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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of:
SHOREHAM NUCLEAR POWER STATION
LONG ISLAND LIGHTING COMPANY

OFFICE OF SECRETARY
DOCKETING & SERVICE
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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 ATOMIC SAFETY AND LICENSING APPEAL BOARD
4

5 In the Matter of:

6 SHOREHAM NUCLEAR POWER STATION
7 LONG ISLAND LIGHTING COMPANY
8

9 Thursday, July 5, 1984

10 The Licensing Board met, pursuant to
11 notice, at 10:30 a.m.

12 APPEARANCES BEFORE ADMINISTRATIVE JUDGES

13 JUDGE BRENNER CHAIRMAN
14 JUDGE MORRIS
15 JUDGE FERGUSON

16 ON BEHALF OF NRC:

17 C. BERLINGER
18 R. GODDARD
19 B. BORDENICK

20 ON BEHALF OF NEW YORK STATE:

21 L. LANPHER
22 F. PALOMINO

23 ON BEHALF OF SUFFOLK COUNTY:

24 A. DYNNER
25 D. SCHEIDT

ON BEHALF OF LONG ISLAND LIGHTING COMPANY:

D. TARLETZ
D. DREIFUS
E. FARLEY
O. STROUPE
A. EARLEY
B. MCCAFFREY

P R O C E E D I N G S

1
2 JUDGE BRENNER: Good morning. Let's get
3 the appearances of counsel, first, starting on the
4 Board's left with the staff.

5 MR. GODDARD: Richard J. Goddard and
6 Bernard M. Bordenick, the Office of Executive Legal
7 Director, NRC staff. At counsel table is Mr. Carl
8 Berlinger.

9 MR. PALOMINO: Fabian Palomino, State of
10 New York.

11 MR. DYNNER: Yes, I'm Alan Dynner, counsel
12 for Suffolk County. With me today are Mr. Lawrence
13 Lanpher, on my right. And on my left, Mr. Douglas
14 Scheidt.

15 MR. EARLY: Anthony Earley of Hunton and
16 Williams, representing Long Island Lighting Company.
17 With me today, Judge, on my right are Odes Stroupe,
18 Milton Farley, David Dreifus and Darla Tarletz, all of
19 Hunton and Williams, representing the licensing
20 company, the lighting company.

21 Also with me today is Brian McCaffrey from
22 Long Island Lighting Company.

23 JUDGE BRENNER: All right. Thank you. Our
24 purpose today is to evaluate for the purposes of
25 admissibility of the proposed issues, the specification

1 of contentions filed by Suffolk County. And we have
2 the written filing as well as the answers thereto of
3 LILCO and the staff.

4 As a preliminary reminder, our February 22,
5 1984 bench order, which begins at Transcript Page 21,611
6 and continues thereafter, among other things established
7 the guidelines and framework for the specification by
8 the county and the state of instances of diesel
9 problems upon which the overall contention that are
10 diesels are undersized and over rated and improperly
11 designed and manufactured would depend.

12 Among other things, we required a statement
13 by the proponent of the contention of the (inaudible) to
14 Shoreham (Phonetic) of each instance specified, and
15 that discussion begins at Transcript 21,620.

16 We did note that where the problems relied
17 upon, where those arising from the shoreham diesels
18 themselves, then the explanation can probably be rather
19 short. We also noted that another possibility of
20 reliance would be upon instances of other diesels,
21 diesels other than the Shoreham ones, in which case,
22 the specification would have to show that the other
23 diesels were sufficiently similiar to the shoreham
24 diesels with respect to the particular occurrence of
25 a problem being relied upon.

1 And our purpose for that Nexus (Phonetic)
2 requirement was, of course, to evaluate the relevance
3 to the decision of whether or not to authorize for
4 purposes of the diesel issues the issuance of a license
5 for shoreham of any alleged contentions. And we
6 would evaluate the basis and specificity of the
7 contentions proposed, including the basis and specificity
8 of the alleged relevance of Nexus to Shoreham.

9 With that framework we're prepared pretty
10 much seriatim to proceed through the issues being
11 raised by the county in their Roman II and then there-
12 after the other sections.

13 If there are any brief, emphasis on the
14 brief, preliminary remarks by the other parties, we'll
15 permit them at, at this time. County?

16 MR. EARLY: Judge Brenner,..

17 UNIDENTIFIED SPEAKER: Judge Brenner,..

18 JUDGE BRENNER: We'll call on the county,
19 first. Then we'll go to you, Mr. Early.

20 MR. EARLY: I have some preliminary matters
21 in the nature of status reports on various things that
22 might be helpful to get to before we get to arguments
23 on the contentions.

24 JUDGE BRENNER: All right. Let's take
25 that. Then, we'll go back to you, Mr. Dynner.

1 MR. EARLY: Judge, since we haven't met in
2 some months, I thought it would be helpful to give a
3 brief rundown of the status of various items that
4 relate to this proceeding.

5 The first thing that I'd like to cover is
6 the DRQR Owners Group Program. That program has now
7 been completed for the Shoreham TDI engines. All
8 reports, including individual component reports and
9 Phase II report on the DRQR Program, has now been
10 issued. And I believe all the parties in the proceeding
11 have been supplied with copies of that report. So,
12 that program has now been done for Shoreham.

13 with respect to the TDI diesels themselves,
14 preoperational testing has been completed on diesel
15 generators 101 and 102. That testing program included
16 a modified integrated electrical test that the Board
17 may recall from various submittals, that the integrated
18 electrical tests test the diesels along with all of
19 the electrical systems in the plant.

20 That test was run using machines 101 and
21 102, while the 103 machine was being worked on. So,
22 that test has been completed for those two machines.

23 Diesel generator 103 had a new block
24 installed in it. The block has been replaced. That
25 diesel has been reassembled, returned to its diesel

1 generator room where the initial stages of testing are
2 in process, the check-out and initial operation tests.

3 The schedule calls for completion of all
4 of the testing included, including the integrated
5 electrical test with all three machines to be done
6 right around the middle of September. I think the date
7 is September 17th right now.

8 The next item of information for the Board
9 involved the Colt diesel generators. That, those are
10 the three diesel generators that are being installed
11 on the side and they're manufactured by Colt Industries.
12 The engineering work on those three diesel generators
13 is essentially completed.

14 Construction work is now in progress. The
15 underground cabling and piping runs have all been
16 installed, and the actual diesel generator building
17 that will house those three Colt diesel generators is
18 under construction.

19 The reenforcing bar is all in place, and
20 I believe concrete work is in progress. Two of the
21 three Colt engines are now physically on the site, and
22 they'll be installed in the rooms as soon as they're
23 completed.

24 The Colt schedule calls for completion of
25 installation and testing of the Colt diesel generators

1 in May 1985. Until the actual hookup of those diesel
2 generators is made, and I believe at the last pre-
3 hearing conference or our last conference of the parties,
4 we noted that the company preliminarily intends to
5 hookup those diesel generators at the first for fueling
6 outage, that until that hookup is made, and that's a
7 process that takes I believe on the order of eight to
8 twelve weeks, that that construction has no impact on
9 the rest of the plant or the TDI diesels themselves.
10 That's kept separate.

11 One other item that I'd like to raise now
12 is the company submitted a letter, SNRC 10-65. It was
13 dated July 3, 1984. And I believe copies were tele-
14 copied to the Board and the parties. And it involves
15 a revision of the loads that are assigned to each of
16 the emergency diesel generators.

17 As a result of the testing on the diesel
18 generators, the company decided to review the actual
19 loading of the diesel generators, and it was determined
20 in looking at the loading that it was possible to delete
21 one reactor building service water pump from the
22 loading of diesel generator 103.

23 There are four such pumps in the plant.
24 Two of the pumps were connected to the 103 diesel.
25 That diesel then had a significantly higher total load.

1 I believe it's on the order of about 350 KW above the
2 other diesels.

3 In reviewing that matter, it was determined
4 that those two service water pumps did not both have
5 to start automatically. So, the company is, is
6 proposing having one of those pumps in standby
7 service, that it won't start automatically, thereby
8 reducing the load on the 103 machine from a 10 minute
9 load of approximately 3880 down to the range of 3442.
10 And information on that has been included in that
11 SNRC 10-65. And I just wanted to bring that to the
12 Board's attention.

13 That, that change will result in, in the
14 company being able to lower the kilowatt rating at
15 which the diesels are tested for overload purposes,
16 I believe, down to approximately 3500 rather than 3900
17 that they had been tested at.

18 And those are the only preliminary
19 matters that LILCO thought might be helpful to bring
20 to the Board's attention.

21 JUDGE BRENNER: Well, as to the last point,
22 we had..the information we had not received, that
23 letter. You mentioned it now. Mr. Dynner?

24 MR. DYNNER: Yes, Judge Brenner. I just
25 have a brief comment and then a brief report on a

1 meeting which was held among the counsel for the NRC,
2 LILCO and the county last Tuesday to discuss, as the
3 Board had, had ordered us to do, the June 11th filing
4 and the issues that flowed therefrom.

5 Mr. Early has just mentioned to the Board
6 the letter from the Long Island Lighting Company to
7 Mr. Denton, dated July 3. It was received by telecopy
8 in our office at 6:00 on Tuesday afternoon, right before
9 the holiday.

10 It represents, in our view, a complete
11 changing of the standards by which we had proceeded
12 to, to judge the diesels since it involves, in effect,
13 a derating of the diesels.

14 We view this matter with a great deal of
15 seriousness insofar as the basis underlying our
16 contentions go to the adequacy of the on-site electric
17 emergency power system at Shoreham. And from what we
18 can gather from this brief letter, it is now proposed
19 by LILCO to further reduce or to change that power
20 system.

21 It also may involve, although we have not,
22 of course, had a chance at all to study this matter,
23 a degradation of the, of the safety of the on-site
24 system and how it's going to operate. As soon as we
25 receive the letter on Tuesday afternoon and it was, I

1 emphasized to you, the first time that we had heard
2 that there was even any possibility of LILCO taking
3 this approach in derating the engines or reducing
4 their load in this matter or any other matter.

5 We sent off by Federal Express copies of
6 the letter with its attachments to county consultants.
7 The attachments, I must say that we have are in many
8 cases illegible. We'll be asking LILCO to give us
9 legible copies as well as any background that might
10 be available to justify the changes which are being
11 proposed.

12 In essence, we think that after eight and
13 a half years without warning to suddenly unload on
14 us an issue that totally changes the standard for the
15 on-site power system and the standards for the
16 diesels will involve a careful examination by the
17 county in order to determine its impact, if any, on
18 the litigation.

19 And I wanted to bring the matter to the
20 Board's attention so you would not think that this
21 was something that we had any notice of whatsoever
22 and had any opportunity to review because we didn't.

23 I would now like to briefly advise the
24 Board of the discussions which were held on Tuesday.
25 In the first place, the county clarified by responding

1 to questions from LILCO, some of the matters addressed
2 in the June 11th filing.

3 First of all, the County made clear that
4 with regard to Part II of the filing, that it is the
5 County's intention, it was only the County's intention
6 to litigate the design of four of the sixteen
7 significant component problems that had been identified
8 by the owners group, that namely the replacement crank
9 shafts, the cylinder blocks, the cylinder heads and
10 the AE pistons.

11 Some confusion had apparently arisen by
12 Item 5 on Page 10 which is labeled, other components,
13 and which is a more general, if I will, can call it
14 a sort of context under which this litigation is
15 taking place. And I'll further describe that when the
16 Board wishes.

17 But the important and significant point
18 to make is that while the January 27th contentions
19 addressed and specified instances going to the overall
20 design of, of the engine and all of its components,
21 after the period that we had gone through of, of
22 depositions and examination of documents and review of
23 the owners group reports that had been issued on the
24 16 components and bearing in mind the resources that
25 the County has available to it and in an effort to

1 sharpen the issues and make the litigation as direct
2 as possible, we have limited the litigation to those
3 four major components.

4 In addition, we have addressed the issue
5 of the over rating and undersizing of the engines
6 which is now, of course, connected to the issue of the
7 June, the July 3rd letter that LILCO has filed,
8 proposing to reduce the load on the diesels and change
9 the configuration of the on-site power system.

10 With respect to the matters addressed in
11 Part III, I must say..I'll back up a moment and say
12 that with regard to the four major components, if I
13 can call them that, we also answered many questions
14 that LILCO had with respect to matters of evidence,
15 what the County has found wrong, what the County
16 intends to do.

