rules in effect have been voided by the Court of  
18 Appeals, but we're not addressing that right now.

19 Secondly, both the Staff and counsel for LILCO  
20 continue to suggest that the only public issue question  
21 here is the one that LILCO has formulated, which they're  
22 in the process of reformulating, I might add, this 90 to  
23 \$135 million savings. WE suggest that the standard of  
24 public interest is a regulatory standard, not a LILCO  
25 fabricated standard and LILCO can't tell anybody how to limit

1 the inquiry as to the public interest.

2 The discovery rules make clear that discovery,  
3 we're talking discovery here, I mean, alot of the points  
4 that have been raised so far might go to the weight of the  
5 evidence, might go to efficiency, might go to persuasiveness  
6 in the end, and so forth. But right now we're trying to do  
7 is get information so that we can file testimony that we  
8 believe is relevant to this proceeding.

9 But, the discovery standard, both as interpreted  
10 I am sure by the Commission, and certainly by the Court, is  
11 that discovery goes to claims, their claim of \$135 million  
12 savings, and defense. Our defense is that it is not in  
13 the public interest to have an insolvent company test a  
14 plant, whether now or tomorrow or six months from now. If  
15 a year from now or six months from now or 30 days from now  
16 the financial condition is different, maybe that takes away  
17 particular issue out of contention.

18 But right now, our position is that you can't, I  
19 mean for purposes of analysis to reiterate, if this com-  
20 pany were bankrupt today, would it be in the public  
21 interest to grant it a low power testing lixense and analy-  
22 tically we don't see any distinction between that question  
23 and the testimony we want to put in.

24 That's all I have.

25 JUDGE MILLER: Thank you. Mr. Palomino?

1 MR. PALOMINO: Judge Miller, members of the Board,  
2 I'd like to say in response to this proposition it raises  
3 that a full power license is presumed. Well, that's not  
4 a conclusive presumption and I think this is just the type  
5 of proceeding in which evidence should be permitted to rebut  
6 it in the public interest. And I think the facts here are  
7 ripe for such a rebuttal, whether we succeed or not is  
8 another question. But I do think it's very relevant to a  
9 public interest and that doesn't preclude it.

10 The fact that nobody looked at it this way  
11 before, I don't think precludes us, or should preclude us  
12 from looking at it this way, because I don't know if this  
13 situation ever arose before.

14 Now, I'd like to advert to another subject now,  
15 and that is as far as the state of New York. The position  
16 of the Governor of the State of New York has been and is,  
17 he doesn't want to see any private venture in the state go  
18 bankrupt. He told that to LILCO. He's appointed a special  
19 committee with people from the First Boston Corporation,  
20 Felix Rowatton, people who are experts on bankruptcy and  
21 reorganization. I don't know their names because I usually  
22 don't participate in their proceedings.

23 To try and help work out and see what legislation  
24 they could get, whatever other assistance they could provide  
25 governmentally to have LILCO avoid bankruptcy.

1 I must be candid with you. The Governor feels  
2 that since the County is not participating in this plan  
3 and the state can't fill in with its own resources, that  
4 it doesn't feel it would be safe to open a plant. And  
5 that's why we're here opposing it, but as far as that we're  
6 avoiding a LILCO bankruptcy, he is standing ready now to  
7 negotiate with them if they want to negotiate.

8 It was Dr. Catacasino's I think white paper which  
9 is insistent on opening a plant and running the risk of  
10 bankruptcy. And the Governor said, well, that's a course  
11 you've chosen, if you have chosen you will have to run the  
12 risk. Because, given those circumstances and our other posi-  
13 tion, we can't help you.

14 So that it's not a question of unwillingness or  
15 lack of good faith. It's the State has always taken this  
16 position. And it's not that we're opposed to nuclear  
17 power plants. We want to complete Nine Mile Two.

18 When it came to Rockland County last year, it  
19 was one county out of four we could provide the resources  
20 to supplement it when Rockland County didn't participate.  
21 And the State did so that it went through. And I wouldn't  
22 want, you know, I just want to have the record clear as to  
23 the State's position.

24 JUDGE MILLER: Thank you. We appreciate your filling  
25 in the record, Mr. Palomino. Is there anything further

1 now on this subject? WE may move on to see if there's any  
2 other problems concluding discovery before we bring this  
3 discussion or hearing of arguments of counsel to conclusion,  
4 at which point we'll take a short recess, I want to be sure  
5 everyone has had an opportunity to be fully heard.

6 MR. REIS: Mr. Chairman, I just want to say that Mr.  
7 Lanpher's factual characterizations of the two cases I cited  
8 were absolutely correct. And as he said, they are not dis-  
9 positive but we think the reasoning should be followed

10 MR. ROLFE: Your Honor, I don't wish to belabor the  
11 point. I don't fully agree with the characterization of  
12 the aid that's been offered to LILCO by Suffolk County or  
13 the State of New York, but I don't think it would benefit  
14 the record here to engage in an extended discussion of that  
15 so I have no further remarks.

16 JUDGE MILLER: Very well.

17 MR. SEDKY: Judge Miller, just as a point of procedure,  
18 I'm awfully sorry to raise this, but I have a meeting at  
19 11:00 down in downtown, and it may be that I will not re-  
20 join you after the recess. I'm gonna call my office and  
21 see, but I hope you would excuse me if I wasn't able to.

22 JUDGE MILLER: Well, of course we will, we don't want  
23 you to be prejudiced in any way.

24 MR. SEDKY; Certainly, whatever prejudice will be on  
25 our necks.

1 JUDGE MILLER: Okay. Certainly, you will be excused  
2 whenever you wish. Let me move on now to see if there are  
3 any other subjects the Board has in mind its responsibili-  
4 ties under the statement of policy of the Commission and  
5 just plain good sense to monitor the progress of all cases,  
6 concerning a case such as this which is hotly contested,  
7 subject to a certain amount of interest.

8 Our obligation, as we see it, would be both to  
9 monitor reasonably closely discovery and any other aspects  
10 of the schedule which has been adopted by this Board pur-  
11 suant to the recommendations of the Commission. We there-  
12 fore inquire are there other matters, whether or not they  
13 are the subject of formal motions or position. I mean,  
14 for get the formalities, is there any other problems that  
15 you have that could impede the conclusion of discovery  
16 according to the schedule established, Friday of next week.

17 If so, we're giving all of you, all counsel,  
18 all parties, the opportunity to tell us if there's anything  
19 either that's pending or likely to be pending in the near  
20 future that could impact one way or the other upon the estab-  
21 lished schedule. I'll go in the same order as we did on the  
22 previous motion.

23 MR. ROLFE: Judge Miller, the only potential problem  
24 that LILCO sees, and I don't know now whether it will be a  
25 problem or not, but I will bring it to the Board's attention.

1 LILCO has thus far taken the deposition of seven  
2 of the County's consultants. Several more are scheduled to  
3 be taken next week. Among the seven having been deposed  
4 were Messrs. Deeley and Eochi, who were supposedly investi-  
5 gating diesel generator matters with respect to the EMD  
6 diesels. Messrs. Weatherwax and L. Garcia, Messrs. Madden  
7 and Dirmier who are the economic consultants, and Dr.  
8 Mayer, who is a seismic consultant.

9 In those depositions which began two weeks ago,  
10 each of the deponents advised LILCO that he had yet to  
11 reach any opinions or conclusions. One or two of the depon-  
12 ents expressed some general preliminary thoughts. Most of  
13 the others just had no conclusions at all. They told us  
14 what they were planning to look at and that's all the infor-  
15 mation we got.

16 I assume that the County intends to supplement the  
17 discovery responses and their deposition testimony when  
18 those gentlemen reach their opinions and conclusions. But  
19 I haven't received any indication that that would be the  
20 case yet. I just don't know one way or the other.

21 JUDGE MILLER: Well, let us inquire right now, not  
22 only of counsel for the County and New York, but of all  
23 counsel. Do you plan to and will you supplement whatever  
24 extent is reasonably necessary all discovery. Whether it be  
25 depositions, we don't have interrogatories, request for

1 admissions I don't suppose we have, certainly have produc-  
2 tion of documents. Is it the intention of all counsel to  
3 supplement, especially in view of the limited discovery per-  
4 iod that we have, all discovery provided in whatever form  
5 heretofore. Let me ask you, do you intend to?

6 MR. ROLFE: Your HONor, to the extent that it needs  
7 supplementation, LILCO will supplement. We've produced  
8 virtually all the documents we have. There are a few more  
9 that have to be produced that will be produced at deposi-  
10 tions.

11 JUDGE MILLER: Now you say necessary, we would like to  
12 have that not just your client looking at it solely in  
13 terms of its own self interest, but we'd like to have some  
14 reasonably broad scope so that nobody's gonna get cut out  
15 of discovery by deponent's interpretation. So let's be  
16 real clear and precise.

17 MR. ROLFE: All right, what I mean by necessary is  
18 that anything that would shed new light on the matters pre-  
19 viously answered by way of documents or deposition testi-  
20 mony, obviously subject to the privilege requirements. And  
21 certainly anything that's inconsistent with answers that  
22 have been given before, whatnot.

23 None of LILCO's witnesses have yet to be deposed.  
24 They will be deposed in

25 JUDGE MILLER: Well, let's assume they will be, lets



1 not have any exceptions to exceptions. Lay it right out  
2 on the table. What are you prepared to stipulate?

3 MR. ROLFE: I'm prepared to supplement our responses to  
4 the extent that any new opinions or new bases for opinions  
5 or which, they will be made available to the County as soon  
6 as LILCO can do so. Any documents which are generated which  
7 either shed new light on things that have been previously  
8 been discovered, or are inconsistent with things that have  
9 previously been discovered, subject, of course, to drafts  
10 of testimony and that kind of thing which would be protected  
11 under the Work Product Privilege.

12 JUDGE MILLER: Don't be too sure about that. There  
13 are exceptions to that and you're getting awfully close to  
14 trial and so at trial all of those things are producible  
15 anyway. So don't place too much reliance on that or  
16 waste much time on it.

17 MR. ROLFE: Well, I'm not.

18 JUDGE MILLER: Okay.

19 MR. ROLFE: My point is that subject to the privilege  
20 rules, LILCO would supplement.

21 JUDGE MILLER: Let me inquire just one step further.  
22 Our own regulations do make provisions on interrogatories  
23 and upon the duty to supplement if directed by the Board,  
24 though not of the latter portion of it which goes beyond  
25 your duty, if there's anything that changes will be filed.

1           If directed by the Board, and we normally do  
2 enter and have in this case, since we don't have interroga-  
3 tories, are you prepared to undertake the same degree of  
4 supplementation that our regulations provide in the case of  
5 interrogatories, if so directed by the Board?

6           MR. ROLFE: Yes, Your Honor.

7           JUDGE MILLER: Okay. Let's see, who's next here? I  
8 guess the County and the State can indicate to us their  
9 position.

10          MR. LANPHER: Judge Miller, I'd first like to disagree  
11 with the characterization regarding the deposition. I don't  
12 think it takes any extended argument, I just want it to be  
13 clear that I think Mr. Rolfe is incorrect. What the people  
14 had was no final opinions. And in each instance, in my  
15 recollection though I was not at the deposition of Messrs.  
16 Madden and Dirmieir, I was at the other depositions. I  
17 guess it's five other depositions, and these people laid  
18 out in some detail the areas of their inquiry, their  
19 preliminary concerns, what they intended to do to do it.

20                 So in terms of advising LILCO of where we are  
21 going with our case, or where these experts are attempting  
22 to go, I think there was full disclosure and so

23          JUDGE MILLER: We're not trying, we're not character-  
24 izing, or accepting characterization, we just like to have  
25 agreements among counsels so that among yourselves you can

1 fairly provide each other with whatever additional material  
2 or supplementation one would expect or hope for.