17 I think most, if not all of those matters,
18 probably all of them, were covered in the, more than
19 ten days and 1450 pages of depositions that LILCO
20 has taken in this case, but there were a few matters
21 that were specifically addressed. There were,
22 specifically, some changes made in the crank shaft
23 issues to make it clear that what the County was doing
24 was, would be on the crank shafts, principally
25 addressing the strength, if I can use that word loosely

1 and nontechnically, of the crank shafts under the
2 Loydes ABS, who rules the draft rules of the Inter-
3 national Association of, what's it called, Classification
4 Societies and the German criteria used by LILCO's
5 own consultants.

6 JUDGE BRENNER: Mr. Dynner, if I could
7 interrupt for a moment. Even though the crank shaft
8 are the first ones, let's not get too far ahead of
9 ourselves --

10 MR. DYNNER: Okay. Sure.

11 JUDGE BRENNER: -- because as we go through
12 each one, we may have some questions about some.

13 MR. DYNNER: All right. I won't go, I
14 won't go into any detail, Judge Brenner, at this
15 point about further elucidation that we gave LILCO
16 at the meeting on those specific items except to
17 say that there was a good deal of discussion about
18 those matters.

19 With respect to the Owners Group Program
20 plan and the matters that the County wants to address
21 in the DRQR, I should say that at the time this
22 document was filed, we had not received the DRQR for
23 Shoreham. It, we learned, consists of nine volumes.
24 Was delivered to our office on Saturday, June 30th,
25 and this week earlier we sent our, our one copy to one

1 of our consultants. We have extra copies that LILCO
2 has kindly agreed in its own reproduction of the
3 documents, to make available to us.

4 It may be, as LILCO has said in its response,
5 that some of the matters that we were concerned about
6 in the program plan.. for example, the extent to which
7 inspections were made on various components..will be
8 addressed in the DRQR report and, therefore, while as
9 we said, for example, that the plant itself makes it
10 unclear what those inspections were, it may be that the
11 DRQR report does make it clear.

12 We will need, obviously, some time to
13 review those nine volumes. Secondly, that DRQR
14 report apparently does address the quality of
15 manufacturing issues which we were unable to previously
16 examine except with respect to, to some extent the
17 four components in the context of this litigation.

18 The last matter that I will refer to in,
19 in our discussion involves the additional information
20 matters. We have been told by United States Steel
21 Corporation that any information that we want to get
22 concerning the Gott..that's G-O-T-T..will have to be
23 subpoenaed in that they will not give us any informa-
24 tion voluntarily, including, for example, our request
25 as to whether the, the piston, the crown which, which

1 cracked was, in fact, an AE crown or an earlier model
2 crown.

3 We've also been informed by the State of
4 Alaska that due to their, what they regard, I should
5 say, as a good business relationship now and a
6 favorable contract with (inaudible) for the servicing
7 of the engines on the MV Columbia, that they will not
8 be prepared to give us further information concerning
9 the engines; specifically, the cracked blocks on the
10 Columbia except with respect to answering the subpoena.

11 And, third, we have been trying throughout
12 this period to get information from the ABS concerning
13 the letter which we received in discovery about ten
14 days ago regarding the replacement crank shafts. The
15 ABS people gave us only some information. They told
16 us they did not regard that letter as a certificate
17 that they normally give in these cases.

18 We said we wanted to talk to them about
19 the information that they reviewed concerning the
20 crank shafts and what their criteria were and other
21 matters which go directly to the heart of whether, in
22 fact, the ABS has approved or not approved to replace
23 the crank shafts.

24 We learned on July 3rd from them that they
25 were not prepared to talk to us except under subpoena.

1 They felt that given the fact this matter was going to
2 litigation, that that was the appropriate approach.
3 And I so informed, immediately, LILCO that we would be
4 seeking to subpoena the ABS people whose names we
5 learned about ten days ago in this, in this matter.

6 And, finally, I had a conversation with
7 Mr. Goddard concerning the willingness or unwillingness
8 of the NRC staff to assist us in obtaining information
9 from some of the foreign owners/operators of TDI
10 diesels with regard to the specific matters mentioned
11 in Part IV. And, apparently, Mr. Goddard feels that
12 the staff will not be able to assist in this matter,
13 but he can elucidate you on that, if he wishes.

14 At the close of this rather lengthy
15 meeting, I think that the result was that we gave
16 LILCO and the staff quite, quite a bit of additional
17 significant information. The position of, of LILCO,
18 I think it's fair to say, remains unchanged from that
19 stated in its response to the June 11th filing.

20 JUDGE BRENNER: Well, it may be that some
21 of our questions in the normal course will cause you
22 to give us some of that additional information to
23 assist us in evaluating the specificity and bases
24 of the proposed contentions and the alleged nexus to
25 Shoreham of, of those contentions.

1 And I think the course of the discussion
2 will make it obvious as to where you should do that.
3 You and your own can make that judgement, also.

4 Do the staff have any preliminary comments?

5 MR. GODDARD: The staff would only respond
6 to Mr. Dynner's reference to his conversation with
7 me, reference the staff's willingness or unwillingness
8 to assist Suffolk County in obtaining information from
9 foreign users.

10 I do not want it to appear on the record
11 that the staff is unwilling to assist persons in
12 developing matters which may be in the public interest;
13 however, as can be gleaned easily from the affidavits
14 which accompany the staff's response to Mr. Dynner's
15 filing, the NRC does not feel that information from the
16 non-nuclear foreign based users would be essential.
17 And it's not to say that might not be of some
18 assistance, but it certainly is not essential in the
19 NRC staff and its consultants reaching a conclusion as
20 to the qualification of the Shoreham TDI (inaudible).

21 Other than that, the staff has no statement.

22 JUDGE MORRIS: Mr. Goddard, did I under-
23 stand the import of the staff's June 21st filing, that
24 you would admit all of the contentions that are
25 submitted by the County and the State?

1 MR. GODDARD: As to all of the contentions,
2 if that is..that is correct as to the diesels themselves.
3 We would oppose any separate litigation of the DRQR which
4 is set out in Part III.

5 As to the contentions as stated in Part II
6 of the County's filing, the staff would not oppose
7 those contentions.

8 JUDGE MORRIS: I would just like to comment
9 that we would have appreciated it if the staff had
10 given us some reasons as why they took that position
11 on each part of those contentions.

12 MR. GODDARD: Judge Morris, the, the staff
13 position as to the alleged bases for the contention was,
14 in the opinion of the staff, a matter properly
15 considered as a question of admissibility of evidence
16 at such time as information regarding the specific
17 engines which were cited as a basis were introduced.

18 As far as the contention themselves, the
19 staff felt that there was sufficient basis, that
20 it would not oppose the admission of the, the
21 admissibility of the contentions.

22 That is not to say that we accept the
23 evidentiary basis thereof as being relevant or material
24 in each and every instance.

25 JUDGE MORRIS: Well, of course, we under-

1 stand the difference between evidence and the basis and
2 specificity for admitting a contention and both the
3 applicant and the County went through some pains to
4 state their positions on those matters. It would have
5 been very helpful to the Board for the staff to have
6 done so also.

7 JUDGE BRENNER: All right. Let's turn to
8 Roman II of the County's filing and as ..

9 MR. EARLY: Judge Brenner?

10 JUDGE BRENNER: Yes.

11 MR. EARLY: If LILCO may, could we make
12 the preliminary remarks on, on the substantive matters
13 that we gave a status report?

14 JUDGE BRENNER: All right. Do it briefly
15 because I think we know the positions of the parties
16 pretty well, and I want to get to the specifics, but
17 go ahead.

18 MR. EARLY: Yes, Judge. Let me clarify one
19 thing and then I'll ask Mr. Farley to make LILCO's
20 preliminary matters on the statement, on the substantive
21 matters.

22 Mr. Dynner in referring to LILCO's July 3rd
23 letter kept talking about a change in the configuration
24 of the on-site power system. The only thing we're
25 talking about is having one reactor building service

1 water pump in what is, in effect, a standby condition.
2 All pumps that are controlled from the control room
3 can be placed in lockout so they won't start automatical-
4 ly. There are no physical changes to the on-site
5 power system that are involved. It is not any type
6 of modification or hardware change, and I think the
7 Board ought to be aware of that.

8 And with that, I'll let Mr. Farley address
9 LILCO's position.

10 MR. FARLEY: Just briefly, Judge Brenner.
11 The counsel did meet on July 3. Mr. Goddard, essentially,
12 had take the position that he was unable to make
13 any agreement at variance with the NRC staff filing
14 because I think Mr. Berlinger had been preoccupied
15 with other matters and could not attend.

16 So, we couldn't very much accomplish, we
17 couldn't accomplish very much with, with the staff.
18 As far as the, the County is concerned, there was this
19 discussion, essentially as Mr. Dynner has enumerated
20 to the Board, but the fact of the matter is everything
21 that he says is by way of enumeration and not limita-
22 tion.

23 He always reserves the right to add
24 components or add issues in connection with his
25 contentions. So, we're unable to, to narrow anything

1 with him either by the filings or, or by the, or by the
2 conference.

3 We think that they have patently disregarded
4 your order of February 22nd. They disregard the law
5 on the role of specifications of, of contentions. I
6 think they pervert their position as intervenors in
7 this proceeding, and they basically take the position
8 that even though they have these consultants, they're
9 not required to do anything. They're not required to
10 look at anything. They're not required to make any
11 calculations. They're not required to furnish us
12 with any specifics.

13 All they do are take pot shots at whatever
14 LILCO produces. And I respectfully suggest to the
15 Board that that is not appropriate or reasonable in,
16 in these proceedings.

17 On the, the other components, while Mr. Dynner
18 did mention that this alleged pervasiveness argument
19 would deal with the four principal ones that he
20 enumerated, he was not willing to limit himself to that.

21 On the, the over rating and undersizing,
22 nothing more was said that, that is anymore specific
23 than what you see in the County's filing which we
24 respectfully contend is, is very evasive in general.

25 On Number 3, on the Owners Group Program,

1 while he did not have the final draft of the Owners
2 Group Program until it was delivered to him Saturday,
3 he had ample information about the, the context and
4 the structure and representatives of the County
5 attended owners groups meetings. And there was no
6 reason in the world why he could not have complied
7 with your order that he specify in that filing of
8 June 11th what elements of the DRQR that related to any
9 of the specific components that, that he was complaining
10 about.

11 He, he's had an opportunity to depose
12 everybody. He's had all the documents. And it, it's
13 just inexcusable that on the basis of all that
14 material that he could not have complied with your
15 order and have been specific with respect to the, the
16 various components.

17 On the additional information, on Number 3,
18 the staff supports our position, and we think the
19 Board should, should rule that way, that the, the
20 DRQR Phase II will not be a separate issue for, for
21 litigation.

22 On the additional information, again,
23 Mr. Dynner was not precluded by your order of
24 February 22nd from coming back to the Board with
25 respect to a specific request on any of these other

1 TDI owners. And he just simply elected not to do so
2 or he simply elected to wait, again, until the last
3 minute and then contend that he needs this further
4 information and this further discovery.

5 And both the staff and LILCO are opposed
6 to that and, again, we would respectfully urge you not
7 to permit anymore discovery by way of depositions or,
8 or by way of subpoena in connection with that alleged
9 additional information.

10 We are prepared to file the testimony before
11 the end of this month. That's what the Board said
12 in its May order, that everybody better be prepared
13 to do. That's what we want to do, and we want to get
14 on with showing that these diesels are capable and
15 reliable and they will protect the public health
16 and safety.

17 JUDGE BRENNER: Well, we'll come back to all
18 these items in the course of a somewhat more detailed
19 discussion of each one, the schedule, the last to the
20 extent it's pertinent. For example, LILCO also has
21 another alternative request. That is that the County
22 file its testimony first.

23 MR. FARLEY: Yes, sir.

24 JUDGE BRENNER: And that might affect your
25 last statement. The discovery of a deal of our

1 customers, we did discuss it at Transcript Page 21,624.
2 And we'll come back to that in the particular context
3 and so on.

4 So, I think it would be most helpful to us
5 now to just proceed through the individual items,
6 bearing in mind the framework that we had in the
7 written filings as reemphasized in your oral
8 introductory remarks today.

9 Under the County's Roman II, that is the
10 general and now combined, EDG contention, which is,
11 we understand it, is meant to combine the previous
12 contentions did discuss and admitted at the February 22nd
13 conference regarding over rating and undersizing
14 of the diesels and their alleged improper design and
15 manufacture.

16 As I stated in my introductory remarks here
17 and as we had established in the February 22nd bench
18 order, this general contention exists only insofar as
19 a particular instances relied upon exist, and those
20 instances form the basis for the proof of it and
21 establish the framework and (inaudible) of the
22 contention.

23 And, so, there's no point in discussing
24 the worrying of the general contention now, in any
25 event, and maybe at no point. And what we want to

1 get to is, in fact, the definition of what will encompass
2 totally the contention under the specific subparts.
3 And we'll start in the order that the County has it
4 with the crank shafts.

5 The first item is the allegation as to the
6 improper design, and the County also includes its
7 notation O for..that's the shorthand for allegation
8 that it..the diesels that were oversized and..

9 UNIDENTIFIED SPEAKER: Over rated.

10 JUDGE BRENNER: Overrated and undersized.

11 I knew I'd get that confused at some point. Once we
12 established that over rated had no dcuble meaning in
13 February, I thought I'd keep it straight.

14 In any event, this contention goes to the
15 original crank shaft which are now being replaced and
16 our preliminary review is that is no longer relevant
17 as an end in itself. And, apparently, the County at
18 least in 4 recognizes that by the second sentence of
19 that Part A. So, we'd like to ask the County why
20 would it be relevant to litigate that at this point?

21 MR. DYNNER: I'm sorry, did you say why
22 it would be or would not be?

23 JUDGE BRENNER: Why would it be?

24 MR. DYNNER: All right.

25 JUDGE BRENNER: And maybe you can..

1 MR. DYNNER: I think what I'm going to have
2 to do..

3 JUDGE BRENNER: Maybe you could explain
4 your second sentence in the course of that.

5 MR. DYNNER: I think what I'm going to have
6 to do to put the specifics in context is..if you'll
7 bear with me, make it quick..statement about our
8 interpretation of your February 22nd ruling which
9 might explain some of the differences stated here.

10 And for the record, I think Mr. Farley
11 mischaracterized my position and the County's position.
12 And that's this, Judge Brenner. We..Transcript Page
13 21617, the Board ruled that there are sufficient proper
14 bases and that the contentions should be admitted.

15 The Board then required a specification of
16 instances, and that's the Board's word, on which the
17 County will (inaudible) prove its contention so the
18 parties will not be surprised as to what items will
19 be addressed in testimony. That's on Transcript
20 Page 21,617 and 618.

21 Now, in its January 27th filing, the County
22 listed many, many instances of TDI failures and
23 defects in nuclear marine and nonnuclear utility
24 service. What we tried to do in the June 11th filing
25 was to narrow and reduce that significantly. And we,

1 we did that in terms of what we regarded you meant by
2 instances. And I think that there is a misunderstanding
3 or that we did not, from what your comments today have
4 been, adequately understand what the Board meant.

5 On Transcript Page 21,621 and 622, that the
6 Board said that it required a list of "instances of
7 apparent problems either on the Shoreham diesels
8 themselves, in which case, of course, the explana-
9 tion by the County can be rather short and support
10 of nexus, or instances of occurrences which the County
11 believes have occurred on other diesels which are
12 sufficiently similar to the Shoreham diesels with
13 respect to the particular concern arising from the
14 particular occurrence that it would be relevant to the
15 Shoreham diesel.

16 And we would limit the instances to those.
17 Now, ..

18 JUDGE BRENNER: I think you're repeating
19 what I said at the outset, all of which was not to
20 repeat what was said on February 22nd.

21 MR. DYNNER: Well, what I'm trying to do
22 is to explain how we..in fact, what we construed you
23 were saying was, for example, that you didn't want
24 them to be surprised that we were going to refer to
25 a crank shaft that might have broken out in Saudia

1 Arabia without listing that that crank shaft broke.

2 We do not interpret what you were saying
3 as a requirement that we were to list elements of
4 evidence that in each and every case we would rely upon.
5 We focused on what..and thought what you were saying
6 was..instances of defects or instances of failures
7 because we listed so many of them, and we knew the
8 Board had said you had to have this next. So, we did
9 not in this filing on June 11th, for that reason, go
10 into the details of all the evidence that had been
11 adduced to that time which LILCO is well aware of
12 because it had taken 10 days of depositions of all of
13 our consultants.

14 Now, in that context..

15 JUDGE BRENNER: Well, let me comment at that
16 point. You're discussing the (inaudible) tension and
17 NRC juris prudence between how much evidence you have
18 to put forward at the contention admission stage.
19 And including the (inaudible) that you don't have to
20 put all your evidence forward at the beginning. That's
21 not very helpful. Everybody recognizes that.

22 There are still basic minimum requirement to
23 establish the bases and specificity of a contention.
24 If what you had said was true, there would be no reason
25 for us to have imposed that nexus requirement because

1 simply listing the instances would have taken care of
2 the surprise element.

3 It does not take care of the surprise
4 element fully just to say you want to talk about
5 Instance A and Saudia Arabia or anywhere else for that
6 matter unless you show what it is, in particular,
7 that you think is relevant about that to Shorum,
8 and that both assists with the surprise element, so
9 the other parties know what aspect of that matter
10 you're going to want to rely upon, and it's also
11 perhaps more significantly, from the point of view of
12 our rulings on admissibility, necessary to judge the
13 relevance, as I said at the outset.

14 One slight misstatement you had but perhaps
15 a significant one, when you quoted our ruling at 21,617
16 regarding the bases and specificity, we said that
17 there was enough in the subparts set forward in that
18 January filing to show that there is minimum bases
19 and specificity for the general propositions. And
20 we also emphasized we weren't going to distinguish and
21 we thought it was not important to distinguish
22 between the, at that point, between the design
23 allegation or the manufacture allegation or the under-
24 sized and over rated allegation. But looking at
25 those three allegations together, there was at least

1 some minimum instances being set forward which would
2 supply the bases and specificity.

3 We also said, and I'm reading from my own
4 notes, although I could easily pull out the transcript,
5 but I know we explicitly stated we were not ruling
6 that each and every instance had the requisite
7 sufficient bases and specificity. And now is the time
8 when we're going to go through each and every
9 instance and make that ruling. I think that's
10 accurate also.

11 MR. DYNNER: I quite agree that, that, with
12 what you've said in that it's a matter of drawing the
13 line. The point I was trying to make, Judge Brenner,
14 is that when you use the word instances and in the
15 citations I've given you to the transcript, we
16 interpreted those as instances.

17 Now you get to the point..for example, on
18 the cylinder heads let's say..and this is just an
19 example..we know the cylinder heads are cracked.

20 JUDGE BRENNER: Well, let's go through each
21 one and we'll evaluate it.

22 MR. DYNNER: All right, we will. I'm,
23 the point I'm trying to make is that the instances,
24 the way we interpreted your, your words, were not the
25 same as listing all of the evidence. Not instances

1 of failure, but evidence to say, well, we think that
2 the, that the crank shaft is, is undersized and not
3 strong enough because the web on the fourth journal
4 is a quarter inch too thin.

5 And it's that level, when we get down to
6 that level of evidence in detail that we didn't go
7 into.

8 JUDGE BRENNER: Well, you may need some of
9 that level to have an admissible contention, just
10 discussing it as an abstract proposition. And it
11 depends on the subject matter.

12 The word instance was not set forth in
13 a vacuum. It was defined by the other requirements
14 which we have now discussed several times today and
15 discussed thoroughly in the February 22nd bench order
16 including the nexus, the absence of surprise, emphasis
17 that I just alluded to.

18 And I will give the quote now since you come
19 back to it. On Line 17 on Page 21,000, 617. In
20 addition, we do not necessarily agree that all of those
21 items, referring to the specifications, are a proper
22 bases.

23 And a line or two below that, we go on to
24 refer to the specification of the instances upon
25 which the County would depend to prove its contentions

1 one, two and three, and I'm paraphrasing a little bit
2 now, would have to be provided after discovery and
3 prior..which is now, that is the time of your written
4 filing.

5 And we have had permitted, in our view,
6 extensive discovery, both as to time and, and quality.
7 And that discovery was more than enough for issue
8 identification, especially since it was intended as
9 discovery on the case for preparation of testimony.

10 And, so, we have a different setting six
11 months later, approximately, in which to evaluate
12 the level of detail in terms of judging the relevance
13 of the allegations.

14 And in that sense, it may not be sufficient.
15 In fact, would not be sufficient to simply say, for
16 example, we want to talk about the new crank shaft
17 because we want to hear what LILCO has to say about
18 it as opposed to specifying what you think is incorrect
19 in the design, manufacture or whatever of the new crank
20 shaft, but that will be Subpart B.

21 We're still, still struggling to get through
22 the first subpart.

23 MR. DYNNER: Okay.

24 JUDGE BRENNER: With all that context back
25 and forth now, maybe more context than we need, what's

1 relevant about discussing the old crank shaft, and I
2 refer, again, to the fact that the County seems somewhat
3 ambivalent about it also, given the way you phrased
4 it.

5 MR. DYNNER: No, the ambivalent..we don't
6 intend to litigate the old crank shaft or why it
7 failed. The reason this is in here is because the
8 fact is that the old crank shaft did fail. We didn't
9 want to ignore that point and say we can't refer to
10 that on the record, that there was, in fact, a, a
11 poorly designed crank shaft that was not properly
12 designed and that the engine was already..now, maybe
13 what you're saying is we don't have to put down everything
14 in this filing that we may refer to..

15 JUDGE BRENNER: Well, just be careful about
16 that because our object is to get more down, not
17 less down.

18 MR. DYNNER: Okay. So, that's why I'm saying
19 that, that we're referring to that because it seems
20 to us that's part of the record, that there was an
21 undersized crank shaft that was not properly designed
22 by TDI that did fail. We don't think there's anything
23 to litigate, and we don't..about that. It is a matter
24 of record, and we don't intend to litigate why it
25 failed.

1 JUDGE BRENNER: Well, what is the relevance
2 to having this (inaudible) to any decision we have to
3 reach on the merits of the acceptability of the
4 reconstituted, if you will, TDI diesels at Shorum?

5 MR. DYNNER: Okay. Because it goes directly
6 to TDI's ability to design the crank shaft properly,
7 and they designed the new crank shafts as well. It's
8 a matter of the background and history of this, of this
9 record.

10 The context of this record, as we view it,
11 is not that Shorum now has three diesel engines and
12 that the County says that there are design problems
13 with four components and that the engines are over-
14 sized and stop there.

15 The record, it seemed to us,..the record
16 at least should show that this is not a blank slate,
17 that TDI has a history, as shown by the fact that
18 there was an Owners Group Program in the first place,
19 that the staff has said that it wouldn't license a
20 plant with these diesels, that there are numerous
21 Board notifications and other documents which
22 demonstrate that there is, and I think that, that this
23 is a, a statement the staff made at some point, a
24 broad pattern of problems or defects with TDI diesels.

25 It seemed to us that, that at least the fact

1 that the..one, if there was a single major event which
2 triggered this, this process of the Owners Group Program
3 and of the staff's enhanced investigation into the
4 diesels and everything else, it was the fact that this
5 crank shaft was not properly designed by TDI, a
6 matter which I gather LILCO agrees with from the FAA
7 report that it is (inaudible).

8 JUDGE BRENNER: Yes, but you told me at the
9 outset, I think, in a follow-up to my opening remarks
10 that the items you were setting forth, at least in
11 part Roman II and I think in your entire pleading, if
12 I interpreted your remarks correctly, but we'll get
13 that later on the other items, you were limiting it
14 to the requirement of a nexus either at Shorum or
15 at diesels sufficiently similar to Shorum for the
16 problem alleged.

17 And we have not had occasion to discuss
18 the other possibility because as we read the County's
19 pleading, at least as to Roman II, the other possibility
20 was not raised by it. And that was that you would want
21 to allege something that did not have a nexus to
22 Shorum's diesels but had, was related to TDI.

23 And we discussed that possibility, and it
24 was only a possibility because we didn't see anything
25 like that put forward in February, but the County

1 didn't want to preclude the possibility, and we felt
2 in the abstract we would not preclude it either. We
3 would permit you the opportunity to come forward with
4 the particulars on something that was so fundamental
5 and inherent to TDI's involvement that adverse
6 instances about anything, TDI would do, could and
7 should (inaudible) from it.

8 And we said that if you were going to use
9 something like that and this is, I think, at..in fact,
10 I'm sure..at Transcript Page 21,622, a very special
11 showing. And you certainly have not attempted to
12 make that nor did you want to as we understood your
13 opening remarks; am I correct?