3 MR. LANPHER: Judge Miller, we will supplement as  
4 required by the regulation. I will not commit to, for in-  
5 stance when we meet with some consultants next week, if  
6 we do, I'm trying to remember what the schedule is, or the  
7 following week, and we work out, they say well we now think  
8 this. I'm not going to commit, Judge Miller, given the time  
9 schedule that we're on, that we will, and let's say it's a  
10 new concern that they've developed because they've gone  
11 through some of the discovery materials that have been  
12 produced, or finally have been able to complete a calcula-  
13 tion. I cannot commit to immediately writing a letter to  
14 Mr. Rolfe or to the entire service list and say we've gone  
15 back over the deposition and we now have that. There is not  
16 sufficient time in the schedule that you have directed us to  
17 supply testimony on.

18 JUDGE MILLER: Well the first time some of your experts  
19 or your witnesses indicate that there is additional matters  
20 why couldn't you, in a letter or even a telephone call,  
21 say there's this additional matter and

22 MR. LANPHER: Because, Judge Miller, frankly I can't  
23 remember whether things are additional.

24 JUDGE MILLER: No, you said your witnesses might tell  
25 you.

1 MR. LANPHER: Well, okay.

2 JUDGE MILLER: I'm assuming that you know, not that  
3 you have to make research on.

4 MR. LANPHER: Judge Miller, I'm not, if you order me  
5 to do something, I'm gonna have to obviously decide whether  
6 I can take an appeal or whether I just, otherwise I certain-  
7 ly am going to have to obey you. But I'm not going to com-  
8 mit to go beyond the requirements of the regulations in this  
9 instance in terms of supplementing our answers to discovery  
10 requests, because there's just simply not sufficient time to  
11 do that and to perform all the other work that has to be done  
12 by, I guess it's July 16 or 15th, whatever the date for  
13 submission of testimony. So

14 JUDGE MILLER: I'm not sure I understand you. We  
15 consider that our regulations with reference to interroga-  
16 tories, which is a type of discovery, if we so direct, and  
17 we do normally do it in the beginning, shall be supplemented  
18 to the extent reasonably necessary to be additional infor-  
19 mation or whatever. That's the rule that we're asking  
20 counsel to stipulate to. If you don't you realize what  
21 we're gonna have to do. We're gonna have to give some  
22 additional opportunity for deposition. And that's going to  
23 be more time in a tight framework.

24 We want to protect everybody and we're asking  
25 your cooperation.

1 MR. LANPHER: Judge Miller, I do want to come back to  
2 the interrogatory question because there is a question of  
3 whether interrogatories are permissible or not.

4 JUDGE MILLER: No, the original rule we entered, we  
5 considered to be ongoing. The discovery shall not include  
6 interrogatories. Shall or may include depositions, request  
7 for protection of documents. The same rule that we had before  
8 this case was resumed.

9 MR. LANPHER: Judge Miller, the Commission's May 16  
10 order directed that this proceeding be conducted in accor-  
11 dance with the Commission's rules and we interpreted that  
12 to, since they vacated the previous order of this Board  
13 of April 5th, I believe

14 JUDGE MILLER: To the extent that, quote the order if  
15 you're gonna do it.

16 MR. LANPHER: As to the schedule and given their  
17 further directions, we had proposed, propounded interroga-  
18 tories, which LILCO's refused to answer and

19 JUDGE MILLER: Well, that's something you'd better  
20 bring up now then, if that's

21 MR. LANPHER: We have propounded interrogatories because  
22 we believe under the Commission's regulations and under the  
23 direction that the Commission gave on May 16th, that such  
24 interrogatories are proper. And that's something that we  
25 were prepared to address to this Board as part of the, I think

1 you called it, a status report in your order of yesterday.

2 JUDGE MILLER: It is something we want to take out.

3 MR. LANPHER: But, getting, I want to, just so there's  
4 no misunderstanding on the prior thing we were discussing,  
5 my understanding is that Mr. Rolfe wants us to advise him  
6 whenever our witnesses come up with any new ideas, basically,  
7 to use a short hand.

8 JUDGE MILLER: Well, in view of their testimony in  
9 a deposition, he's asking when it's reasonable to have a  
10 supplement and when they're able to testify further than  
11 they could at that time. I think that's the framework that  
12 we're looking at.

13 MR. LANPHER: Well, it's a vague standard and I'm not  
14 agreeing to it, Judge Miller, because I don't think it's  
15 called for under the regulations. And if we had more time  
16 to do that, we would. We have not asked for an extention  
17 in the schedule that we have here, but I can tell you right  
18 now, it's a very tight schedule from our perspective, at  
19 least, in terms of putting all the testimony together.

20 JUDGE MILLER: When are you due to file testimony, by the  
21 way?

22 MR. LANPHER: 16th I think, it's the 15th or 16th.  
23 16th of July. Obviously there's July 4 in there and there's  
24 gonna be alot of work that week before. Does that answer  
25 your previous question?

1 JUDGE MILLER: Well, it answers it in part by not  
2 answering it, yeah. I guess you can call that an answer.

3 MR. LANPHER: I thought I answered it as directly as  
4 I could.

5 JUDGE MILLER: You declined to stipulate to use the  
6 same rule we have on interrogatories when the Board directs  
7 it to the other functions of discovery, which we're allowing  
8 here. You say you won't do it.

9 MR. LANPHER: Unless the Board directs me.

10 JUDGE MILLER: Well, we can't direct you in a vacuum.  
11 We can tell you this, that if there is additional informa-  
12 tion, data, opinions of expert witnesses and the like which  
13 goes beyond that which was reasonably available by inter-  
14 rogatory or as deposition, we're certainly gonna give  
15 who ever's involved an opportunity to have a further depo-  
16 sition. Now, that could occur on the night of a trial,  
17 too. It can occur pretty fast. So if you want to be under  
18 that kind of a time hazard, all right, we're gonna protect  
19 everybody.

20 And that means that we're gonna give opportunity  
21 for adequate discovery consistent with the time frame. Now  
22 if you're gonna hold back advising counsel by telephone or  
23 by letter, of significant new evidence, testimony, data,  
24 opinions and the like comes up and as a skillful lawyer,  
25 I'm sure you would know when it was coming up. You'd either

1 know or somebody'd tell you, as is true of all counsel  
2 trying this case.

3 We'd expect at that point that you notify  
4 opposing counsel. If you can't agree to do that, then we're  
5 going to have to keep open the possibility of directing,  
6 either directing additional depositions or of striking the  
7 existing deposition and refusing to admit the testimony,  
8 and we don't want to go to that expense, but we're gonna be  
9 sure that everybody here is protected. And by holding back  
10 as you are doing, you are inviting that kind of a  
11 situation.

12 MR. LANPHER: Judge Miller, I just want it to be clear  
13 I'm not holding back anything. I'm telling you the practi-  
14 cal inability to agree voluntarily to the proposal because,  
15 to agree voluntarily and then to skip over something because  
16 there's so much that has to be done, I'm very worried that  
17 someone would say well, you promised that you were supposed  
18 to do something, Mr. Lanpher, and you didn't do it, so you  
19 held back. Well, Judge Miller, there's not time here to  
20 have the degree

21 JUDGE MILLER: There's time to be candid with counsel  
22 in discovery. The deposition, I mean the interrogatory rule  
23 provides for it. I'm asking you to extend that to depositions  
24 and you're refusing. So I think that you're not being very  
25 consistent in your argument.



1 MR. LANPHER: It's a wholly different category to  
2 extend it to voluminous depositions that go hundreds of  
3 pages.

4 JUDGE MILLER: You know what's in there, now don't  
5 give me this argument. As a skillful lawyer that you and  
6 your associates don't know what's in every deposition of your  
7 own and the other people, because you've got enough help, and  
8 you do.

9 MR. LANPHER: Judge Miller, I mean no disrespect, but  
10 I'm tired of being called

11 JUDGE MILLER: No disrespect taken, go ahead and say  
12 what's on your mind.

13 MR. LANPHER: I'm tired of the cliches about skillful  
14 lawyers and knowledgeable

15 JUDGE MILLER: Don't you regard yourself as a skillful  
16 lawyer and a member of a law firm which is well staffed  
17 and putting the manpower at whatever expense necessary to  
18 try this and other case?

19 MR. LANPHER: Can I finish my statement, please?  
20 There are finite limits on expense.

21 JUDGE MILLER: All right, we'll say whatever reasonable  
22 limits there are. And we won't inquire into the nature of  
23 it. But with that qualification, what?

24 MR. LANPHER: I'm tired of the cliche, yes, I think  
25 I'm a skillful lawyer and a careful lawyer. I try to

1 JUDGE MILLER: You have demonstrated that to us. As  
2 a matter of fact, we believe that you are from the partici-  
3 pation that you had when we had the trial for a day and a  
4 half. So we have seen you in action and we're not being  
5 perjuristic when we say you're skillful, so I don't know  
6 what you're tired of. What are you tired of?

7 MR. LANPHER: I'm tired of the cliches about being  
8 skillful in this and the presumption that seems to go with  
9 that that automatically I remember the things that are in  
10 depositions, or that my colleagues do. I'm very concerned  
11 about the practical problem. We're not trying to hold  
12 anything back. I don't think my witnesses did hold anything  
13 back.

14 JUDGE MILLER: I don't know, I'm passing no judgment on  
15 that.

16 MR. LANPHER: What I was willing to do was to comply  
17 with the regulation which colleague, 2.740E2, you know,  
18 supplementation of responses. And we're gonna live up to  
19 that regulation, you can be sure that we're going to.

20 JUDGE MILLER: You're going to supplement the responses,  
21 let me get this so we know what we're talking about. The  
22 duty to supplement, hold it just a moment, I'll read it.

23 A duty to supplement responses may be imposed by  
24 order of the presiding officer, or agreement of the parties.  
25 Now, that relates to the provisions regarding discovery

1 generally and under the section 2.740(E), supplementation  
2 of responses, which, unless I'm misreading it, addresses  
3 interrogatories

4 MR. LANPHER: (E)2 says that a party is under a duty  
5 seasonably to amend a prior response if he obtains infor-  
6 mation upon the basis of which he knows that the response  
7 was incorrect when made, or he knows that the response  
8 though correct when made, is no longer true, and the circum-  
9 stances are such that a failure to amend a response is in  
10 substance and knowing concealment.

11 We're gonna live up to that obligation, Judge  
12 Miller.

13 JUDGE MILLER: I mentioned that. I said we're going  
14 beyond that which would otherwise be in effect fraud, that's  
15 the section that I was referring to. That's the duty im-  
16 posed on you regardless of anything else. And I said we  
17 were going to slightly higher duty of subparagraph 3, a  
18 duty to supplement responses may be imposed by order of the  
19 Board. And we are directing all parties and we're ordering  
20 all parties, if you want an order, to supplement responses  
21 where they're contained in answers to depositions, oral inte-  
22 rrogatories, anything else, or the production of documents.

23 We're directing you to do it under the terms and  
24 provisions of 2.740(D)(3). Now do we all understand  
25 what we're talking about?

1 MR. LANPHER: I hear your order and we'll certainly  
2 comply with it, Judge Miller. I would like

3 JUDGE MILLER: That's all we're asking.

4 MR. LANPHER: All you're ordering.

5 JUDGE MILLER: Well, we first ask and then you chose  
6 to ask us to put it in an order. We're putting it in an  
7 order.

8 MR. LANPHER: I would like

9 JUDGE MILLER: It was voluntary. I'm sorry, go ahead,  
10 I did interrupt you.

11 MR. LANPHER: I would like your clarification, maybe  
12 you've had experience in terms of supplementing deposition  
13 reponses. Can you give some flavor on what you

14 JUDGE MILLER: I'm trying to answer you now. I'm not  
15 trying to impose burdens on you and others. I know that  
16 you're busy. I appreciate fully. I just have to count,  
17 stack or measure the volume of documents the Board receives.  
18 And we know how much more you folks may be working with.  
19 So we fully appreciate, we're not trying to impose an  
20 unreasonable burden upon you.

21 But we do feel that by the same manner in which  
22 you address depositions, you can have hundreds of thousands  
23 of depositions with some subparts, nevertheless, competent  
24 counsel, and if we offend you by that term, I'll say I'm  
25 sorry, but I think that you are competent counsel, as are

1 others. And we're not trying to put additional burdens  
2 on you or your law firms, but we do expect in this case,  
3 which is important to everyone, that our regulations pertain-  
4 ing to the supplementation of interrogatories may reasonably  
5 be carried over to supplementation of information adduced  
6 as a result of depositions, production of documents, or  
7 whatever other discovery may be employed by any lawyer in  
8 this case, as against or in terms of any other witness.