14 MR. DYNNER: That's correct.

15 JUDGE BRENNER: All right.

16 MR. DYNNER: This is not in the..this is
17 in the context. This is in the context issue. What
18 is there that we're..that's going to be on the
19 record that we can refer to?

20 The Board, specifically, noted in the
21 transcript on February 22nd that a part of the entire
22 case of the County was the general ability of TDI to
23 design and manufacture diesel engines adequately.

24 And the context..

25 JUDGE BRENNER: I guess I just don't

1 remember that in the abstract, anything like..

2 MR. DYNNER: It's Transcript..

3 JUDGE BRENNER: Let me, let me finish and
4 then, and then you can show me where I'm wrong.

5 MR. DYNNER: Okay.

6 JUDGE BRENNER: Anything like that would
7 have been in the context of adding either before or
8 after as to bind by the specific instances set forth
9 by the County and/or the State, I believe, but you can,
10 you can show me where we didn't do that.

11 That's certainly our purpose today. And
12 if I misstated it back then, I'll have to do something
13 about it, but you show me where I made a statement that
14 we could litigate in the..in general, TDI's
15 competence and ability without being defined by
16 specific instances.

17 MR. DYNNER: Well, I'll, I'll tell you what
18 I was referring to, specifically. And that's on
19 Transcript 21,635, where you said, Judge Brenner, that
20 this is going to be a specification of the contention
21 and the proof would be limited to the specification.

22 JUDGE BRENNER: That's exactly my last
23 point.

24 MR. DYNNER: That's exactly what you said.
25 Then you went on to say that you look at the, that

1 we're going to have a look at the DRQR to see whether
2 and if so, when, there will be an opportunity for the
3 possibility of further specification being added.

4 So, that is the Part III that we added here.

5 But that's the purpose of the specification,
6 so everybody knows what points the proof has to be
7 addressed. And then you went on and said, now, the
8 contention, however, is not just that this list of
9 items is wrong. It also includes that important
10 element of the County's contention that and once you've
11 looked at this list of items and see the extent and
12 cumulative nature of all the things that have gone
13 wrong, that this tells you that you have no reasonable
14 assurance that other things would not also be wrong,
15 that the things wrong are so significant and so
16 pervasive that even if the particular individual items
17 are repaired or changed, that there is still no
18 reasonable basis for confidence that the diesels can
19 reliably perform their function.

20 We recognize that important element in the
21 County's contention and agree with it, unquote.

22 JUDGE BRENNER: Yes.

23 MR. DYNNER: We read that to mean that the
24 Board was not going to approach the issue of the
25 specific components and items which LILCO and TDI

1 said they now repaired with a clean slate as if there
2 was no context for this litigation, as if there had
3 never been a pervasive pattern of difficulties and
4 problems.

5 And that's why we put in this Item 5,
6 and that's the only reason we put in Item 5 of our
7 filing on Page 70, which refers to the, the issues,
8 the pervasiveness of, of defects and deficiencies in
9 the Board notification, in the DRQR reports and
10 documents themselves because they have a history of
11 these and they say when they're relevant and not
12 relevant.

13 And we don't intend and don't think we have
14 a need to litigate each and every one of those and have
15 said we don't intend to, but it is the context. We're
16 not writing on a clean slate. And we, we took your
17 remarks to mean that the Board recognize that also.

18 JUDGE BRENNER: Well, we..

19 MR. DYNNER: That's the context of the
20 failed crank shaft.

21 JUDGE BRENNER: All right.

22 MR. DYNNER: The same thing.

23 JUDGE BRENNER: Well, you've explained your
24 view. Now, let me explain that statement. both
25 generally and in particular as applied to crank

1 shafts since that's the first example before us.

2 It was a remark as to context, and it
3 recognized that cumulative element, if you will, of
4 what the County wanted to show. It was, however, still
5 in the context of remaining particular items which
6 would have nexus to Shorum. That's my general
7 explanation.

8 The particular explanation as applied to
9 Shorum would be you seem to recognize and, in any
10 event, we believe that your Item A under crank
11 shafts would not be relevant as an end in itself and,
12 therefore, would not be admitted as a contention, but
13 it may be that parties may include aspects of what
14 went wrong with the old crank shaft in their evidence,
15 where it is relevant to the adequacy -- the design
16 of the supposedly repaired and corrected new crank
17 shaft.

18 (END OF TAPE 1)

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1 JUDGE BRENNER: ... the new crankshafts are any
2 good. We still have to have some particular allegation
3 with basis, and access to Shoreham, which we'll get to in a
4 moment under Subpart B, as to what's wrong with the new
5 crankshaft, then under those particulars, when you want to
6 bring in some details of evidence, and that could await the
7 details of evidence as opposed to the contention stage,
8 that, ah, there are things that went wrong in the, ah, post
9 mortem, which we discovered in the post mortem, of what went
10 wrong on the old crankshafts, which still have not been
11 adequately addressed, with respect to the new crankshafts.
12 So, if that's all you meant, ah, then we're on common ground.

13 MR. D'YINNER: Okay.

14 JUDGE BRENNER: But I don't know if that's what you
15 meant. In any event, that would be our ruling. Ah, I guess
16 I'll give you an opportunity to say if that's what you meant.

17 MR. D'YINNER: That's what I meant.

18 JUDGE BRENNER: Alright. Let's go to B then, which
19 everything will turn on with respect to the crankshaft
20 litigation.

21 MR. D'YINNER: As I, um, stated we added some add-
22 itional information or some clarifying information to this
23 in the meeting. I'm not going to bother saying every time
24 we said something at the meeting; it will shorten things up,
25 but I will tell the Board about this, ah, specific intentions

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1 on B-1.

2 JUDGE BRENNER: Alright, well B-1, just to set the
3 stage, has a few, ah, subparts, although they are not separately
4 numbered, and ah, the first two are as follows. One is that
5 you allege that the replacement crankshafts are not designed
6 for operation at the overload rating and that the design is
7 marginal for the full load rating. That's one. The second
8 would be the replacement crankshafts will adversely effect
9 and be effected by other engine systems, such as, a phrase
10 that we have discussed before in this proceeding, but passing
11 that for now, such as bearings and piston pressures. So, our
12 question would be, as to those two, what's your basis for
13 those allegations? We understand the nexis to Shoreham, that's
14 easy on this part; you're talking about the crankshafts that
15 are in present machines at Shoreham. So, that's the kind of
16 example where you get by the nexis rather easily. But you
17 still need a basis for the allegation, and specificity often
18 goes hand-in-hand with basis, so I'll add that phrase, also.

19 MR. D'YINNER: Okay. Um, in the first place, the
20 position, the basis is that the crankshafts, the design
21 standards for these crankshafts do not meet the standardly
22 acceptable design standards set by the ABS, Lloyds Register.
23 The attempt to encompass a, all of a whole variety of
24 design standards for crankshafts, as set by the draft rules
25 of the International Association of Classification Societies

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1 or the design standards for crankshafts set by the German,
2 um, consultants to LILCO. Um, that is essentially what our
3 contention is. That those design standards, which have to
4 do with the strength of the crankshaft and whether it can
5 hold up under the operating modes to which it will be, ah,
6 used under, and it includes both the full rated load of 3500
7 KW, and the overload of 3900 KW, except with respect to the
8 German criteria, where we're saying its marginal as to full
9 load and no good as to overload. What we're saying as to
10 ABS, as to Lloyds, and as to the draft IACS rules, the crank-
11 shaft is not strong enough, it is not properly designed, and
12 it will not hold up under full load of 3500 Kw or the over-
13 load condition.

14 JUDGE BRENNER: Alright, now, the last reference on
15 the German consultant, you're not talking about an alleged or
16 recognized industry or tradegroup or insurance group standard,
17 you're talking about LILCO's own consultants.

18 MR. D'YINNER: Is this we're talking about LILCO's
19 consultants or the standards that they apparently apply when
20 they review crankshafts in Germany.

21 JUDGE BRENNER: Now, they don't meet any of the
22 standards? That's your allegation, are there particular
23 standards that they don't meet?

24 MR. D"YINNER: Well, as I understand it, these
25 are the design standards for crankshafts, and they are set

1 by the classification societies, and we maintain that A) a
2 crankshaft, in order to be reliable and in order to operate
3 properly at these loads should meet those standards, and that
4 the, number two, that the replacement crankshafts do not.

5 JUDGE BRENNER: Okay. Do you want to tell me a
6 little bit about your basis for saying that the crankshafts
7 do not meet those standards?

8 MR. D'YINNER: Ah, one by one? Experts, consultants
9 have taken and made calculations, and determined by virtue
10 of those calculations, which are done in accordance with
11 equations set forth in the rules, that the crankshaft design
12 does not meet the points, that it does not meet IACS draft
13 rules. That, with regard to the ABS, that there is a letter
14 from ABS, but that is shown in the FAA report on the crank-
15 shafts, that the materials submitted to the ABS is, ah,
16 deficient, that the values used for the crankshafts, ah,
17 strength in various ways, um, were values that were set by
18 TDI that have been, demonstrated to be substandard. That if
19 the same values that FAA set were the correct ones called
20 T_n values had been used by ABS, that those values would have
21 resulted in a calculation that would have been inadequate,
22 that, further, we are unsure as to what extent the overratings,
23 I'm sorry, the overloadings of 3900 KW requirement of the
24 current engine specifications were taken into consideration
25 by the ABS. And, finally, the data that was submitted, did

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1 not accurately reflect the firing pressure in the cylinders
2 of the engines in which the replacement crankshafts will be
3 operating.

4 JUDGE BRENNER: Are there particular, you used the
5 term "strength" as a general type meaning, and I'm comfortable
6 with that for now, too, although my colleagues on the Board
7 might not be. Are there particular criteria for strength
8 withing those standards that you allege the crankshafts do
9 not meet, or are you saying, some of the points you have
10 raised are, ah, relevant to all the, test of strength under
11 all the criteria?

12 MR. D'YINNER: My understanding is that are part-
13 icularly rigid standards in Lloyds and IACS that have to be
14 met that are not met. And that there are similar standards
15 in ABS, although ABS will in effect, I use the word loosely,
16 negotiate, that is they will hold discussions with the
17 applicant, in this case I believe it was TDI that submitted
18 the figures. There was a meeting that was held with TDI,
19 though we don't know what went on in that meeting.

20 JUDGE BRENNER: At this point can you list the
21 particular standards which are not met. You don't have to
22 tell us in detail the numbers, but just the category.

23 MR. D'YINNER: It's, I understand, the complicated,
24 complicated calculations resulting from an equation. It's
25 not like, I suppose you've heard or seen, for example DEMO,

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1 where you have this sum of the orders being 700 psi and that's
2 it. My understanding is this is not at all that one simple
3 standard type thing; it is a complex calculation arising
4 from particular equations that determine whether the crank-
5 shaft is sufficiently strong.

6 JUDGE BRENNER: Alright.

7 JUDGE FERGUSON: Mr. D'Ynner,

8 MR D'YNNER: Yes, sir?

9 JUDGE FERGUSON: Just as a matter of clarification,
10 did I understand you to say that there were certain criteria,
11 I think you used the word equations relating to these standards,
12 that your consultants used, and based on the calculations
13 your consultants, it is your determination that the crank-
14 shafts do not meet the criteria. Did I understand you
15 correctly to say that?

16 MR. D'YNNER: That is true with respect to Lloyd's
17 and IACS, sir.

18 JUDGE FERGUSON: I see. So, the crankshafts do
19 not meet the standards based on your consultants calculations
20 using the criteria, is that correct?

21 MR. D'YNNER: That is correct, sir.

22 JUDGE FERGUSON: Thank you.

23 MR. D'YNNER: And my information is that these are
24 rather standard, I mean I could never do it, but anybody
25 that knows how to use a little bit higher math than I'm

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1 capable of, can run it out. I'm not sure depositions are
2 elsewhere that anybody's ever disputed the fact, that, for
3 example, they don't meet Lloyds. The battle on that is
4 going to be whether they ought to or not, and we say they
5 ought to.

6 JUDGE BRENNER: I thought your colleagues read the
7 table to do those kind of calculations for you, as we
8 discussed them.