9 And that's all that we're asking you to do. No  
10 more than that, but we think that that is fair and reasonable,  
11 even though it may be somewhat onerous.

12 Now, you wanted clarification, am I giving you  
13 enough to give you guidelines? Because we're not trying  
14 to be, I mean, that you neither understand or are able to  
15 comply with. It does apply to all counsel and all parties,  
16 now, not just you.

17 MR. LANPHER: Judge Miller, so I understand, you're  
18 extending the supplementation obligation ~~that~~ is for inter-  
19 rogatories, to the depositions and documents, production  
20 requests.

21 JUDGE MILLER: And other discovery, yes. I only  
22 think of those two, but if there's other forms of it,  
23 supplement. That's no great, unknown thing, it's not un-  
24 precedented, it's known to all lawyers.

25 MR. LANPHER: Then the regulation that you're extending

1 is 240, 2.740(E)(1), is that

2 JUDGE MILLER: Well, I gave it to you awhile ago. We  
3 are ordering that supplementation of all discovery data  
4 information responses, spontaneous utterances, whatever,  
5 be under the same rule of supplementation which our regula-  
6 tions provide in the case of supplementation of information  
7 to interrogatories where directed by the Board, not just  
8 that if it stands alone without it it would be fraud or  
9 something. That's a rather coarse standard.

10 We're saying go ahead and supplement. And I  
11 don't know why it takes us so long to understand the plain  
12 meaning of words that are used in the English language.

13 MR. LANPHER: Okay, thank you.

14 JUDGE MILLER: You're welcome. Now, anything further  
15 on this subject? By any counsel? All right. Then we'll  
16 consider that we've covered that subject. Now, I was gonna  
17 say your colleague was free to leave, I see that he has.  
18 Because I understand that he has a previous obligation.

19 Now, what would you like to get into next in the  
20 way of clarifying whatever you think needs clarification  
21 or consideration by the Board of any problems if they  
22 bother you.

23 MISS LETSCHE: Judge Miller, something which was  
24 raised, at least preliminarily a few minutes ago and  
25 you indicated, or Mr. Lanpher indicated it was something

1 we did want to address, was the question of discovery by  
2 way of interrogatories in this proceeding on LILCO's exemp-  
3 tion application. As has been alluded to in connection  
4 with the argument of the motion for the protective order,  
5 LILCO has taken the position in response to the County's  
6 first discovery request, as well as in response to the County's  
7 second discovery request, that it is under no obligation to  
8 answer interrogatories propounded by the County.

9 The reason that the County's discovery request did  
10 include interrogatories was that because this Board had  
11 issued no order limiting discovery in this proceeding on  
12 the exemption for an application. Following the Commission's  
13 May 16th order, which as you noted, Judge Miller, vacated  
14 to the extent inconsistent with the May 16th order, this  
15 voids April 6th, 1984 order, this Board issued on May 31  
16 an order establishing a schedule for the hearing on LILCO's  
17 exemption application.

18 That order contained no limitation on discovery,  
19 it merely said discovery commences and stated the date upon  
20 which it ends. Since the Commission's discovery rules do  
21 provide for the use of interrogatories as well as requests  
22 for the production of documents, depositions, requests for  
23 admissions and other matters, the County proceeded to pro-  
24 pound interrogatories to LILCO.

25 It is the County's view that LILCO's refusal to

1 respond to, I believe and my count may be off by a few,  
2 28 or 29 of the requests contained in the County's first  
3 discovery request, on the basis that they were interrogatories  
4 rather than document requests, is incorrect. The County  
5 intends to file a motion to compel responses to those inter  
6 rogatories, based upon the County's understanding of the  
7 rules that are in effect to govern this proceeding. And  
8 that is the Commission's rules which give us the right to  
9 seek discovery by way of interrogatory.

10 JUDGE MILLER: You have not addressed the prior order  
11 in this proceeding and we deem it to be the same proceeding  
12 by the way, by this Board.

13 MISS LETSCHE: Well, I

14 JUDGE MILLER: Pardon me. You haven't addressed that  
15 portion of the prior order limiting discovery to, at least,  
16 depositions, furnishing of documents, may be other aspects,  
17 but not including interrogatories.

18 MISS LETSCHE: Well, I believe I did address it, I'll  
19 address it again for you, Judge Miller.

20 JUDGE MILLER: What does it say, tell me what it says?

21 MISS LETSCHE: The Commission's May 16th order

22 JUDGE MILLER: No, no, I'm not asking about the  
23 Commission. I'm asking about our order, precedently, and  
24 please address it.

25 MISS LETSCHE: The April 6th, 1984, order of this



1 Board was vacated to the extent

2 JUDGE MILLER: Never mind, I didn't ask you its history  
3 or pedigree, I asked you what it provided with reference to  
4 interrogatories, it's a simple direct question to a lawyer.

5 MISS LETSCHE: It is my understanding

6 JUDGE MILLER: Do you have it before you?

7 MISS LETSCHE: I do not have it before me, but I can ans-  
8 wer your question.

9 JUDGE MILLER: I'm sure you can answer it. Can you  
10 answer it accurately is my question.

11 MISS LETSCHE: I'm going to try to, if you let me.

12 JUDGE MILLER: Please do, address it and speak to that  
13 and forget for the moment other orders. Go right ahead.

14 MISS LETSCHE: My understanding is that this Board's  
15 April 6th order, which dealt with LILCO's supplemental  
16 appli

17 JUDGE MILLER: We know what it dealt with, whether to  
18 provide an interrogatory. Don't dance around it, come  
19 right to it, grapple with it, look it in the eye. What  
20 did it provide?

21 MISS LETSCHE: It is my understanding that this Board's  
22 order, which dealt with LILCO's supplemental motion for

23 JUDGE MILLER: We strike that, consider that portion  
24 stricken. Counsel admonished, please to answer the questions  
25 of the Board. And don't be cute.

1           MISS LETSCHE: It is my understanding that this  
2 Board's order indicated that, with respect to that  
3 hearing, there were, discovery was not to include interroga-  
4 tories. It is my further understanding that the Commission's  
5 May 16th order vacated the portions of this Board's April  
6 6th order that were inconsistent with the Commission's  
7 May 16th order.

8           The Commission's May 16th order provided that the  
9 proceeding on LILCO's application for exemption, which is  
10 the proceeding in which we are all now engaged, was to be  
11 conducted in accordance with the Commission's rules. Pur-  
12 suant to that May 16th order, this Board on May 31, issued  
13 an order entitled Order Establishing Schedule for Resumed  
14 Hearing. And in that order there was no limitation on  
15 discovery and it is pursuant to that order and the  
16 Commission's May 16th order, that the County pursued its  
17 rights to conduct discovery as set forth in the Commission's  
18 regulations.

19           JUDGE MILLER: Thank you. I think we can rule on that  
20 one right now. We don't need to hear from ~~other~~ counsel.  
21 We consider this to be the same continuing, ongoing pro-  
22 ceedings, the order of the Commission vacated our memorandum  
23 and order of April 6th to the extent inconsistent, they do  
24 not deem our direction as to nonuse of interrogatories in  
25 a limited time period for discovery to be in anyway effected.

1           We think that in fact it indicated, by the  
2 Commission's own designation of discovery commencing on  
3 Day 2 and ending on Day 32, itself a somewhat less than  
4 usual period of all discovery. We believe, therefore, there  
5 should be no confusion in the minds of the County or its  
6 representative that the order entered originally, counsel  
7 has so much trouble remembering, definitely excluded the  
8 use of interrogatories and discovery. It's ongoing, it's  
9 as good today as it was then.

10           We overrule the County's motion, if it is a  
11 motion, to do something variant therefrom and we direct  
12 that the continued discovery, which is to end under our order  
13 which was based upon the Commission's order next week, be  
14 brought to a conclusion on the scheduled date and that all  
15 parties and all counsel cooperate to the maximum extent to  
16 provide reasonable information to each other.

17           Now, are there any more motions?

18           MR. ROLFE: Judge Miller, may I make one comment just  
19 so the record will be full? With respect to the interroga-  
20 tories in ~~the~~ first discovery request, to the extent that  
21 documents were also requested with the interrogatory LILCO  
22 has produced.

23           JUDGE MILLER: Those should be produced.

24           MR. ROLFE: They have been produced, or they will be  
25 produced so that all the documentation that might be

1 pertinent to those questions should be, or will be shortly,  
2 given to the county.

3 JUDGE MILLER: All right. They should be now, we inten  
4 only discovery of documents.

5 MR. ROLFE: I understand that.

6 JUDGE MILLER: We're not foreshortening that. We  
7 expect them all to be produced, made available by each of  
8 you to the other.

9 MR. ROLFE: I understand that, Your Honor. I just  
10 want to be clear that we haven't just dismissed the whole  
11 request out of hand, because it happened to include an  
12 interrogatory, documents that are responsive to those have  
13 been produced in

14 JUDGE MILLER: Very well, continue to do so, all parties  
15 to do so. Are there any other motions?

16 MISS LETSCHE: Yes, Judge Miller, if I might just  
17 respond to what Mr. Rolfe stated. The, with respect to  
18 document production by LILCO. Separate and apart from  
19 LILCO's refusal to answer interrogatories, and I understand  
20 the Board has ruled that the County's request that responses  
21 be provided will not be ordered by this Board, LILCO has  
22 in addition objected to an refused to produce many cate-  
23 gories of documents that were requested

24 JUDGE MILLER: I understand but that was, you're  
25 entitled to have rulings on those. We're trying to go into

1 every, please designate now what you're talking about and  
2 we'll get a response and rule on it, because we want to  
3 cover all potential discovery controversies.

4 MISS LETSCHE: Well, there are several categories of  
5 objections that LILCO made and refusal to produce documents  
6 and I can go through them if you wish. First of all

7 JUDGE MILLER: Well, it's your record. I'm gonna try  
8 to make an order so to the extent that you want us to look  
9 at it and to find out the situation, use your judgment.

10 MISS LETSCHE: Well, we had intended to file a written  
11 motion to compel production because these do involve large  
12 numbers of the responses and we'll be glad to do that if  
13 you

14 JUDGE MILLER: Pardon me, with your time up next Friday,  
15 you see, you're handicapping yourself and your client,  
16 really. Why don't you take this opportunity to do what you  
17 had in mind next week and do it now and get it over with.

18 MISS LETSCHE: I'll be glad to do that if you wish,  
19 I just wanted to make sure that that's really what you  
20 wanted me to do.

21 JUDGE MILLER: Not what I wish, it's what you wish.  
22 Go ahead.

23 MISS LETSCHE: Well, first of all, LILCO has refused  
24 on page 2 of its response to the County's first discovery  
25 request, LILCO Has stated that it objects to the production

1 of all drafts and copies of documents requested as unduly  
2 burdensome and oppressive. They say that it's not feasible  
3 to obtain these documents and a good faith effort will be  
4 made to produce at least a final version of all responsive  
5 documents. And as a result, presumably, none of the, no  
6 drafts or copies of documents containing handwritten  
7 notes or such things have been produced in response to the  
8 document request, although the request did expressly include  
9 such matters.

10 JUDGE MILLER: Pardon me. I may inquire. Is that  
11 getting into this financial things that we're handling  
12 separately?

13 MISS LETSCHE: No, Judge.

14 JUDGE MILLER: Okay, then let us get a response if  
15 you've identified the problem. Now, why won't you produce?

16 MR. ROLFE: Your Honor, it's a question of feasibility  
17 We have received, there were some 90 requests here, not  
18 counting subparts, and there were, I don't know how many  
19 submitted on April 11 and 12. In response to that, the  
20 discovery requests have been circulated to the people at  
21 LILCO whom we and the LILCO employees believe would have  
22 responsive documents. They have all been instructed to  
23 produce those documents.

24 The problem is that in the course of operating  
25 the plant an conducting LILCO's business, sometimes documents

1 get circulated to four or five different people. Sometimes  
2 drafts don't get put in the file where the final document  
3 ought to be lodged and it's simply not feasible for  
4 counsel

5 JUDGE MILLER: Well, what is feasible? Now, look, I  
6 have heard these arguments for years and I know counsel make  
7 them to suit their own predicament. You're all under pres-  
8 sure, I know that. But, let's get down to it.

9 Produce the maximum extent possible. What can  
10 you, what have you produced for the lady?

11 MR. ROLFE: We have produced and are producing all  
12 documents responsive. The problem is I can't certify that  
13 I have every draft that may be in existence. I have made  
14 a request

15 JUDGE MILLER: Well, I don't you or any lawyer would.  
16 Make every reasonable effort. And she says you filed a  
17 response as saying it's too onerous. And I don't know, we  
18 don't even have the document before us, but we don't want  
19 to have onerous objections, except for what is it they  
20 call the truly, or the very truly onerous, which is  
21 exceptional.

22 Now, what is it that you're not producing that  
23 she's entitled to?

24 MR. ROLFE: Your Honor, everything that I know about  
25 has been produced although, well, with respect to copies.

1 With respect to drafts, I don't believe that all drafts  
2 have been produced or documents.

3 JUDGE MILLER: Drafts of what now?

4 MR. ROLFE: I'm not sure drafts of what, Your Honor.  
5 I don't know what's out there, is my problem.

6 JUDGE MILLER: Well, I'm getting fuzzier and fuzzier.  
7 Now, come on, let's get precise.

8 MR. ROLFE: Well, I'm not attempting to be fussy, the  
9 problem is, when I took these requests to LILCO and I said  
10 here's the request, I need the documents.

11 JUDGE MILLER: Now you're telling me your problems,  
12 come on now. If I won't let counsel for the County tell  
13 me its problems, I can't let you. What are you gonna  
14 produce that you haven't produced. Or what grounds do  
15 you have for not producing if you're asserting some ground  
16 and we'll rule on it. Let's get on with this.

17 MR. ROLFE: Your Honor, the grounds for not producing  
18 drafts is simply that it's, as I said, burdensome, very  
19 difficult to track down the

20 JUDGE MILLER: Overruled. All discovery is burdensome  
21 whether the large utility, I know there are lots of  
22 documents. But assume the burden now, do the best that you  
23 can. We're not requiring you to put your head on the line,  
24 but we do require a reasonable effort by lawyers acting  
25 professionally. Now, if you've done it, tell the lady. If



1 you haven't done it, tell her what you're gonna do about  
2 it.

3 MR ROLFE: I will then make a request, and I will  
4 produce such drafts of the documents as we have already pro-  
5 duced that may be in existence, if that's the Board order.

6 JUDGE MILLER: Well, we order you to produce all that  
7 you can reasonably lay your hands on. I mean, this thing's  
8 got a week to go now. We can't all stand and dance around  
9 and come to the Board for orders and protective orders and  
10 tell us how burdensome everything is. WE know life is  
11 burdensome.

12 What can you, are you holding anything back? If  
13 so tell us what and why.

14 MR. ROLFE: Your Honor, the only specific documents  
15 I'm aware of that we're holding back have been identified  
16 particularly as privileged documents. I have not collected  
17 from LILCO all of its drafts of documents, which I may  
18 have produced already in a final form. IN other words

19 JUDGE MILLER: Now, we're not gonna spend alot of time  
20 on privilege, I can tell you that. This is a wide open  
21 case and we're getting into matters that go into motivation  
22 and everything else, so don't come in and expect to get  
23 some long winded argument and then order on privilege, es-  
24 pecially when it's attorney client. That's a limited privi-  
25 lege and you're practically in the course of trial where

1 that privilege, as far as most courts are concerned,  
2 vanishes.

3 Say I got a witness statement, it's privileged and  
4 he says well, have you got it here, counsel, yeah, get it  
5 out of your bag. And this happened a thousand times,  
6 they're getting simple answers. So don't lean too heavily  
7 on privilege. Let's produce, what the heck, we're in a  
8 law suit, we're trying to get the facts, the evidence,  
9 and in advance by discovery.

10 Now, are you complying with that pretty clean  
11 simple dictum or not?

12 MR. ROLFE: Your Honor, to the extent I understand it  
13 yes, sir, I have tried to comply with that. I don't want  
14 Your Honor to be under the illusion that I'm attempting to  
15 withhold information or documents.

16 JUDGE MILLER: That's what we don't want to be under.

17 MR. ROLFE: Here's the situation, if I can give you  
18 an example. There may be, suppose there was a memo that  
19 was written by one employee to another. I have produced  
20 tha memo.

21 JUDGE MILLER: Okay, fine, fine.

22 MR. ROLFE: I can't certify that I produced every draft  
23 of that memo, I may have gone through it

24 JUDGE MILLER: Do everything you reasonably can do  
25 but our concern not with what you've done, but what you

1 haven't done. If there isn't anything on that category,  
2 we'll move on. Tell me there what you know that you  
3 haven't done, if that be a situation. And if not, let's  
4 move on with it.

5 MR. ROLFE: I'm not trying to be evasive. Part of my  
6 problem is I don't know what I haven't done. I instructed

7 JUDGE MILLER: All right, you go back to your office.

8 MR. ROLFE: I will.

9 JUDGE MILLER: Look at what you haven't done, call the  
10 lady up on the telephone first, follow it up with a letter  
11 and tell her what the status of this thing is and produce  
12 everything that you can reasonably be expected to, being  
13 liberal in production.

14 MR. ROLFE: I will do that, Your Honor.

15 JUDGE MILLER: Okay, next. What's next?

16 MISS LETSCHE: Yes, Judge Miller, in addition, on page  
17 2 of LILCO's response to the County's first discovery  
18 request, they indicate an objection to the request that it  
19 supply documents in the possession or subject to the control  
20 of LILCO's consultants, persons under contract with LILCO  
21 and venders of equipment or services to LILCO, and they  
22 state that the basis is that's burdensome and oppressive and  
23 exceeds the scope of document requests permitted by 10 CFR  
24 Section 2.741, and that it is not limited to documents which  
25 are in the possession, custody or control of LILCO.

1           And it is my understanding that the only documents  
2 responsive to the County's request that LILCO has produced  
3 are those that are in the custody of LILCO employees, which  
4 Mr. Rolfe was just referring to.

5           JUDGE MILLER: All right, let me inquire about this.  
6 We understand that you might get into matters of trade sec-  
7 rets and so forth, but we think that usually is more in  
8 the apprehension than in the reality. We don't want you to  
9 limit discovery solely to what you got in your multitudinous  
10 files or employees. Reasonably, if it's in possession of  
11 some other company you deal with and there's no question  
12 of trade secret, something like that, ask them to send it  
13 in.

14           MR. ROLFE: Your Honor, we've done that and we've been  
15 producing documents for our consultants who are not  
16 What we haven't been able to do, for example, there's a  
17 request in here about our oil supply. And we haven't gone  
18 to, for example, Exxon

19           JUDGE MILLER: I'm not sure of the relevance of that,  
20 frankly. Now you're getting into areas where you may have  
21 a relevance question.

22           MR. ROLFE: But this is just an example, we haven't  
23 gotten it down to

24           JUDGE MILLER: As an example, go ahead.

25           MR. ROLFE: But we haven't gone to Exxon and asked for

1 all their documents that might shows where the oil comes  
2 from. That's the kind of limitation I've interpreted and  
3 that's what

4 JUDGE MILLER: All right, well see, if, you've got  
5 interstatially some areas where you can supply more informa-  
6 tion that might have escaped the broad sweep of the request  
7 as she's phrased it. I understand your Exxon situation,  
8 but short of that, there's an awful lot of situations  
9 where routinely you either have or you can get them.

10 MR. ROLFE: We've attempted to do that.

11 JUDGE MILLER: Give her a list of those you can't and  
12 tell her where they are, then give the Board a copy, we'll  
13 soon rule on that one. Use reasonable effort, that's all  
14 we're asking.

15 MR. ROLFE: I've been trying to, Your Honor. If counsel  
16 would advise me on what

17 JUDGE MILLER: All right, let me do this. We direct  
18 counsel on behalf of, I take it that it's the County at the  
19 moment, may or may not include the State, and LILCO to sit  
20 down Monday, as early as they can get down to their offices  
21 and get together to go over these discovery requests, try  
22 to agree on as much as you can in terms of the clients that  
23 we've indicated.

24 I might point out now, Commanche Peak, we incor-  
25 porated that earlier in this proceeding, too, and we still

1 regard this as the same ongoing proceeding, where we said  
2 sit down, confer and let us know who's being unreasonable  
3 in your judgment before you file motions.

4 Now, that still applies too. At least the philos-  
5 ophy of it does. So, sit down Monday and go over these  
6 things. Much of it you ought to be able to resolve. As  
7 lawyers, I won't characterize you as that offends some of  
8 you, but as lawyers admitted to practice and as appearances  
9 entered here. Get together. All of you, that is all of you  
10 where it's an ongoing matter.

11 I say Monday, that's a short time, I realize, but  
12 since Friday is the last day for discovery, you can't be  
13 holding off much longer and you've got to have an opportunity  
14 to start producing, if there are some that you can put your  
15 hands on and produce as much as you reasonably can and I'm  
16 gonna ask counsel also, on behalf of the County, keep your  
17 requests within reasonable bounds, so far as you can.

18 There's no sense in putting them to alot of work  
19 on something that's of peripheral significance, perhaps, to  
20 you.

21 Yes?

22 MR. LANPHER: Can we go on to the next?

23 JUDGE MILLER: Pardon me?

24 MR. LANPHER: Can we go on to the next?

25 JUDGE MILLER: It may be subsooned in what we've said

1 now. We see no point in going through all of these. I  
2 think you ought to select out now if you've got some real  
3 problems of Board ruling. Give us those, now, we've  
4 giving you the thing on the onerous business.

5 MR. LANPHER: Well, just in terms of the status report,  
6 we have conferred, obviously though it was prior to your  
7 arlier admonition about privilege, or, by the way, I think  
8 you said gee, I don't want to hear about attorney client pri-  
9 vilege, because that's not an absolute privilege. I think  
10 you meant work product.

11 JUDGE MILLER: You're correct. I did. Thank you for  
12 correcting me. I did mean work product. Attorney client  
13 is different, but it has alot of exceptions, too.

14 MR. LANPHER: Well, I don't think any of us have raised  
15 an attorney client privilege with respect to any of the  
16 documents that are being produced or been requested. I could  
17 be wrong, I just don't recall any.

18 We have the potential for a dispute over some  
19 documents related to seismic matters, which we requested  
20 back in April. We did not pursue it because, I don't have  
21 to go through the whole history what happened after that,  
22 but once, as soon as LILCO advised us, they've advised us,  
23 I don't think they served the Board, the didn't need to,  
24 is that they have some seismic witnesses they're now going  
25 to use. We asked for these documents from LILCO. LILCO

1 had previously, in April, said they would not produce them  
2 because they were work products.

3 We asked them to reconsider that and they said they  
4 had and with two exceptions, documents that I think were  
5 inadvertently withheld before, they have continued to  
6 withhold them and I haven't had a chance to talk with Mr.  
7 Rolfe since your earlier statement.

8 JUDGE MILLER: Okay, all right, good. I think you've  
9 identified now that problem area.

10 MR. LANPHER: 32 documents.

11 JUDGE MILLER: Let's hear about that.

12 MR. ROLFE: Your Honor, the documents are all documents  
13 that were put together at the express request of counsel  
14 to assist counsel in drafting the original supplemental  
15 motion for low power operating license, which was filed on  
16 March 20. They were created in this context. Counsel sat  
17 down and we drafted an outline and said we want to know the  
18 answers to these questions.

19 LILCO went out and wrote, in some cases, hand  
20 written notes and some cases they typed up things, to be  
21 brought back to counselor, to give us that information  
22 and it was from that that we drafted the supplemental  
23 motion for low power operating license.