9 MR. D'YNNER: Bette~~e~~, but they're not here.

10 JUDGE BRENNER: I meant your presently present
11 colleagues. Ah, what about the second sentence of that B-1?

12 MR. D'YNNER: I've stricken it.

13 JUDGE BRENNER: What about the third sentence?

14 MR. D'YNNER: That is still part of the contention.
15 We have evidence that the shot peening (phonetic) of the
16 replacement crankshafts, in two out of the three crankshafts,
17 was reported by TDI, that it was done inadequately, and had
18 to be over. Franklin Institute, which is the NRC's, ah,
19 an NRC consultant concluded in it's report that the shot
20 peening had problems, that may result in subsurface nucleation
21 sights, which could, as a result of the second shot peening
22 process, would be difficult, if not impossible, to ascertain.
23 The shot peening process in general is on which is recommended
24 some people that LILCO talked to and recommended by others.
25 TDI, for example, recommends that it be done, although, as

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1 I recall, they said that because they didn't think it would
2 add measurable less than 5% to the strength of the crankshaft.
3 But we feel that on the basis of the evidence that we've
4 seen that the shot peening may be detrimental, both in terms
5 of having resulted in the creation of nucleation sites because
6 of the incorrect way in which it was done the first time, and
7 in general, because the, when a crankshaft of this size is
8 shot peened, it makes discovery of a nucleation site extremely
9 difficult, if not impossible.

10 JUDGE BRENNER: But, can you be a little more
11 specific in the context of the way you might word the issue
12 meant to be put forward by that sentence three, that is that
13 shot peening of the replacement crankshafts may be detrimental,
14 I guess may have been detrimental, because, in that, specifics,

15 MR. D'YNNER: Because the, ah, because the ah, the
16 shot peening of two of the crankshafts was incorrectly done,
17 resulting in the possible creation of nucleation sites, and
18 further, because the shot peening of the replacement crank-
19 shafts makes any existing nucleation difficult, if not
20 impossible, to discover.

21 JUDGE BRENNER: Can you tell me a little more
22 about what was incorrectly done?

23 MR. D'YNNER: Well, I don't have the Franklin
24 Report with me, sir. But, ah, it does go some detail about
25 it.

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1 JUDGE BRENNER: Can you give me a reference?

2 MR. D'YNNER: There is a report, I don't have it
3 with me, that was done by the Franklin Institute for the
4 NRC staff. My colleague tells me it's on page 65 of that
5 report, in which there's a discussion of the fact that
6 there was almost

7 JUDGE BRENNER: Well, my point, Mr. D'ynner, is
8 that we don't have to be totally steeped in the technicalities
9 of it, and I'll admit that I'm not, and you can make your
10 own admission or not make the admisssion, I don't care. For
11 you to be able to tell me, it seems to me, whether the shot
12 peening was bad because they hit it in the wrong place, they
13 hit it too hard, they should have never done it, ah,

14 MR. D'YNNER: I think the result was that it was
15 a very ragged type of a surface that resulting. The shot
16 peening is supposed to be blasted out so that you get a
17 hardening of the surface, and in this case, instead it was
18 jagged, if I can use that word.

19 JUDGE BRENNER: The surface of the crankshaft, the
20 resultant surface of the crankshaft was jagged after the
21 shot peening process. Whereas it's your allegation that the
22 shot peening should leave a smooth surface.

23 MR. D'YNNER: Yes. I don't know whether jagged
24 is the right word. There was another word, I'm trying to
25 remember I can't recall, right now. (PAUSE)

1 JUDGE BRENNER: Alright, ah, let's get the responses
2 of LILCO to the oral allucidation, if you will, ah. Part B,
3 we've already denied part A for the reasons agreed upon, I
4 think, as a contention in itself.

5 MR. STROUPE: Judge Brenner, speaking to B-1, let
6 me say first of all,

7 JUDGE BRENNER: Yes, I meant B-1, thank you.

8 MR. STROUPE: First of all, our problem, LILCO's
9 problem with this particular contention is that, ah, as
10 Mr. Farley indicated earlier, we don't think it's been there
11 at all, from the primar contention. Basically, what Mr.
12 D'ynner has told us today and told us at the July 3rd meeting
13 of counsel that we had, is that, as far as the crankshafts
14 are concerned, the county's contention is that by virtue
15 of the fact that we don't meet allegedly several design
16 codes, ah, the crankshafts cannot be reliable, and they
17 are deffectively designed. Number 1, we know of absolutely
18 no rule or requirement in this country that a crankshaft
19 meet any of these codes, for that matter. The fact that
20 the crankshaft may not meet any particular code, whether
21 that be a German code or some international classification
22 society, in our estimation is not determitave of the issue
23 in this proceeding. There are hundreds of codes throughout
24 the world, and these codes are basically designed to make
25 a determination, and a short hand determination to insure

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1 for insurance company purposes that a particular vessel
2 is going to be sea worthy, as far as its propulsion system
3 goes. That's precisely what these codes are for. They make
4 no attempt to go into detail and to get at design criteria.
5 All they do is give a short hand, ball park estimate of
6 whether a particular crankshaft, in fact, comes under the
7 code, and is sufficiently strong enough, large enough or
8 whatever to satisfy that particular code.

9 JUDGE BRENNER: But do they have quantified
10 criteria by which, on which they make that judgement?

11 MR. STROUPE: Well the criteria, Judge Brenner,
12 are basically empirical formulas that don't require a lot
13 of ingenuity. You just plug in the design; you plug the
14 various parameters of the crankshaft, ah, such as the size
15 of the web, things of that nature. It's no detailed determ-
16 ination of whether a crankshaft is a well designed crank-
17 shaft or is not a well designed crankshaft. It's just a
18 short hand determination. We don't think that is something
19 that should be litigated in this proceeding. We're not
20 afraid to litigate the liability of these crankshafts. Our
21 experts say, and Mr. D'ynner has had full opportunity to
22 depose all of our experts on crankshafts, and they say these
23 crankshafts are sufficient. The way the contention is worded
24 right now, and particularly when Mr. D'ynner's explanation
25 is had, we don't know what they say is wrong with the crank-

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1 shafts. We don't know whether that they are contending that
2 the crank pin is too small, whether the webs are too small,
3 whether the configuration of the crankshaft is wrong. We
4 just don't know what they're saying. All they're willing to
5 say is well we think that there are four classification
6 codes that you ought to meet, and we think you don't meet
7 them. Our experts have made these calculations, and by
8 the way, I might add, I'm rather surprised to hear Mr.
9 D'ynner say that. I've spent several days with Mr. Christian-
10 son, who is one of his chief crankshaft experts. I've spent
11 several, at least a day and a half with Mr. Ely, who is
12 crankshaft expert, and perhaps a day with Mr. Bochi, trying
13 to find out what their calculations were. I was never able
14 to get anything. We've asked for these calculations; we
15 don't have them. So, I'm rather flabbergasted to hear that
16 they now have calculations that show that presumably these
17 crankshafts do not meet these codes. I might add that the
18 ABS, my understanding, has, in fact, approved the replacement
19 crankshafts, and has issued a certificate to that effect,
20 and Mr. D'ynner has a copy of that. And, my understanding
21 is that they found it, the particular engine with its
22 components, including the crankshaft, suitable for the
23 purposes of ABS. Now, again, that is the American Bureau
24 of Shipping, and that applies to shipping standards, in
25 effect. Suspiciously absent from Mr. D'ynner's discussion

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1 were the DEMA requirements, Deisel Engine Manufacture Assoc-
2 iation. All our people say we meet DEMA. If there is anything
3 that American Engine Manufacturers applied to their own
4 engines, it is the DEMA requirements. But we think we're
5 entitled to something more than the mere allegation that we
6 don't meet these four codes that he has set for us. That
7 doesn't give us the opportunity to prepare ourselves to
8 know exactly what we have to show the county and this board
9 to be able to prove that the crankshafts are reliable and
10 adequate for their intended purposes.

11 JUDGE BRENNER: Is ther a fourth code that has been
12 referred to as your German consultants? Is there a code
13 that they're using?

14 MR. STROUPE: Well, the way Mr. D'ynner characterized
15 that, I think was incorrect, your honor. What our expert,
16 who is Dr. Franz Pischenger told Mr. D'ynner's associate
17 Mr. Mike Miller was that there is a German classification
18 code that is more an internal sort of thing that certain
19 manufacturers and certain people in Germany use. It is a
20 very, very conservative code, maybe the most conservative
21 code in the world, and it considers things that, in our
22 experts' opinion, are not important as far as crankshafts
23 we're talking about today are concerned. And the fact that
24 the crankshaft may be marginal as far as that German code
25 goes, as Mr. D'ynner I believe put it, does not concern our

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1 expert at all. He feels pretty strongly that these crank-
2 shafts are suited and fit for their intended purposes.

3 Getting to the second aspect of the crankshafts, and that is
4 the common instance which Mr. D'ynner has listed in Saudi
5 Arabi, again,

6 JUDGE BRENNER: But, could I back you up to the
7 shot peening, and I don't think I asked Mr. D'ynner about
8 the B-2.

9 MR. STROUPE: Alright. Well, let me say this about
10 shot peening. I think Mr. D'ynner is incorrectly characterizing
11 the Franklin research report. I don't believe that that
12 report says what Mr. D'ynner has said it says. I think what
13 the report said was that, the person who authored that report
14 apparently did not or was not able to have a sufficient
15 look at the shot peening that was done to come to any
16 conclusion about the shot peening, and I believe all the
17 report said was that if the shot peening was done incorrectly,
18 the shot peening was done incorrectly, it could be, it
19 could be detrimental. Now, I know of now one shred of
20 testimony or anything else in this proceeding indicating
21 that there is a problem with shot peening. The evidence
22 as I understand it, is that TDI personel shot peened a
23 couple of the crankshafts when they were received by LILCO.
24 We had shot peening experts look at those crankshafts, and
25 they made a determination that additional shot peening needed

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1 to be done to insure that what was trying to be accomplished
2 by the shot peening, and that is to remove the surface
3 stresses on the metal, the material, in fact, was accomplished,
4 and we had what we believe is a world-reknown, at least
5 reknown in this part of the country in this part of the United
6 States, expert on shot peening come in and do that. And we
7 know nothing that was done improperly, and no reason why that
8 shot peening shouldn't, in fact, add some margin to the
9 crankshaft. And we believe, again, as with the first part
10 of this contention B-1, that we're entitled to hear from
11 Mr. D'ynner, for the purpose of being able to adequately
12 litigate this issue, if indeed it is to be litigated, what
13 they contend is wrong with shot peening. We haven't heard
14 one word as to specifically what is wrong, and contrary to
15 what Mr. D'ynner says, I do not believe we will find that in
16 the Franklin Report. So again, we think we should be given
17 the basis that Mr. D'ynner and Suffolk County believe bares
18 out that contention.

19 JUDGE BRENNER: Well, I'm sorry, have you completed,
20 on that point? Using this as an example to add to add to
21 our already lengthy but somewhat too general discussion of
22 basis, ah, where the county is alleging that the shot
23 peening is improperly done, and that contention is based
24 on a reference to a report, certainly the minimum basis
25 would have been to reference the report, and if, attach the

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1 page or pages, or if we have the report, at least, quote
2 the pertinent portion as a basis in support of the contention,
3 and this is just what we're talking about. In terms of
4 basis, we certainly have pages and pages of depositions
5 attached, which appear to be less directly relevant to basis.
6 Passing that, that was for purposes of illustration, ah,
7 staying with the particular, but more to the point, does
8 anybody have a copy of the exert, the report that's pertinent
9 that we could look at here today?

10 MR. D'YNNER: Judge Brenner, I'm reminded by my
11 colleague that probably that the information on the nature
12 of the shot peened after the first attempt is not included
13 in the report, but would be testimony from a witness.

14 JUDGE BRENNER: Well, then you still haven't given
15 me a basis that I can look, in terms of what's wrong with
16 shot peening, other than the allegation. And I'm putting
17 that to you so you could come back and give me a basis.
18 Mr. Stroupe, you referred to what you think the report says.
19 Do you have a copy of the portion of the report that you
20 have in mind?

21 MR. STROUPE: I do not have that with me because,
22 quite frankly, I did not know in advance that that's what
23 Mr. D'ynner was relying upon for the basis for this content-
24 ion.

25 JUDGE BRENNER: Well, have you read it?

1 MR. STROUPE: I have read that report, yes, Judge
2 Brenner. My recollection, as I have stated earlier, is that
3 the question that was raised in that report was because of
4 the author's lack of familiarity with, in fact, how the
5 shot peening was done, not specifically that anything was
6 done improperly.