24 And it's LILCO's position, Your Honor, that that's  
25 classic trial preparation materials as defined by the rules,



1 JUDGE MILLER: Well, it probably would be, originally,  
2 we would agree with you on that, or with any counsel who  
3 asserts that. However, the lapse of time and the approach  
4 the point that you're all gonna have to furnish prefiled  
5 written testimony, and you're gonna start an adjudicatory  
6 hearing, we think maybe that the force of that might be some-  
7 what diluted. Have you given any consideration to that?

8 MR. LANPHER: If I can do this, so as identify this  
9 as LILCO's April 16 response to a document production  
10 request, and I'm showing you the, just LILCO listing of the  
11 documents withheld under claim of work product privilege,  
12 which has a description of subject matter.

T3  
13 MR. ROLEE: These are not documents that were used or  
14 reviewed in anyway in the preparation of testimony or for  
15 preparation for depositions or any form of testimony by  
16 the witnesses. Indeed, most of them weren't even prepared  
17 by people who are witnesses. And in that context, Your  
18 Honor, I think they still come within the privilege.

19 The County has experts on these areas, the County  
20 has heard testimony of some of the LILCO witnesses on  
21 April 24 and 25. They are scheduled to depose most of the  
22 other LILCO witnesses, in particular, they're scheduled to  
23 depose the seismic witnesses on Monday.

24 JUDGE MILLER: Well, I suppose they can depose more  
25 adequately, in their judgment, at least, if they have access

1 to the underlying data that this witness either has pro-  
2 duced or has had available to him.

3 MR. ROLFE: Well, YOur HONor, these are not documents  
4 which were produced by LILCO seismic witnesses, nor had  
5 they been given to those seismic witnesses. These are things  
6 which counsel considered originally in developing the  
7 seismic testimony, LILCO Has relied on

8 JUDGE MILLER: How do you develop testimony? Testimony  
9 is given by a witness under oath here. What are you doing  
10 developing testimony?

11 MR. ROLFE: I'm not, Your Honor. I mean the consultants.

12 JUDGE MILLER: Okay.

13 MR. ROLFE: What I meant to say is this, LILCO's seis-  
14 mic witnesses come from two engineering firms, Sargent and  
15 Lundy and Stone and Webster. The documents which we relied  
16 upon and which are identified there with respect to seismic  
17 information, were put together mainly by LILCO people just  
18 for counselor's use, they have not been furnished to the  
19 Stone and Webster or Sargent and Lundy people as far as I  
20 know. They don't form the basis for any of their work.

21 JUDGE MILLER: Now let me inquire, counsel says there  
22 are just two documents, if I understand him.

23 MR. ROLFE: No, sir, there are more.

24 MR. LANPHER: There are 30, there are two which Mr.  
25 Rolfe informed me this morning, we had talked with him

1 before, informed me this morning that they were not properly  
2 withheld, that he is producing them. But there are approxi-  
3 mately 30 others and I would just like to point out, like  
4 under subject matter, I mean, a question which our witnesses  
5 are intending to investigate and address, depending on the  
6 outcome of the investigation. For instance, if there is the  
7 SSE at Shoreham, which is a .2 G acceleration, are there  
8 systems, vital systems, structures or components for in-  
9 stance, insulators or fuses or circuit breakers or a trans-  
10 former that might be adversely affected.

11 I look at the subject matter here for instance,  
12 natural frequency of the 69 KV switch yard fuse structure.  
13 Well, that's something right in the line from the 20 mega-  
14 watt gas turbine to the RSS transformer. It's a critical  
15 component in getting that power into the plant, just to give  
16 you an example.

17 JUDGE MILLER: I understand, from counsel's statements  
18 in part, that LILCO does plan to put on some seismic  
19 testimony.

20 MR. ROLFE: That's correct, Your Honor.

21 JUDGE MILLER: I suppose prefilled written, plus what-  
22 ever else may develop, subject to cross examination and  
23 the like. Well, if that's correct, counsel certainly  
24 has the right to go into the testimony as it's finally  
25 filed, but the underlying bases of such testimony. The

1 facts, in other words.

2 Now, the fact that you've got here certain matters  
3 I recognize that it presents a problem to the profession.  
4 And I'm not trying to let anybody get into the brain of  
5 counsel that developed it, which I think is really the basis  
6 of this trial preparation work product privilege. Also,  
7 let each lawyer do his own work, and not pick the brains  
8 of his opponent.

9 So as I point out, we are now getting right down  
10 to trial where that becomes less looming in significance.  
11 We're now down to where people are going to testify. And  
12 when we're down to that point, with the time limitation on  
13 discovery, we're concerned that the genesis of this thing,  
14 where counsel tells us that you're asked the questions and  
15 asked for the information. The genesis of it now is less  
16 significant than the descendants. I mean, we're to the  
17 point now these people are gonna say something and County's  
18 entitled to know in advance, in their depositions, about what  
19 it is based on there.

20 We're gonna have to find some solution to this,  
21 because you can't wrap that umbrella of initial trial  
22 preparation lawyer request, you can't just shield now infor-  
23 mation he's entitled to. Maybe you could mask somehow the  
24 lawyer part of this thing, but I think you're gonna have to  
25 make some information available to counsel.

1 MR. LANPHER: I'll be heard just briefly.

2 JUDGE MILLER: Yes.

3 MR. LANPHER: My understanding, correct me if I'm  
4 wrong, Mr. Rolfe, none of these documents were prepared by  
5 counsel. I agree with you.

6 JUDGE MILLER: I assume that.

7 MR. LANPHER: Judge Miller, that I think that goes in  
8 a different category, you know, what counsel, you all must  
9 inevitably have mental impressions on that. And I think that  
10 really has to be protected.

11 But these look to me to be essentially factual  
12 stuff and just looking through, one of the documents, in  
13 fact, was prepared by Mr. Shiftmacher, who's been one of  
14 the LILCO witnesses, I think, if the Board recalls.

15 JUDGE MILLER: Yes, we recall.

16 MR. LANPHER: So, these appear to be essentially  
17 factual data. Quite frankly, given the extremely short  
18 time frame, it's awfully hard for us to develop a lot of  
19 these data.

20 JUDGE MILLER: We're conscious of that and we're  
21 trying to be fair to all counsel. I think the area now  
22 that really he's entitled to some of that, some or most of  
23 the information that he's designated, we're willing if you  
24 can figure out some way to pull out participation of  
25 counsel, because we are interested in protecting counsel's

1 mental impressions, trial preparation and the like.

2 But since we're so close to trial and since we  
3 are on a very tight frame, I think the burden's on you to  
4 figure out some way to protect your own necessary attorney  
5 interest and disclose tha information.

6 MR. ROLFE: Your Honor, may I make a suggestion there?

7 JUDGE MILLER: Okay.

8 MR. ROLFE: Mr. Lanpher's correct. These are not docu-  
9 ments that were prepared by counsel. They were prepared for  
10 counsel and to the extent that counsel asked specific ques-  
11 tions and saying going out and tell us X or Y, they did  
12 that.

13 These people that prepared these documents are  
14 not the witnesses thã LILCO will sponsor. To the extent  
15 that, well, it's also my understanding tha LILCO's seismic  
16 consultants, who will be the witnesses, did not use this  
17 information.

18 Mr. Lanpher is scheduled to despose that seismic  
19 panel on Monday morning. I suggest, Your HOnor, that he  
20 inquire there and to the extent that this information form  
21 the basis of their opinions or they used it in their  
22 investigation.

23 JUDGE MILLER: So long as it came into play in anyway,  
24 I'm not trying to go into the qualitative. They had it  
25 available to them and did or could use it, I think he's

1 entitled to it precedently as discovery.

2 MR. LANPHER: I'm concerned because I hear that this  
3 is stuff that is important seismic information and for some  
4 reason unknown to me, counsel has decided not to give it  
5 to these witnesses. I'm getting more and more curious  
6 quite frankly, what's in these documents. And to lead  
7 all the attorney's questions, I want the facts, I don't want  
8 to get into mental impressions of the attorney at all.

9 JUDGE MILLER: Unless you can come to some agreement,  
10 we're going to have to enter an order directing you to  
11 produce, giving you certain remedies to mask the attorney's  
12 participation, whether by the ~~frme~~ of the question or  
13 otherwise, but I'm afraid that information is going to have  
14 to be produced.

15 Now, you can probably do it more conveniently  
16 by telling us here and now in a form that's either accept-  
17 able to counsel, or at least reasonable, or else we're  
18 just gonna have to enter an order and you're gonna be in  
19 the situation of having to produce something and they don't  
20 want to. You want to think about it?

21 MR. ROLFE: My problem is, Your Honor, and forgive me  
22 if I'm rehashing, mentioned a moment ago, I don't think I  
23 am, but the rule puts the burden on the discovering  
24 party.

25 JUDGE MILLER: No, no, let's not get into burden. Now

1 we're getting down to that tweedle-dee, tweedle-dum stuff.

2 MR. ROLFE: What I'm trying to say though is, the  
3 reason these documents weren't provided to the consultants  
4 is so they could reach their independent analysis.

5 JUDGE MILLER: Maybe they think that the information  
6 provided wasn't shown to them because it might vary their  
7 conclusions or worry them a little bit, too. Or open  
8 up something for cross. They're entitled to all kinds of  
9 reasons, they don't have to define them. This is discovery  
10 now, I think you'd better figure out how to produce it.  
11 Voluntarily. Mr. Palomino says there's a difference between  
12 voluntarily and voluntary. I'm giving you the chance to  
13 produce them voluntarily.

14 MR. ROLFE: Well, given Your Honor's directive, I  
15 will review thos documents and attempt to excise any  
16 portions that reflect counsel's opinions. I want the record  
17 to be clear, LILCO still objects on the same basis it did,  
18 but I will make

19 JUDGE MILLER: Your objection is part of the record.  
20 Do I have to overrule the objection, we direct their produc-  
21 tion with the safeguard that you mention and we've mentioned.  
22 You may excise or delete or cover up the participation of  
23 counsel. But the information which comes from the experts  
24 we believe is producible an directed to produce.

25 MR. ROLFE: Your Honor understands this isn't from our



1 experts. We're producing all the documents from the  
2 experts.

3 JUDGE MILLER: Well, you had opinions of somebody.  
4 The only people who can give opinions that are admissible  
5 are experts. If they're not, then we'd throw out nine-  
6 tenths of our evidence.

7 MR. ROLFE: Well, Your Honor, that was my whole point  
8 You see, these were just in house opinions from LILCO's  
9 people. Well, they may be experts, but they're not, we  
10 haven't attempted to qualify them, they aren't our  
11 witnesses.

12 JUDGE MILLER: We understand that. But we're not  
13 making that the threshold consideration. All right, any-  
14 thing further now? We're trying to be fair to both of  
15 you. I think we've indicated that they are producible.  
16 Anything further on this point? All right.

17 MR. LANPHER: I've got another point.

18 JUDGE MILLER: What's you next one?

19 MR. LANPHER: The next question, you, Judge Miller  
20 expressed a number of times concerned that discovery ends  
21 next Friday under the schedule. WE have asked the Staff  
22 to identify any additional witnesses that they may be  
23 using. They've been unable to identify any at this time  
24 though in a conversation with my colleague, Ms. Letsche,  
25 with Mr. Reis, there's clearly the possibility that an

1 additional witness or witnesses may be used. I'd like to  
2 get that clarified on the record whether there is gonna be  
3 more witnesses. If so, we may need to take discovery of  
4 them.

5 JUDGE MILLER: Have you been furnished a list or  
6 description of the witnesses that Staff counsel has indi-  
7 cated he intends to or is likely to call?

8 MR. LANPHER: I think it was four that they had  
9 prefiled testimony, Mr. Hodges, Knox, Gaskin and one other,  
10 but not beyond that.

11 JUDGE MILLER: Well let me inquire. Mr. Reis, are you  
12 planning to or

13 MR. REIS: We will probably call other witnesses. We  
14 have not identified them yet.

15 JUDGE MILLER: When will you be able to identify them?  
16 We suggest you do it very quickly because of the oppor-  
17 tunity for discovering. We don't want to start varying  
18 these schedules which are modeled upon what the Commission  
19 told us to do. Got to do it at some point.

20 MR. REIS: I know I have to do it and I've been  
21 looking to July 16th when I have to file testimony, I knew  
22 it would be done by then.

23 JUDGE MILLER: I know.

24 MR. REIS: But I was not looking to do it this month  
25 because of all the briefs due in the Shoreham proceedings.

1 JUDGE MILLER: Well, I'm afraid we're gonna have to  
2 tell you, let's see, now, what is it, you're an expert  
3 lawyer, you're very competent, we know you've got problem,  
4 but, this case, as far as you and I are concerned, is  
5 number one on your agenda. Now, you're gonna have to  
6 get those witnesses. You can't wait until it suits your  
7 convenience for prefile testimony, because they've got a  
8 right to discovery. And you're gonna be depriving them  
9 of that if you don't come up at a reasonable time, reasonably  
10 in advance of the close of the discovery. They're entitled  
11 to take depos. So I think you better do something Monday.

12 MR. REIS: We are going, for instance, we are going  
13 through the depositions being taken of other people, and  
14 identifying additional witnesses on the file, on the basis  
15 of depositions because we weren't sure where all the  
16 issues were.

17 JUDGE MILLER: Fine, but you can go ahead and supple-  
18 ment repeatedly, you know. Like your SSE's, 10, 12, okay,  
19 keep on with the supplementation but give them the list.

20 MR. REIS: WE will go back to our people and attempt to  
21 identify all the witnesses

22 JUDGE MILLER: That you might call.

23 MR. REIS: That we might,

24 JUDGE MILLER: I know there's some that you may have  
25 to list you won't, but at least give them the potential.

1 MR. REIS: Right.

2 JUDGE MILLER: Can you do that by Monday, or do that  
3 Monday, by 5:00?

4 MR. REIS: We will attempt to.

5 JUDGE MILLER: All right.

6 MR. REIS: I will not say that will be definitive,  
7 because I know

8 JUDGE MILLER: I understand, then supplement it on  
9 Tuesday and supplement it on Wednesday, and so forth,  
10 sequentially, but get it in Monday if you will, please, by  
11 5 and then as you decide others might be called, pick up the  
12 phone, just like I've told other counsel and call them.  
13 That's fair and Staff, I know you've got problems, but here  
14 we've got to get these witnesses, because we're in discovery  
15 and we're gonna be in trial. Okay.

16 MR. REIS: ~~There~~ are sections of the NRC and NRR that  
17 have not even identified employees who will be giving  
18 testimony.

19 JUDGE MILLER: I realize that. Tell them to get on  
20 the ball and that will be your supplement number 4 by  
21 Thursday of next week. But start off Monday and Tuesday,  
22 now, give them what is, you know, reasonably lacking, you're  
23 not saying you're gonna call, but let them know who the peo-  
24 ple are. Give them a reasonable shot at it, just like  
25 you'd like to have a reasonable shot at theirs

1 MR. REIS: I've been trying to get them to identify  
2 myself.

3 JUDGE MILLER: All right. You know, see, we're helping  
4 you, too, trial preparation.

5 MR. LANPHER: Judge Miller, related to that is whether  
6 there's going to be a supplemental safety evaluation report  
7 being issued.

8 JUDGE MILLER: I don't know.

9 MR. REIS: I don't know that either

10 JUDGE MILLER: I haven't heard of any and I'm not  
11 about to try to cause one to be produced, I'll tell you  
12 that. Because of this schedule, but stand neutral on it.

13 MR. LANPHER: I don't mean on the original LILCO motion  
14 but I mean on pertaining to the exemption.

15 JUDGE MILLER: I don't know. I will say if something  
16 of that kind is contemplated, it would certainly be within  
17 the same request we just made of the staff, to seasonably  
18 and like Monday or Tuesday to give that information, at least  
19 preliminary information and deal fairly, that's all we're  
20 asking and certainly if there's gonna be the possibility  
21 of anything more coming from the Staff, let them know as soon  
22 as you can, even if it's still in a period of gestation.  
23 Next?

24 MS. LETSCHE: Yes, Judge Miller, going back to LILCO's  
25 response to the County's discovery request. There are a

1 number of requests that LILCO objected to on the basis  
2 that they were too broad or burdensome, in which they  
3 said that they would produce some, "representative  
4 documents" or "summaries if available of information" but  
5 they are not producing the documents we're requesting.

6 JUDGE MILLER: Why didn't you bring this to our atten-  
7 tion earlier? This is the very thing that you should, or  
8 any party should, because they don't make the rulings and  
9 if they make the objection, you've gotta bring it to the  
10 Board's attention in some way.

11 MS. LETSCHE: I agree, Judge Miller, and that's what  
12 I'm doing now.

13 JUDGE MILLER: Yeah, but you're kind of late in the  
14 ball game.

15 MS. LETSCHE: I told you we were gonna file a motion  
16 to compel.

17 JUDGE MILLER: This is the week before the end of  
18 discovery and

19 MS. LETSCHE: We just received this.

20 JUDGE MILLER: Oh, you did, which one is that?

21 MS. LETSCHE: This is LILCO's response to Suffolk  
22 County's first discovery request. It's dated June 19th. I  
23 believe we got it on June, we got it on, I don't know, the  
24 20th.

25 JUDGE MILLER: The 20th? Okay. So now you're taken

1 by surprise. You're startled and you see they've got alot  
2 of it. Tell me your side and we'll ~~hear~~ theirs.

3 MS. LETSCHE: Well, my point, Judge Miller, is that  
4 we have requested certain documents. LILCO has taken upon  
5 itself to decide that the County apparently doesn't really  
6 need all those documents and instead it's going

7 JUDGE MILLER: All right. What is it that you  
8 want that you think you truly need to

9 MS. LETSCHE: I think we are entitled to have the  
10 documents we've requested produced, rather than what LILCO  
11 determines are "representative documents".

12 JUDGE MILLER: All right, what are the documents you've  
13 requested? What's the nature of them, category

14 MS. LETSCHE: The numbers of the request to which this  
15 objection was raised, are numbers 52.

16 JUDGE MILLER: What's 52 talking about?

17 MS. LETSCHE: 52 is provide copies of the documents  
18 relied upon for support for the following assertions in  
19 the application for exemption. And there are one, two, three,  
20 four, five quotations from LILCO's exemption application,  
21 with page citations in there. And we've asked for the docu-  
22 ments that they rely on for each of those statements. I  
23 could read them if you like.

24 JUDGE MILLER: Hold it. I like not, if I can help it.

25 MS. LETSCHE: All right. That's

1 JUDGE MILLER: Why won't you produce those, if they're  
2 addressed to the things that you've asserted in your own  
3 pleading, why in the world wouldn't you produce those?

4 MR. ROLFE: Your Honor, the things they're asking for,  
5 I have to give Your Honor an example to put it in context.

6 JUDGE MILLER: That's what she's objected to. You  
7 offer to give examples illustrative rather than the whole  
8 smear. What's the problem.

9 MR. ROLFE: Well, my objection won't make any sense ot-  
10 herwise. For example, they ask for copies of all documents  
11 relied upon in support of the assertion that many of LILCO's  
12 people have been compelled to devote inordinate amounts of  
13 their times and energy to licensing struggles. Taken liter-  
14 ally, that could mean every document that's ever been  
15 generated in a licensing proceedings.

16 JUDGE MILLER: Well, take it nonliterally but regard  
17 that as addressing the language you yourself chose to  
18 use.

19 MR. ROLFE: Well, Your Honor, that's why we said that  
20 we would produce summaries of the people who had been in-  
21 volved and their efforts, and things like that, but

22 JUDGE MILLER: Well, why didn't you produce them, or  
23 have you?

24 MR. ROLFE: They're going to be produced in Mr.  
25 McCaffrey's deposition on Monday, we're accumulating them.



1 JUDGE MILLER: You'd better fill his briefcase and  
2 start producing them, because if you're gonna plead some-  
3 thing, you're jolly well gonna have to answer what you  
4 base it on, now you know that.

5 MR. ROLFE: I understand, Your Honor. WE intend to do  
6 that, it's just that

7 JUDGE MILLER: I know but intent is tomorrow and end  
8 of discovery is next week. Why am I the only one con-  
9 scious of Friday. Everybody acts like they've got plenty  
10 of time to file all kinds of motions. We'll rule ourselves,  
11 what's your problem?

12 MR. ROLFE: Your Honor, there's no problem, LILCO has  
13 produced over eight cases of documents.

14 JUDGE MILLER: Don't tell me what you've done, tell  
15 me what you're gonna do in this regard.

16 MR. ROLFE: Well, that's what we're gonna do, Your  
17 Honor, we're gonna produce the summaries that provide this  
18 information at Mr. McCaffrey's deposition. That's the  
19 practice that has been followed by the County in discovery  
20 and so far.

21 JUDGE MILLER: Never mind the practice. Now, we're  
22 getting to the point where you can't have fiddling around  
23 and misunderstandings at best of counsel. Now, those  
24 documents are producible and I don't know that she has to  
25 say I'm only gonna have you give illustrative. Is that

1 what you told me?

2 MS. LETSCHE: I'm saying I'm not willing to accept  
3 what LILCO decides are representative.

4 JUDGE MILLER: Yeah, representative is the term.

5 MR. ROLFE: Well, Your Honor

6 MS. LETSCHE: Or summaries was used somewhere else.

7 JUDGE MILLER: Summaries are different category. I  
8 understood you to say representative and I agree with you.  
9 You're entitled not to have them decide what's represen-  
10 tative

11 MS. LETSCHE: I'll address the summaries separately  
12 then.

13 JUDGE MILLER: All right. What are the summaries, what  
14 are you producing or going to produce on the way of summary,  
15 summaries of what?

16 MR. ROLFE: Your Honor, as far as I know, these are  
17 summaries of the costs LILCO has incurred in these proceed-  
18 ings. For example, all their consultants' fees, their  
19 lawyers' fees, to the extent there are documents, again,  
20 we're not compiling special documents for this.

21 JUDGE MILLER: No, you're not required to do that,  
22 but you're required to produce those documents that were to  
23 form the basis of your pleading. Where are you trying to  
24 cut it off?

25 MR. ROLFE: Just, the way I interpret this request

1 and again, the way it's worded, it would require for  
2 example to produce every document showing anyone who's  
3 ever worked on licensing proceeding.

4 JUDGE MILLER: All right, give the documents and give  
5 a statement of somebody who's responsible and knowledgeable  
6 that searches have been made, these are the documents so far  
7 as can be ascertained at this time. And be prepared to  
8 stand by it. That is whoever says that they made the search,  
9 in case it's the subject of inquiry.

10 MR. ROLFE: Well, we will be, Your Honor, and he's being  
11 deposed on Monday and

12 JUDGE MILLER: I'm not talking about him being  
13 deposed. I'm talking about these discovery requests for  
14 documents and I don't know why in the world we're arguing  
15 about it now on Friday. I think they should be in hand.  
16 I think you should produce them just as soon as you can. To-  
17 day, if possible. I assume that you, your people, I know  
18 you don't produce them yourself, have made some search and  
19 have at least some bundle of these things. Send over what  
20 you got and tell them to search over the weekend, if that's  
21 necessary.

22 We're down to time and I am talking about weekends.  
23 I've dragged a spot, too. I worked many weekend I didn't  
24 want to, guys, and 4th of July occasionally.

25 MR. ROLFE: I can assure Your Honor we worked many, if

1 not most weekends.

2 JUDGE MILLER: All right. I'm glad to hear it. Now,  
3 can you produce them and without any shilly shallying about  
4 it? I'm not asking you now to sign it in blood, but I  
5 am asking a reasonable effort be made and that whoever con-  
6 duct it or is responsible for that search so certify.  
7 That's not unreasonable.

8 MR. ROLFE: Yes, Your Honor. I mean, what's reasonabl  
9 Again, I'm not trying to limit what they're getting, it's  
10 just that

11 JUDGE MILLER: Well, why don't you shove over a bundle  
12 and get them started looking through them and then see if  
13 that's adequate. Instead of in advance saying my God,  
14 it's alot of work, I can't do it and all the rest of it.  
15 Do what you can. And I know there are some limitations.  
16 But let's discuss them later in terms of what you've done,  
17 not what you're worried about or all the rest of it.