7 JUDGE BRENNER: We have the report, but I'll be
8 candid to admit we have a stack of reports. And whether or
9 not I know that I can pull it out for myself from our joint
10 board records during the break, the lunch break, I'd frankly
11 want to spend the break doing other things pertinent to this
12 case, than document search.

13 MR. D'YNNER: Do you want me to identify the name
14 of the individual who gave us this information, is that
15 what, I'm having a real hard time with some of the things
16 that Mr. Stroupe is saying in differentiating between
17 contention, which has a basis, and knowing all the evidence.

18 JUDGE BRENNER: Well, I know..

19 MR. D'YNNER: I'm also having trouble with some-
20 body telling me it's not enough to say the crankshaft is
21 no good because it doesn't meet an international standard a,
22 but somehow we have some responsibility to tell him how
23 it should meet that standard by increasing the crank pin
24 by a quarter of an inch or whatever.

25 JUDGE BRENNER: Okay. Hold it, see, my mind just

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1 doesn't work that well, I have to stay with one point at a
2 time or I run into trouble, and you'll have to forgive me
3 for that. I understand, I think, quite well, your disagreement
4 on your allegation, and the first part of that B-1. You've
5 explained the basis for your allegation in terms of the
6 standards, and I understand LILCO's objection to it, and I
7 was discussing a smaller point, and want to stay with that
8 as a basis for the shot peening sent/ ^{ence.} Now, in the abstract
9 that might sound silly or not, I don't know, I'm not an
10 expert. I'm glad to hear that in this age of specialization
11 there apparently are such things as shot peening experts, of
12 which I am not one. But I do want to understand what the
13 basis is for the sentence because, before we go marching off
14 to a litigation, ah, based on, what I've characterized as
15 a mere allegation that the shop peening was done incorrectly,
16 and I don't know how giving me the name of somebody who
17 would be a prospective witness for you, just that would help
18 me.

19 MR. D'YNNER: I don't know what else I could tell
20 you. Our experts say, A) the shot peening in general, B)
21 that the shot peening in this particular instance was
22 incorrectly done, and had to be done over, and C) we have
23 a witness, who will say, who was there, who observed it, who
24 saw the surface that says he thinks there are nucleation sites
25 and it was a mess. Now, I don't have anything else.

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1 JUDGE BRENNER: Well, you could tell me what their
2 basis is so that I could have an objective evaluation, or
3 you could have attached an affidavit and left open that
4 possibility, it's not required, depending on what you could
5 come up with without an affidavit. But, again, I'm looking
6 for an ascertainable basis. Especially, if Mr. Stroupe's
7 version of the report, which is what you had originally
8 referred to, Mr. D'ynner, is accurate, because then you not
9 only do you not have a report that supports you, then the
10 only report we might have on it would contradict you. And,
11 again, we would look at it only in the context of basis, it
12 may be you have a basis for disagreeing with that or any
13 other report on a subject, but we need to look at that basis.
14 I guess at some point we're going to have to get the pertinent
15 page or pages from the report that you referred to, Mr.
16 Stroupe, and sooner rather than later.

17 MR. STROUPE: Well, Judge Brenner, I think, you
18 know, one of the problems I have with,

19 JUDGE BRENNER: I'm not criticizing you for not
20 having it with you, I'm just pointing it out.

21 MR. STROUPE: No, I understand that. One of the
22 problems I have with the county, one of the many problems
23 I have with the county came from the "loosey-goosey", if
24 I may use that word, nature. Because, for example with
25 the shot peening, they don't say the shot peening with

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1 replacement crankshafts is detrimental. They say may be
2 detrimental. Now, are we to litigate something that may be,
3 or are we going to litigate things that are? I think,
4 generally that's the problem we have throughout this filing
5 that the county made.

6 JUDGE BRENNER: Alright, if you could accomodate
7 us somehow, and there are telacopy machines available that
8 my secretary can put whoever you want in touch with if you
9 want to do it that way, I'm not going to require that, or
10 maybe you can get something to us as soon as possible after
11 today,

12 MR. STROUPE: Are you asking me to get the report
13 to you? The portion of the report that deals with shot
14 peening. We will give that to you.

15 JUDGE BRENNER: Right. I think we have the report
16 somewhere, and Judge Morris recalls reading it, but I don't
17 want to trust our recollection, and although you've given
18 us your recollection I'm sure in good faith, I don't want
19 to base a ruling on your recollection.

20 MR. STROUPE: Sure, I understand that. We will
21 get that to you as soon as possible.

22 MR. GODDARD: Judge Brenner, Mr. Burlinger has
23 advised me that he's going to try and obtain a copy of that
24 report at this time, and have it brought over.

25 JUDGE BRENNER: Okay, I appreciate that. Of course,

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1 my comments were meant generally. Incidentally, Mr. Palomino,
2 any time you want to jump in after we run through the primary
3 proponents and apponents, feel free to do so. Maybe this
4 is a good time to clarify what may be just a minor procedural
5 point or maybe more important. The state had the opportunity
6 to put forward its own issues from that February ruling, as
7 you understand. The county made a filing, and, I guess, as
8 I understand it, the state does not want to put forth any
9 of its own issues, but does want to support the county's
10 issues.

11 MR. PALOMINO: We work with the county on it, and
12 we'll support the county's issues. And if I feel it
13 appropriate, I'll discuss it with Mr. D'ynner, or otherwise,
14 I will interject.

15 JUDGE BRENNER: Are you planning to put on your
16 own separate, well not separate, but your own state witnesses
17 as a case if any of these issues are admitted?

18 MR. PALOMINO: I don't think so, your honor.

19 JUDGE BRENNER: Okay. Mr. Stroupe, you wanted to
20 talk about the oil pressure plugs in Saudi Arabia, and I'll
21 let you do that, then I'll get back to Mr. D'ynner on that
22 same subject.

23 MR. STROUPE: Well, again, I think our position
24 is pretty simple, Judge Brenner, and I think it's exactly
25 as you explained the Board of intents in its February 22nd

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1 order, and that is, have the county make some sort of an
2 explanation of the nexis relationship between an instance
3 something going wrong with a component that the county
4 decided to litigate, and the particular component on Shore-
5 ham. As far as I can tell, based on what has been said in
6 this county's filing, we don't have any explanation on how
7 it relates to the replacement crankshafts in Shoreham. He
8 just says, as a matter of fact, an adequate crankshaft always
9 has its plugs on a replacement-design crankshaft damaged
10 pistons, and that's it. We don't know the operation conditions;
11 we don't know the hours of service; all we know is that he
12 is listed it as a common instance, apparently one of which
13 he intends to rely upon, to show that the crankshafts are
14 not adequately designed for the Shoreham engines. Again,
15 we think the litigation of this requires more, that we should
16 given the specifics of how this impact on the Shoreham
17 replacement crankshafts, because as it stands, again, we
18 don't know what to litigate about oil passage plugs.

19 JUDGE BRENNER: Well, now you know something about
20 it, I infer, because in your answer arguing that the contention
21 should not be admitted, you alleged,

22 MR. STROUPE: We know we don't have that problem.

23 JUDGE BRENNER: Yes, and you allege that the oil
24 plug design in Saudi Arabia was different. Am I recalling
25 that correctly?

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1 MR. STROUPE: Correct.

2 JUDGE BRENNER: Ah, it's the same engine type as
3 the Shoreham deisels, correct? I infer that from the DSR-48
4 designation. They have the new size crankshafts in ther, at
5 least the county so alleges. I don't know if LILCO knows
6 what size crankshafts.

7 MR. STROUPE: I'm not sure they really know.

8 JUDGE BRENNER: Well, do you have access through
9 TDI to information about this incident, using this,

10 MR. STROUPE: We have whatever the county has, I
11 believe, and that is the service records or the failure
12 analysis reports that TDI maintains, that we all went out
13 to Oakland, California back in March, I believe, and went
14 through and obtained, which were I assume is where this
15 came from.

16 JUDGE BRENNER: Well, do you know what's different
17 about the oil plug design in Saudi Arabia such that one
18 could not infer that the same problem would arise on the
19 oil plug design in the Shoreham deisel?

20 MR. STROUPE: I don't know the answer to that,
21 Judge Brenner.

22 JUDGE BRENNER: You see it's said, just for purposes
23 of the framework, you said their oil plug design is different.
24 Now, I could have the oil plug design, to site an absurd
25 example, being the color red in one and the color green in

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1 the other, and that may be a difference, but it's a difference
2 without a distinction in terms of the problem. And I don't
3 know anything about the different oil plug design, and I'm
4 looking at it in terms of a possible argument on Nexus.

5 MR. STROUPE: Well, I believe, Judge Brenner, that
6 as we stated in our filing, and of course when we made this
7 filing, we relied to a large extent on some of our experts,
8 but our indication is that it is a different designed oil
9 passage plugs on the Shorehams that they have checked. The
10 problem has been found, and a certainly know that we haven't
11 had piston failure as a result of the oil plug passage problem.

12 JUDGE MORRIS: Uh, Mr. Stroupe, did the information
13 that you saw define the problem that occurred with the oil
14 plugs in Arabia?

15 MR. STROUPE: I believe that, my best recollection,
16 Judge Morris, is that the plugs that were used in the replace-
17 ment of the crankshafts at Saudi Arabia were a thinner plug,
18 a much thinner plug, as I understand it. The Shoreham
19 crankshafts have thicker plugs, and thus, I believe, would
20 be less susceptible to any sort of problem, such as apparently
21 occurred at RAFFA, the electriciy coroporation.

22 JUDGE MORRIS: Well, did TDI do an analysis to show
23 that it failed because of lack of strengths due to improper
24 dimension? Did it go that far?

25 MR. STROUPE: Quite frankly, Judge Morris, from

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1 memory, I can't answer that question. I think, probably
2 there was either some sort of failure analyses report that
3 TDI did that we obtained access to, or there was some sort
4 of indication in their service record that this problem had
5 occurred, and in most cases where we were looking at records
6 of that nature, you could get a general idea of what the
7 problem was. If you put that with the failure analysis
8 report, you would get a specific idea of what the problem
9 was.

10 JUDGE MORRIS: Was there any indication of whether
11 this was a unique problem or whether that particular design
12 was, ah, general,

13 MR. STROUPE: I can say this, in all honesty, I
14 don't believe we know of any other instances of piston damage
15 as a result of failure of oil passage plugs.

16 JUDGE MORRIS: Was that design common to other
17 engines, do you know?

18 MR. STROUPE: I believe so.

19 JUDGE BRENNER: I inferred from your written answer,
20 LILCO's written answer, and one was there was some sort of
21 analysis done because the answer was that it wasn't an oil
22 plug failure, but it was an overspeed accident, number one.
23 So, that there is knowledge available to TDI, and presumably
24 therefore to LILOCO about it, and, well, I'll stop there.
25 But something you said today is apparently, or may be not

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1 fully consistent with that because you recall something
2 about a thinner oil plug design.

3 MR. STROUPE: Well, if certainly my recollection
4 is, if we said what you're saying about overspeed in our
5 filing, I would assume that is the most correct answer. My
6 memory certainly would not superceed our filing. (PAUSE)
7 Judge Brenner, I'm not sure, it may appear to be an inconsist-
8 ency, but my colleagues tell me that they believe that the
9 overspeed problem caused the thinner plugs to cause the
10 additional problem that resulted in the piston failure. So,
11 I think it's part of the same problem.

12 JUDGE BRENNER: That's one explanation that occurred
13 to me also just now. Mr. D'Ynner, we're evaluating this in
14 terms of the Nexus to Shoreham, it's an occurrence at another
15 deisel generator. You've alleged to it without contradiction
16 that it's a DSR -48, so we'll accept that. You've alleged
17 without contradiction that it's the new design crankshaft,
18 at least the new size, and again without contradiction, so
19 we'll accept that.

20 MR. D"YNNER: Now, the plug is, the first we heard
21 of it was in this filing, where they're saying the plug is
22 a different thickness. The drawing that we had from TDI,
23 which proports to be the drawing of the oil passage plug
24 on the replacement crankshafts, is of the thickness which
25 concerns our experts, and is as far as we know, is of the

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1 same thickness. We've not seen any drawings since this
2 occurrence, which would indicate that there was a change
3 in the thickness of the oil pressure plug.

4 JUDGE BRENNER: Well, if the oil passage plug, if
5 they are different, in fact, which we should be able to
6 ascertain, short of a litigation to ascertain that, does
7 that take away from the basis because at the time you filed
8 this you believe the oil passage plug design was the same?