18 MR. ROLFE: We will do that.

19 JUDGE MILLER: Good. Next.

20 MS. LETSCHE: Yes, I have another category of objec-  
21 tions that LILCO made to our request. They objected to a  
22 number of requests on the ground that they, in LILCO's  
23 view are not reasonably calculated to lead to the discovery  
24 of admissible evidence. And there's some particular  
25 ones here which I will bring to the Board's attention.

1           For instance, the request number 63 of the  
2 County's first request, was the following. It quoted a  
3 statement in LILCO's exemption application which states the  
4 plant is now ready to load fuel and conduct low powered  
5 testing. Based on observations made during the site  
6 visit, the assertion can't be literally true, so we've asked  
7 LILCO to produce documents that relate to, that identify the  
8 activities or approvals that have to be accomplished or com-  
9 pleted or obtained before fuel loading and low power testing  
10 could actually commence.

11           So that we can evaluate this statement LILCO's  
12 made in its application. LILCO objected to that, refused  
13 to produce any documents, saying that the information sought  
14 is beyond the scope of the issues raised by LILCO's appli-  
15 cation for exemption.

16           I think LILCO's just clearly wrong, as based  
17 on a statement in LILCO's application and we're entitled to  
18 those documents.

19           JUDGE MILLER: Counsel?

20           MR. ROLFE: Your Honor, the status of construction in  
21 the plant is not an issue in the proceeding and that's the  
22 reason. I think from the documents

23           JUDGE MILLER: What is the statement that you made in  
24 your application for exemption that the counsel's referring  
25 to?

1 MR. ROLFE: I believe counsel quoted it correctly,  
2 Your Honor. I guess the reason that we don't think it's  
3 a litegical issue is that, and perhaps counsel was guilty  
4 of throwing in something by way of background that was not  
5 important to the request for an exemption itself.

6 JUDGE MILLER: See, that's what happens, when you  
7 don't screen your utterances. Hyperbole never really  
8 saves you much time. Why can't you simply withdraw that  
9 if it's not really relevant. Strike it. If it is relevant,  
10 they're entitled to know about it. If it's not relevant,  
11 it should be stricken.

12 MR. ROLFE: Your Honor, I will by Monday, either  
13 withdraw it or produce the documents.

14 MS. LETSCHE: Judge Miller, if I could interject here,  
15 counsel's withdrawing a particular clause or statement  
16 from their application does not make that the issue raised  
17 by that statement not relevant.

18 I think it is very relevant whether or not

19 JUDGE MILLER: No, wait a minute, relevance is  
20 determined by the Board and relevance is going to be  
21 determined on the issues that we're charged with, not what  
22 you or they or anybody thinks.

23 MS. LETSCHE: I understand that.

24 JUDGE MILLER: Now, you're not gonna create issues  
25 because they say something and you want to challenge them.

1 You can't impeach on an immaterial issue, you understand  
2 that?

3 MS. LETSCHE: Yes, Judge, yes.

4 JUDGE MILLER: If it's an immaterial issue, I want  
5 it withdrawn so you won't even try to impeach, hence won't  
6 need discovery, you follow me?

7 MS. LETSCHE: I understand that. My point is that the  
8 issue is whether the plant is now ready to load fuel and  
9 conduct low power testing.

10 JUDGE MILLER: What difference does that make from  
11 your point of view?

12 MS. LETSCHE: Well,

13 JUDGE MILLER: I mean, if it's ready to or if it's  
14 not ready to, I don't really see the relevance of that in  
15 this exemption request, frankly.

16 MS. LETSCHE: If it's not ready to, Judge Miller,  
17 then there's no exigent circumstance that leads to the  
18 necessity for an exemption and a license.

19 JUDGE MILLER: Then presumably that's not what what  
20 they'r asking either. They're saying exigent circumstances  
21 you do XYZ, that you're entitled to inquire into.

22 MS. LETSCHE: But what they're requiring the license  
23 to do, and the exemption, Judge Miller, is precisely to  
24 load fuel and conduct low power testing. That's what they're  
25 asking for so

1 JUDGE MILLER: To be permitted so to do by virtue  
2 of an exemption request by by the Commission.

3 MS. LETSCHE: Correct. So whether or not the plant  
4 is in fact in a position to do that so that there could  
5 exist circumstances that would justify the issuance or  
6 the granting of an exemption, is clearly relevant to  
7 whether or not that exemption should be granted. That's  
8 my only point.

9 JUDGE MILLER: May be clearly relevant to you, it's  
10 not so clear to me, frankly, ~~tht~~ we're not getting off into  
11 at least peripheral issues and we're trying to keep this  
12 into a contained matter for inquiry. However, I will  
13 inquire of counsel, I want to be sure you're not being  
14 barred from something that you're legitimately entitled to  
15 go into. What is that situation, why do you say, why  
16 did you say, whether you strike it or not, or whether you  
17 furnish the documents or not, why did you put it in.  
18 Why did you call the Board's attention?

19 MR. ROLFE: Your Honor

20 JUDGE MILLER: Remember now, this is an exemption  
21 request. There are certain requirements.

22 MR. ROLFE: I understand, Your Honor.

23 JUDGE MILLER: All right, bring yourself within it.

24 MR. ROLFE: It was brought to the Board's attention,  
25 Your Honor, to again advise the Board of the status of the



1 plant in conjunction with our request for a low power  
2 license. Again, I

3 JUDGE MILLER: Do we need that, for an exemption hearing?  
4 What do we care one way or the other, as far as materiality  
5 is concerned?

6 MR. ROLFE: I don't think it is material.

7 JUDGE MILLER: Well, I'm trying to find out if it  
8 is, even though you withdraw because counsel says that she  
9 believes at the bean, now I'm trying to get the bases of  
10 both of your legal opinion. What's yours?

11 MR. ROLFE: Whether it is completed as of the date of  
12 this request is not material is best I can determine now.

13 JUDGE MILLER: That's the whole plant? Completion  
14 of the entire plant, is that what you mean? If, what is  
15 if?

16 MR. ROLFE: The construction activities.

17 JUDGE MILLER: All right, of the whole plant?

18 MR. ROLFE: Yes, well, the other reason it's not  
19 material, Your Honor, there are no contentions in this pro-  
20 ceeding pertinent to that. As I understand the proceed-  
21 ing, if this Board were to grant the exemption, and then  
22 authorize the issuance of a license, the Staff would then  
23 have to make sure that certain things were done before the  
24 license were actually issued, and that's within the Staff's  
25 prerogative, but it's not an issue that's the subject of any

1 contention or anything that specifically LILCO is right.

2 JUDGE MILLER: You're shifting now the basis. Before  
3 now we see what's within contention, the exemption regula-  
4 tion itself has its own requirements. And before the staff  
5 starts doing anything, before we do anything, the Commission's  
6 gonna look at this as they very plainly told you.

7 MR. ROLFE: That's right.

8 JUDGE MILLER: They're not just gonna look at the  
9 technicalities as they might view it, they're gonna look  
10 at their responsibility in terms of that whole exemption  
11 procedure. Now, that's more, or could be more than conten-  
12 tions. So don't exculpate yourself necessarily by looking  
13 at contentions.

14 MR. ROLFE: Well, I don't mean to exculpate myself,  
15 but what I'm looking at is what an issue to be litigated  
16 here.

17 JUDGE MILLER: That's what we want to know.

18 MR. ROLFE: And the things that the 5012A, that are  
19 raised here are the public health and safety issues that the  
20 Commission identified in its May 16 order. And I don't  
21 think the status of construction is relevant to that.

22 JUDGE MILLER: Sorry, I got the wrong message. Go  
23 ahead.

24 MR. ROLFE: And then there's the exigent circumstan-  
25 ces which LILCO has pleaded in its application for

1 exemption and I don't think the status of construction as  
2 of now is pertinent to that. That's not to say that the  
3 Staff won't have to look at it down the road if the license  
4 is authorized, ~~th~~'s what I'm saying.

5 JUDGE MILLER: Well, I'm still not too enlightened as  
6 to why you pleaded it in the first place and whether you  
7 pleaded it or not, whether it has any relevance or materia-  
8 lity to this ongoing trial.

9 MR. ROLFE: I think the reason we put it in the  
10 the application to begin with, was by way of background,  
11 not because it was strictly material to the issues which  
12 we raised. And I don't think it's material to the exigent  
13 circumstances which we have cited.

14 JUDGE MILLER: The Board is doubtful as to its rele-  
15 vance, but we'll give counsel of the County one more oppor-  
16 tunity to show us, assuming that it's either stricken or  
17 voluntarily removed from the application, making that  
18 assumption, what is your position then?

19 MS. LETSCHE: Judge Miller, the County's position is  
20 that in order to prevail on its application for an exemp-  
21 tion, LICO must show exigent circumstances that justify  
22 the granting of that exemption.

23 In addition, in this proceeding, the County is  
24 entitled to make its own affirmative case as to why it  
25 may not be in the public interest, or there may be exigent

1 circumstances or equities that weigh on the other side of  
2 the balance that would go against the granting of an  
3 exemption.

4           The whole question, what I heard Mr. Rolfe saying  
5 earlier this morning, was that the whole issue was one of  
6 timing, whether to get this license now, whether they should  
7 be permitted to load fuel and to begin low power testing  
8 now rather than sometime later. Therefore, it is the  
9 County's view that the issue of whether or not, and this  
10 is the issue that's stated in LILCO's own application,  
11 whether the plant is now ready to load fuel and conduct  
12 low power testing is directly relevant to whether or not  
13 there are any exigent circumstances existing that would  
14 justify the granting of an exemption.

15           Because, if the plant is not ready, in fact,  
16 it's gonna take six more months before fuel could be loaded,  
17 then there are certainly are no circumstances now that  
18 justify the granting of an exemption.

19           JUDGE MILLER: By the same token, your client wouldn't  
20 be hurt in any way, either, since you're opposing the early  
21 granting of an exemption request, and now you're supposing  
22 so positigously that it won't be done, it can't be over  
23 six months. YOU've just, it seems to me, destroyed the  
24 basis of your own objection. Can't get hurt.

25           MS. LETSCHE: Well, that was just an example I was

1 giving you.

2 JUDGE MILLER: I know, I liked it though, I think it's  
3 illustrative. I think we're going to sustain the objection,  
4 we're gonna make you make an election right now. Are you  
5 gonna strike it or are you gonna produce what she wants?

6 MR. ROLFE: May I ask the Board a question, actually,  
7 direct it to counsel?

8 JUDGE MILLER: Well, you can ask the question, you may  
9 or may not get an answer. But go ahead.

10 MR. ROLFE: Well, the question is, Your Honor, because  
11 I'm trying to avoid any problems down the road, this request  
12 is 68, is an interrogatory, it requests no documents at all.  
13 If what the County is

14 JUDGE MILLER: Just a minute, is that correct? If it's  
15 an interrogatory, then we've already this ruling.

16 MS. LETSCHE: Well, I had understood that the posi-  
17 tion, from what Mr. Rolfe said, that with respect to inter-  
18 rogatories, LILCO had taken the position that they would  
19 produce documents that included the information requested in  
20 the interrogatory, if such documents existed. So if Mr.  
21 Rolfe is correct

22 JUDGE MILLER: That may or may not be true, but the  
23 Board has ruled, contrary to your impression and argument,  
24 that our earlier ruling eliminating interrogatories con-  
25 tinues throughout this whole proceeding. Whatever forms

1 and twists it may take. Therefore, we're not ruling on  
2 interrogatories as such. And I didn't realize that was  
3 what you were asking us to do.

4 MS. LETSCHE: Well, in that case, I'll just, I can  
5 send out a document request this afternoon which says give  
6 me the documents that relate to this. I mean, that's a  
7 technicality. I understood that Mr. Rolfe was producing  
8 documents that contained information that was requested in  
9 interrogatories and if I'm incorrect in that, then I have  
10 misunderstood what the rest of his response is.

11 JUDGE MILLER: Well, that's something between you  
12 two that you'll conduct when you hold this conference on  
13 Monday, straighten out any misunderstandings or understand-  
14 ings, as the case may be.

15 As far as we're concerned right now, do you have  
16 documents as opposed to interrogatories, which bear upon  
17 this matter?