9 MR. D'YNNER: Well, I keep having this trouble
10 with what's a specific basis and what's the evidence because,
11 their giving evidence, and if they have that kind of evidence
12 it seems to me they ought file a motion for summary disposition
13 of this thing. We have, our consultants looked at this in
14 connection with looking at the crankshaft. They looked at
15 the drawing, and concluded that based upon their own analysis
16 of this element that it's so thin and it's designed in a
17 manner that creates a problem, a potential problem, with
18 breakage or corrosion or cracking. And, then we looked around
19 and said well, did this happen any where else, and we looked
20 through the information that we were able to find from
21 discovery, and we came up with this as the only example
22 where we could find where there was a failure of the oil
23 passage plug. Well, it's kindof like saying, well, we
24 looked for that, and every instance we probably can't find
25 it. When we're an analysis of design you may come up with,

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1 your experts may come with a conclusion that this design
2 is no good. And, that's based on their expertise and
3 experience in the design of deisel engines, and in
4 particular components, and then you something else to put
5 the nail in the shoe, and in that case this is all we could
6 find. In most other cases that we've cited here, I mean
7 all things that have gone wrong at Shoreham, so we haven't
8 had to look for specific things and say, well, that's the
9 only case. This is a rarity, and it couldn't have happened
10 at Shoreham, because they didn't have this model crankshaft
11 in place until recently.

12 JUDGE BRENNER: Was that the sequence of approach
13 by your experts, or was it rather that you had this occurrence
14 at Saudi Arabia, and based on that occurrence, you want to,
15 and your belief that the oil plug design was the same, that
16 therefore, you, would allege that there is an apparent
17 problem at Shoreham.

18 MR. D"YNNER: My recollection is that my consultants
19 said we think there's a problem with, looking at the whole
20 crankshaft, we think there's a problem with the thickness
21 of this oil, I can't, I don't remember what the exact
22 sequence was.

23 JUDGE BRENNER: Alright, well, the only reason that
24 I asked was you seemed to emphasize the sequence in your
25 remark.

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1 MR. D"YNNER: I didn't mean to emphasize any
2 sequence, I just, in my mind that's the probably of what
3 would have happened, but I'm not going to swear to it. It
4 maybe the reverse. It maybe somebody came across this and
5 said maybe we better have a closer look at this particular
6 element, I can't, I can't answer that.

7 JUDGE BRENNER: Well, if the design of the oil
8 plugs are materially different, that would affect our
9 evaluation of Nexus. Now, I understand that if you felt
10 you had enough basis, and we might that there's enough
11 basis, if, in fact, your belief is true, that is you've
12 got the same type of machine, you've got the same size of
13 the new crankshaft, and I'm assuming that's true because
14 LILCO has not contradicted that aspect, the size of the
15 crankshaft, and your belief that the oil plug design is the
16 same. Now, we don't have to await summary disposition, or
17 anything further if we can ascertain fairly readily whether
18 the premise upon which you're basing the contention is, in
19 fact, not correct, although you believed it to be.

20 MR. D"YNNER: We believe that it's the same
21 engine, that it's the same crankshaft. Based upon the fact
22 that the drawings don't show any changes, we know what the
23 drawing thickness is for this and we don't believe, we have
24 no reason to believe that there was an earlier design that
25 went into this engine that was thinner. Now, we get into

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1 the issue, my saying, well, gee, we'd like to talk to
2 these people. We've written letters and asked them what
3 problems have you had. We've asked for some assistance.
4 We don't think, I mean frankly this is one element which is
5 a relatively minor element. We're not going to win this
6 case or lose this case because the oil pressure, the oil
7 passage plug is too thin or not, and I'll be the first one
8 to admit it. But, it is, in fact, an element that appears
9 to us, from everything we've been able to adduce, is a
10 problem area and an area which our consultants tell us, if
11 we're right, if one of these crack, you can have disasterous
12 effects. That's the other thing we've tried to do in
13 paring down our contentions, to try to look at something
14 and say, it's not a question of where, it's a question of
15 something that could really throw a monkey wrench into the
16 operation of this machine during an emergency. That's one
17 of the reasons, for example, that we took out the second
18 sentence of this, this of this B-1 contention about the
19 effect of the bearings, because we decided that in the long
20 run, that while we think it may have that effect that it's
21 the kind of thing you probably could spot and repair, so
22 we don't want to bother with that.

23 JUDGE BRENNER: Alright, you said several things
24 very quickly in that statement. One of it is more information
25 from Saudi Arabi would be nice, or useful, or maybe helpful

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1 Apparently, there's enough information available through
2 sources here, to what, at least, persons who did the analysis
3 believe occurred, and we can learn something about that
4 information beyond what we know to determine if there's even
5 a reasonable basis in Nexus for the contention. And, you've
6 had enough about to believe you had a basis for a contention,
7 and as I said, we might be willing to find a basis for a
8 contention if your premise is correct. But, I think the
9 parties being possessed in great ingenuity, we know, in this
10 long proceeding, can come up quickly with some good way of
11 at least what the experts or attorneys or both, whether or
12 not the oil passage plugs are the same design or not, and
13 what is different about the design, a couple of simple facts.
14 And, if the parties can't, maybe we can come up with some
15 way, but the parties can think about that for now. As to
16 the staff, frankly I'm not anxious take up too much time
17 today with the staff's views because Judge Morris has already
18 given you the view which I share as to the quality of the
19 staff's assistants in its legal pleading. Now, we know
20 what your general position is, and we're giving the other
21 parties, that is primarily the county and LILCO, the
22 opportunity to fill out their written pleading, which written
23 pleadings were of a quite a large amount of assistance to
24 us in evaluating the detailed positions of the parties, and
25 we're supplanting that, and allowing the parties to

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1 supplement that, but anything we hear from the staff is
2 going to be brand new from the first, for the first time,
3 in terms of any details, and that's not helpful, when we
4 have to react suddenly like that. It's difficult to know
5 when even remarks in supplementation are somewhat new, and
6 we'll be here more than today if we start getting a lot
7 of brand new things, unless the staff has something really
8 significant to add, and if you do please let us know and
9 we'll allow you to do so. I'm not going to turn to the
10 staff, as a matter of course, given the nature of the staff's
11 legal pleading, and Judge Morris mentioned it, and now I've
12 had occasion to mention it again, and it's not for purposes
13 of belaboring the past, but if you're going to be a party
14 in this proceedings, you being the staff, you better get
15 in step with the quality of the work of the proceedings
16 that we need to reach our judgement.

17 JUDGE MORRIS: Uh, Mr. Goddard, was Mr. Burlinger
18 able to find that document?

19 MR. GODDARD: There is a copy being brought over
20 here at this time.

21 JUDGE MORRIS: I see, I just, ah, if possible,
22 perhaps the parties could share that with you over the lunch
23 break.

24 JUDGE BRENNER: We're going to take a lunch break
25 until one thirty. We expect to move somewhat more expeditiously

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1 as always. We don't move as fast in the beginning as we
 2 might have hoped, and time is taken up by introductory
 3 remarks, and after awhile, I think, the tenor the remarks
 4 will be, the deficiency of the remarks will be assisted
 5 by reference back to some of the previous remarks as we
 6 go through it. We'll give you enough time to eat in
 7 Bethesda, which sometimes takes a little bit of time, and
 8 to think about things you might want to think about, so
 9 we'll break until one thirty.

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(END OF TAPE TWO)

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1 JUDGE BRENNER: Back on the record. The staff
 2 has provided us with a copy and, during the break. Judge
 3 Morris was also able to locate his copy of the Franklin
 4 Research Center report entitled Evaluation of Diesel
 5 Generator Failure At / Shoreham Unit 1, Final Report, Failure
 6 Cause Evaluation dated April sixth, 1984 and I guess the
 7 parties, I hope the parties have had an opportunity to
 8 briefly look at this at least if not discussed it.

9 You haven't? You have it now in front of you?
 10 You can have this copy. We have another one to share. I
 11 thought Mr. Goddard, we were going to get copies of the
 12 pertinent pages to the other parties.

13 MR. GODDARD: I told Mr. Dynner that the report
 14 was available approximately ten minutes ago.

15 JUDGE BRENNER: I thought you were going to come
 16 in here with copies of the one or two or three pertinent
 17 pages though. It doesn't seem to say exactly what either
 18 Counsel told me. Mr. Stroupe, do you have a copy?

19 MR. STROUPE: Your Honor, I looked at it briefly
 20 a few minutes ago, particularly that language that related
 21 to the photographs of the shot peening that was done by
 22 Metal Improvements and I thought in my own view that it was
 23 pretty well consistent with what I tried to represent to
 24 the Board in that I believe the Franklin Research Center
 25 came to the conclusion that based on the photographs they

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1 had seen, the shot peening that was done by Metal Improve-
2 ments would have created a situation where the shot peening
3 would be effective if in fact all of the shot peening were
4 done in the manner as indicated in the photographs and I
5 believe he then put a disclaimer on that he had not had
6 access to look at all areas of the shot peening and thus
7 could not reach any final conclusion on that.

8 JUDGE BRENNER: That's essentially what you said
9 before and it's essentially accurate as far as it goes and
10 I'm just looking at an instant paragraph here and I may be -

11 MR. STROUPE: Well, I didn't have an opportunity
12 to read the whole thing. There may be something, somebody
13 else.

14 JUDGE BRENNER: Okay. Let me give you something
15 in here and there may be context elsewhere that relate
16 to this that I'm ignorant of, also. But I thought you also
17 said earlier that the conclusion was that the shot peening
18 performed may not have been acceptable in part because the
19 inspector didn't get to see everything or the analyst didn't
20 get see everything that might be pertinent to it.

21 But actually the comments that you just stated
22 after lunch is accurate as related to the rework shot
23 peening as I read this paragraph. However, the conclusion
24 is also in that same paragraph and this is the third full
25 paragraph on page 65 of the report.

1 It is stated that inspection of crank shaft No.
2 693 and 694 revealed inadequate initial shot peening. So,
3 it did go further than to say he didn't know.

4 MR. STROUPE: Yes. I don't think we dispute that.
5 That's why we reshot peened ourselves as a matter of fact.

6 JUDGE BRENNER: Okay. I guess you knew that when
7 you gave the earlier comments, but I didn't know about that
8 phrase and didn't infer it from your earlier comments.

9 MR. STROUPE: I'm sorry. That's certainly what I
10 meant to say. Again, I would just say if that is in fact
11 the authority that Mr. Dynner is relying upon for the basis
12 of his contention, I do not think it accurately supports
13 that contention and would form a basis. It certainly does
14 not give us in my view the requisite information that I
15 believe we need to litigate that.

16 MR. DYNNER: Well, you know, I've said before
17 that we had a witness who was going to testify as to what
18 that looked like to him and he's somebody that's signifi-
19 cant and also testify to what our own consultants -

20 JUDGE BRENNER: Excuse me, Mr. Dynner. Could you
21 speak up just a little?

22 MR. DYNNER: I'm sorry.

23 JUDGE BRENNER: We've got a ventilation fan back
24 here which is louder to us than to you.

25 MR. DYNNER: Sure. Well, I said that I'd, we keep

1 going further and further into the evidence. I said
2 initially that the bases for the specification of why we
3 were concerned about shot peening is that they were inade-
4 quately done initially on two crank shafts by TDI, that our
5 consultants believe in any case that shot peening may cause
6 problems by hiding nucleation sites and making it difficult
7 or impossible for them to be discovered and third, that we
8 had, after the Board asked me some questions about it, a
9 statement from a witness who said that the initial shot
10 peening had been so deliterious that it created or would be
11 likely to create the possiblity of nucleation sites.

12 And then we went into the evidence and you asked
13 me about the report and I told you and Mr.Scheipt remembered
14 it was page 65. In fact, as I peruse this document, the
15 inadequacy of initial shot peening is dealt with and re-
16 ferred to on a couple of pages.

17 It is stated in the report that it was, that they
18 looked at some photographs and insofar as the photographs,
19 inspected a representative of all the shot peened surfaces
20 that it's acceptable to Franklin. You know, to that extent
21 these are matters it seems to us that are issues of fact
22 and to be joined in the litigation.

23 We've had the same situation here, I guess, you
24 know, both sides saying what they recall in the evidence
25 and who said what and what evidence there is and what

1 evidence there is on the other side and it's almost, I must
2 say, as though we're involved in an evidentiary hearing and
3 it seems to me, I thought the standard was is the basis
4 specific enough to support the general contention. And if
5 it is, it's in.