18 MR. ROLFE: Your Honor, I'm sure there are documents.  
19 I don't know specifically what they are.

20 JUDGE MILLER: In that event, let's not quibble as to  
21 the form of the request if there are some that are cogniz-  
22 able by you. Well, once again, I'm gonna ask you to make  
23 an election.

24 MR. ROLFE: To obviate this so that there won't be any  
25 potential error down the road, LILCO will produce what

1 documents it has.

2 JUDGE MILLER: All right. I think that's probably  
3 sound policy. All right, next.

4 MS. LETSCHE: Yes, Judge Miller, I have a few more,  
5 I wonder if we could take maybe just a quick five minute  
6 break?

7 JUDGE MILLER: How many more do you have?

8 MS. LETSCHE: Four or five.

9 JUDGE MILLER: All right, we'll take 15 minutes, while  
10 I'll ask you during that time to confer with your co-counsel  
11 and with counsel for LILCO. We may be able to resolve some  
12 of these without having to go through, and you know pretty  
13 well now what the Board's ruling will be. We'll take 15  
14 minutes, please.

15 (Brief recess.)

16 MR. LANPHER: -- had to go to the phone and he  
17 says that you can go ahead without him.

18 JUDGE MILLER: Okay. Have you had a chance to confer?

19 MS. LETSCHE: Yes, we have and we have agreed to  
20 everything except one issue, we've managed to resolve,  
21 we hope.

22 JUDGE MILLER: Good. What's that?

23 MS. LETSCHE: The issue that is left involves three  
24 requests by Suffolk County, they are numbers 87,88 and 89  
25 in the first discovery request. In all of these requests

1 are, I believe, well, I should look, I was gonna say, are  
2 interrogatories but include a document request. And I'm  
3 gonna have to go through and see if that's true or not.

4 I think Mr. Rolfe would agree with me though  
5 that what we are talking about here is the production of do-  
6 cuments, even though these are in the form of interrogatories.  
7 They all go to the issue of whether, go to questions related  
8 to the training which allegedly is going to be a benefit  
9 that will accrue from LILCO's getting this exemption appli-  
10 cation. They have a section of their exemption application  
11 that discusses in detail the training benefits that they  
12 believe are going to accrue.

13 These questions are designed to obtain information  
14 about the existing experience or qualifications or training  
15 of the operating and other maintenance personnel who LILCO  
16 intends to rely upon to operate the plant at low power.  
17 And, therefore, in the County's view are clearly relevant.  
18 LILCO's objection to these is that they would not lead to  
19 admissible evidence and that they are also burdensome.

20 JUDGE MILLER: Counsel?

21 MR. ROLFE: You Honor, LILCO has alluded to the train-  
22 ing benefits that will accrue from low power testing in  
23 its application for exemption. LILCO has provided docu-  
24 ments concerning the training that will occur. These  
25 requests, in LILCO's opinion go far beyond that issue.



1           What is asked for here is all current LILCO  
2 employees who are licensed reactor operators, to identify  
3 them by name, what shift they work on, the number of years  
4 they've been there. The identity of all individuals who  
5 notified LILCO that they're going to leave the company, all  
6 individuals

7           JUDGE MILLER: Leave the company, what's that mean?

8           MR. ROLFE: I can just read it to you, it says  
9 notified LILCO that he or she will leave LILCO's employ  
10 and state the date on which he or she will leave LILCO's  
11 employ.

12          JUDGE MILLER: Well, you can strike that.

13          MR. ROLFE: And then there's 88 asks for the same  
14 information but with respect to all individuals other  
15 than licensed reactor operators who are involved in the  
16 management chain of command for Shoreham, from operator  
17 supervisors, through the Chairman of the Board. And then  
18 89 asks for the same information basically with respect to  
19 all individuals who have been hired by LILCO to serve  
20 as reactor operators at Shoreham, but who have not yet  
21 begun working for LILCO.

22                 It's our position, Your Honor, that the training  
23 benefits will be described by the training itself and you  
24 don't need to know the names of the individuals who are  
25 gonna be trained or how long they've been working there

1 or whether they may leave the company or whatever.

2 JUDGE MILLER: Forget leaving the company, we think  
3 that's wholly immaterial. However, they're asking you  
4 really for the names and status of various people who are  
5 or will be in the chain of operation. And since you're  
6 asking for low power operation, which is the kind of  
7 operation perhaps, I think they're entitled to that.

8 Surely your personnel office can dig up that  
9 information from your computer. You know, I don't mean  
10 you personally, but your client certainly knows where he  
11 can lay his hands quickly on the operators, that kind of  
12 thing. I haven't heard, now, as to who's notified going  
13 to leave, we'll sustain the objection to that as being  
14 immaterial.

15 Is there any other matters now besides the  
16 inquiry as to the names and status of operators?

17 MR. ROLFE: Well, they ask for the same things with  
18 respect to management of Shoreham all the way up through  
19 Chairman of the Board.

20 JUDGE MILLER: I'm doubtful about that one. What's  
21 that have to do with low power operation?

22 MS. LETSCHE: Well, the question, the actual question  
23 that was asked, Judge Miller, is the individuals who are  
24 involved in the management chain of command for Shoreham  
25 from operator supervisors, those are the people who are

1 supervising the actual operators who would be performing  
2 those functions during fuel load and

3 JUDGE MILLER: Well, the operator supervisors is, we  
4 think is cognizable, but now what's beyond there?

5 MS. LETSCHE: Well, we asked for through the Chairman  
6 of the Board because

7 JUDGE MILLER: All right, we'll strike that. We will  
8 give it to you, however, as to management supervisors con-  
9 nected with operators, in any reasonable fashion.

10 MS. LETSCHE: Okay.

11 JUDGE MILLER: Okay. Now, what's the other category?

12 MS. LETSCHE: I think that was it.

13 MR. ROLFE: Operators who had been hired but not yet  
14 begun their work.

15 JUDGE MILLER: I don't know if anybody knows that. If  
16 you know it, tell them, all right. Is that the extent now  
17 of the controversy on discovery?

18 MS. LETSCHE: That's all that the County has.

19 JUDGE MILLER: Fine. Does anybody else have anything?

20 MR. ROLFE: Your Honor, the only thing I would add, I  
21 assume that Your Honor's earlier ruling about the Work  
22 Product Privilege applies to all parties, and not just the  
23 documents withheld by LILCO.

24 JUDGE MILLER: Definitely applies to all parties.

25 MR. REIS: May I ask, make an inquiry? I'm not sure

1 that I'm getting all documents for all the discovery  
2 request responses, all requests that have applied. Are the  
3 parties serving all parties with requests

4 JUDGE MILLER: Well, all active parties, I assume.  
5 Not everybody on the service list, necessarily, answers,  
6 but all active parties

7 MR. REIS: But all parties. Is there a discovery  
8 request on LILCO, you're serving them on us?

9 MS. LETSCHE: Oh, of course. Yes, the only thing we do  
10 not, we have not made a practice of giving you copies of  
11 the documents actually produced in response, and I don't  
12 think LILCO's been doing that, either, but we certainly

13 JUDGE MILLER: Well, you describe them and say that if  
14 they wish, that they can notify you and you will. I think  
15 something like that's what you've been using.

16 MS. LETSCHE: They get the responses which indicate  
17 we are turning this over or we're not turning that over. So  
18 that certainly the Staff does receive.

19 JUDGE MILLER: Be sure that the Staff is on your list  
20 as an active party of both discovery requests and informa-  
21 tion supplied.

22 MS. LETSCHE: They certainly are on our list.

23 MR. REIS: It might just be my perception that I  
24 didn't get some documents, I'm not sure at all.

25 JUDGE MILLER: I know, sometimes you, we'll try to make

1 sure that you Staff is promptly copied on that type of  
2 everything they're entitled to.

3 MR. ROLFE: Judge Miller, I have one other thing. I  
4 hope it won't be a problem, on I believe May the 23rd,  
5 LILCO propounded a document discovery request to the County.  
6 Their formal response would have been due, under the 30  
7 day rule, I think today. We've not gotten it. I assume  
8 a formal response will be forthcoming, but if not, I guess  
9 we ought to take that up now.

10 MS. LETSCHE: Actually, it is going out today.

11 MR. ROLFE: Fine, then no problem.

12 JUDGE MILLER: Then there's no problem.

13 MS. LETSCHE: We've actually, we've produced documents  
14 beginning, I believe, on June 10th or 11th. We've produ-  
15 ced almost everything, I think there are a few more going  
16 out tonight, but actually you got everything as of the  
17 middle or the beginning of last week in response.

18 JUDGE MILLER: I think that that is correct. We've  
19 noticed that the documents have been coming through that  
20 the County has been furnishing both seasonably and apparently  
21 you have pretty good quantity, so unless you have any par-  
22 ticular objection that you want to bring to the Board's  
23 attention, we think that discovery is proceeding reasonably.

24 MR. ROLFE: Your Honor, I didn't have any specific ob-  
25 jection, I just didn't have any way to know whether we'd

1 gotten everything they intended to produce, this will  
2 solve it.

3 JUDGE MILLER: All right. As I told you, we're going  
4 to rule from the bench on this motion for protective order  
5 insofar as it relates to the producibility of financial data,  
6 information, records and the like. As counsel has pre-  
7 viously described it to the Board.

8 The Board will rule that such financial informa-  
9 tion is not relevant, or is irrelevant to this inquiry. The  
10 Board believes that the order of the Commission, which is  
11 our summary or guideline here, does provide for the evidence  
12 pertaining to discovery and finding of the exceptional  
13 circumstance question as it's set forth in our regulations  
14 in cases which you've all referred to.

15 We believe that the financial or economic hard-  
16 ships referred to under the category of equities, which  
17 all parties are free to address, both in discovery and in  
18 affirmative proof, is limited to those which the Board  
19 is charged with looking at in this proceeding, namely  
20 those matters, financial or economic hardship or other  
21 matters, which relate to the earlier commencement of acti-  
22 vities under a low power license of any kind or character,  
23 whatever phase, as compared or contrasted with the time  
24 that low power operations could be taken up as a result of  
25 the decisions of other Boards or the Commission.

1           In other words, whether or not the earlier com-  
2           mencement of low power operations as a result of the  
3           exemption request proceeding, this proceeding, as compared  
4           with the other date, the later date, is the limit of  
5           our inquiry into financial or other considerations. And  
6           insofar as there are other matters that seek to go into  
7           it by any party, as a matter of fact, we deem them irrele-  
8           vant to this proceeding.

9           We therefore grant the protective order if that  
10          be the procedural posture precluding or denying the docu-  
11          ment requests or other discovery requests that go beyond the  
12          earlier versus the later low power operation, as limited  
13          to the parameter of an exemption request.

14          To the extent that there are motions to the con-  
15          trary, if there be, and I'm not sure, on the part of  
16          the County or the State, they would be denied.

17          So you may proceed with discovery but your finan-  
18          cial and other documentary information will be limited to  
19          the financial or economic hardships as set forth by the  
20          Commission and understood by the Board.

21          Any question? I suggest that you get together  
22          now, because there undoubtedly are some discovery informa-  
23          tion they're entitled to under our limited view of the  
24          issues that probably hasn't been produced. So we think  
25          you should as quickly as possible get together on that, let

1 them have everything that hasn't been turned over.

2 All right. I think that we have ruled on a  
3 number of these things. WE direct the parties to regard our  
4 rulings as issued here today as being controlling in the  
5 discovery phase, at any rate, of this proceeding, because  
6 of the time limitation and other factors. We will endeavor  
7 to enter a short written order Monday, but it will simply  
8 be the skeleton form for the rulings that we've made here  
9 today, so that you may be able to proceed, whatever course  
10 you wish to take on the basis of our rulings here today.

11 Is there anything further? Thank you very much,  
12 appreciate your coming.

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before  
the NRC COMMISSION

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

Date of Proceeding: Friday, June 22, 1984

Place of Proceeding: Bethesda, Maryland

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

TOM BERRY  
Official Reporter

Tom Berry / 213  
Tom Berry  
Official Reporter

**FREE STATE REPORTING INC.**

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