6 I thought they were in. I thought we needed to
7 specify some additional instances and not go through and
8 state all the bases of evidence because then you get to the
9 initial dispute that we had that I thought was resolved on
10 February twenty-second where LILCO was saying what's the
11 bases for yourbases and what's the bases for the bases of
12 the bases and we were saying -

13 JUDGE BRENNER: Mr. Dynner, I really don't want to
14 belabor it because we've discussed it. We've both re-
15 ferred to the transcript -

16 MR. DYNNER: All right.

17 JUDGE BRENNER: As has LILCO and given you our
18 view of what our ruling is and I think it's quite clear from
19 the ruling and I thought that frankly when I reviewed the
20 ruling while out of town at another hearing and decided it
21 presented no problem because it was quite clear and I con-
22 tinue to believe that. So we've stated our view and for the
23 most part it's, the standards, at least, are consistent
24 with your view although not fully and the main difficulty
25 is in applying the standard and we've even had that kind of

1 conversation I think with you and certainly with other
2 Counsel throughout this hearing, even long before February
3 twenty-second and the fact is you don't have to put forward
4 all your evidence, but on the other hand a bare allegation
5 is not sufficient. Even if it's specific enough to understand
6 the allegation a basis is still required.

7 MR. DYNNER: Well, we're making an allegation. I
8 think we're stating the basis and what's happening repeated-
9 ly here and in LILCO's response is they're challenging as
10 a factual matter the evidence that we're stating from the
11 basis and it seems to me that's appropriate for either a
12 motion for summary disposition or for litigation and trial.
13 That's the only point I wanted to make.

14 JUDGE BRENNER: That's one way of looking at the
15 argument and the other way of looking at the argument which
16 LILCO presses upon us is they don't know what it is about
17 shot peening the county thinks is deficient and not cured
18 and I asked you that question and you've given us your view
19 of what you think you have to tell us about that. I think
20 we can move on to cylinder blocks unless somebody over
21 lunch knows something more about the oil plug design in the
22 Saudi Arabia DSR-48 than was known before lunch.

23 MR. STROUPE: We were unable to obtain the infor-
24 mation, Judge Brenner.

25 JUDGE BRENNER: I'm not surprised. I thought I'd

1 stop and ask just in case.

2 JUDGE MORRIS: Mr. Stroupe?

3 MR. STROUPE: Yes, Judge Morris?

4 JUDGE MORRIS: If you were to find that the
5 design of oil passage plugs was exactly the same in the
6 Saudi Arabia machine as it is at Shorem and the crank shaft
7 was identical in every other respect, would you agree that
8 that was sufficient basis to allow this contention?

9 MR. STROUPE: No, Judge Morris. We think we're
10 entitled to know more than just that because we think a
11 nexus has to be shown as the Board has used that term as to
12 why there is reason to believe that just because a crank
13 shaft that happens to be identical to the crank shaft at
14 Shorem caused a piston problem, how does that relate to
15 what might happen at Shorem.

16 And our believe is that based on the contention as
17 presently stated, even if those factors be true, it does not
18 sufficiently inform us as to what we're going to be required
19 to litigate. We don't, and I guess to further explain what
20 I'm saying, we quite frankly don't know any of the specifics
21 of that particular instance other than what has been dis-
22 cussed here today, you know, whether there was a sandstorm
23 and the sand coming in through the intake had something to
24 do with it.

25 We had heard allegations in various documents

1 that some of these engines tend to be run without oil from
2 time to time. There are all sorts of factors that could
3 affect whether or not this bears any nexus to the Shorem and
4 we say without some of that information provided to us, it's
5 very difficult for us to be prepared to litigate that.

6 JUDGE MORRIS: Well, doesn't this put the county
7 in a Catch-22 situation? They're barred from discovery
8 direct to that company.

9 MR. STROUPE: No, Judge Morris, I don't think so
10 and the reason for that is the county had the opportunity
11 to depose a gentleman named Shilling who is the failure
12 analysis expert for TDI and they could have asked him any
13 questions they saw fit to ask him about any particular
14 common instant or anything else that they had information
15 on.

16 And Mr. Shilling was not the only individual from
17 TDI that the county deposed. They deposed numerous indi-
18 viduals and they could have asked these questions very
19 simply and could have discovered that information. They had
20 probably better access to it than we do from that point of
21 view.

22 MR. DYNNER: If I could respond very briefly to
23 that. Number one, as you well know when we were deposing
24 both of the TDI witnesses, it was the same week I recall we
25 were arguing the issue before this Board of having

1 additional time to depose and needing additional time for
2 discovery because we'd just gotten fairly recently before
3 that those depositions were taken, thousands upon thousands
4 of documents from TDI. The document regarding the Raffa
5 plant was one, obviously, of those thousands of documents.

6 Number two, Mr. Shilling didn't do from the
7 documents that we had, we knew he had not done any failure
8 analysis on this particular case. And I really don't want
9 to get into the deposition of Mr. Shilling except to say
10 that he didn't remember very much anyway.

11 But I won't go further than that because I think
12 what Mr. Stroupe said is not relevant. I think that what's
13 relevant is let them explain what would they have to know
14 in order to be apprised and aware of what we're going to
15 litigate because I think the answer is going to be very
16 clear.

17 They want to know every single piece of evidence;
18 why we're going to use it; who said it and then they're
19 still going to say it's not relevant because they disagree
20 with the issue of litigating these points. I think time and
21 again, you know, we say this is what our experts think.

22 This is an inadequate design for this reason. We
23 don't have to tell them because it's an inadequate design
24 now what should you do to fix it; should you change the
25 crank pin width; should you increase the oil passage plug

1 thickness by a sixteenth of an inch and then it will be
2 okay.

3 JUDGE MORRIS: Mr. Dynner, I don't think we're
4 interested in that, either, at this stage of the proceeding.
5 What we are looking for is a clear and precise basis for a
6 contention as to why this design plug, if it's the same at
7 Shorem, makes that machine unacceptable.

8 MR. DYNNER: Yes, sir. And of course our position
9 is that I think what we said is about as much as we can say
10 at this point because we don't have the information that
11 would more particularize the failure at Raffa. But we know
12 it occurred and we believe it was the same design oil
13 passage plug and our experts tell us that in any case the
14 oil passage plugs in their judgment based on their expertise
15 are inadequately designed because they're too thin.

16 If they don't know now that what we want to liti-
17 gate is the design of the oil passage plug into it's manu-
18 facture because we don't know what causes failure in that
19 particular case based upon its thickness or thinness and
20 what may and might not happen as a result of that, I just
21 don't know what level of detail is going to satisfy them.

22 JUDGE BRENNER: Let's turn from crank shafts to
23 cylinder blocks if we could which is your item 2 under the
24 Roman II. LILCO in Court in opposing the admissibility of
25 this contention states that the county's wrong, the cracks

1 have not occurred in the liner landing area. I don't know
2 who much you want to tell us about that at this point, but
3 I take it that there's no dispute that cracks or indications
4 of cracks have occurred in all three, some portion of all
5 three blocks and that the block on EDG103 has been replaced
6 but that the block on 101010, the blocks on 1010102 have not
7 been replaced. Am I correct so far?

8 MR. STROUPE: Yes, that is correct. I guess we
9 would, as we've stated in our filing, we would disagree with
10 the general language that cracks have been found in the
11 cylinder lining area. We were a little more specific I
12 think in where we've located the actual cracks in our fil-
13 ing.

14 JUDGE BRENNER: Where were the actual cracks?

15 MR. STROUPE: Well, I believe as we say, they
16 occur between the stud hole and liner counterbore in the
17 101 and 102 blocks and in the 103 the cracks also extended
18 from between the stud holes.

19 JUDGE BRENNER: That refreshed my recollection a
20 little bit. If you could continue to do that I'd appreciate
21 it. Do you disagree with the allegation that cracks have
22 also been observed in the cam shaft galley area of the
23 block?

24 MR. STROUPE: No, we do not disagree with that
25 allegation. Again, I suppose Mr. Dynner wants to speak to

1 speak to this, but our position is that there's been no
2 specificity in this as to what affect the county is contend-
3 ing those cracks have for one thing.

4 At our meeting that we had with the county, the
5 indication was that the county thinks the cracks in 101-102
6 blocks may grow. At this point we don't have any calcula-
7 tions from the county. We don't have anything but the bare
8 indication that they believe the cracks may grow.

9 And they cite common instances so to speak. I
10 think there are about fifteen of them, starting on page 5
11 and going over through page 6 which appear to be mostly all
12 of them are either marine or non-nuclear situations and
13 basically we don't even know where the cracks occur from
14 the filing other than the county says the cylinder blocks
15 cracking are similar to that in the ^{Shoreham} / EDG's. with some
16 sixteen cylinders, V's, various configurations of engines.

17 And again, there's no attempt to relate these
18 crackings or so-called crackings to the Shorem engines. As
19 far as I can see there's no indication that these engines
20 aren't continuing to operate properly. I think their own
21 experts have said that marine situation is vastly different
22 from a nuclear standby situation with conditions being much
23 more severe in terms of operation.

24 And I believe the staff has said that. Dr.
25 Berlinger has indicated that and the P and L people to some

1 extent have indicated that. We don't see any explanation in
2 the specification as to what the county's belief is as to
3 how these cracks in the 101 and 102 blocks will affect the
4 operation of the engines.

5 MR. DYNNER: Well - I'm sorry. Have you com-
6 pleted?

7 MR. STROUPE: No specification as to that. We
8 believe that we are entitled to know specifically what the
9 county's contentions is, contentions are as to the cracks
10 that are in the 101 and 102 blocks and with regard to the
11 103 block and the cracks that occur in that block we don't
12 believe that that should be litigated because that block as
13 quite frankly as we all know has been replaced.

14 There is a replacement block with some improve-
15 ments on it. The county says that they believe this
16 replacement block has been, it a new design which is
17 unproven. Again, we don't really know what they mean by
18 that.

19 I think the situation is that this is not a new
20 design block. It's a block that is similar in many respects
21 to the blocks in the 101 and 102 engine. It has apparently
22 deeper stud bosses and is a different grade of material or
23 metal.

24 But other than that there are certainly very few
25 differences between the blocks. It's certainly not a block

1 which is unproven in DSR-48 engines because it is based on
2 the design that has operated for many years in various R-48
3 engines. We think we're entitled -

4 JUDGE BRENNER: Well, wait a minute. I thought
5 all those engines sufficiently different from ^{Shoreham} / so as
6 not to be comparable, so why rely on them for good experi-
7 ence when you don't want the county to rely on them for bad
8 experience?

9 MR. STROUPE: Well, the only way we would rely
10 upon engines, R-48's similar to the R-48 that is at Shorem
11 is in the situation where we've had data to indicate that
12 the conditions were as severe if not more severe than those
13 at Shorem. And if you don't have a failure in that situa-
14 tion then I think that's some pretty good evidence.

15 What the county is relying upon is situations
16 where we don't know what the operating conditions are,
17 whether they're less or different or what and only the
18 failure situation. So that's what we would to a certain
19 extent rely upon.

20 But as we look at these fifteen instances or I
21 guess there are fifteen blocks and ten instances, again,
22 other than the type of engine that is indicated, whether it
23 be a six cylinder, eight cylinder or a V of some sort,
24 that's all we know about it. And other than the fact that
25 by looking at what the county has set out, we can make a

1 fairly good determination of whether it's a marine situation
2 or whether it's some sort of municipale or generation of
3 electricity situation.

4 Other than that, we don't know where these cracks
5 are located. We don't know the conditions under which they
6 may have occurred and we don't even know whether the
7 engines are continuing to operate and perform reliably. I
8 would guess that most if not all of these engines are still
9 operating properly.

10 So again, we are faced with a situation where we
11 don't really know what the county intends to show by listing
12 all these common instances.

13 JUDGE BRENNER: Staying with the part A for the
14 moment of the cylinder blocks which is the Shorem instances
15 and not the common instances that you've also discussed,
16 can you remind me of what the R-5 design designation means?
17 Am I correct that those are changes made but still are to
18 the same basic engine, that is, the DSR-48 engine?

19 MR. STROUPE: Yes.

20 MR. DYNNER: Excuse me. I'm sorry. I didn't
21 quite get that.

22 JUDGE BRENNER: I was going to ask you the same
23 question so I'll do it now. I'm asking whether the R-5
24 designation is an engine where changes have been made in
25 different components, but yet nevertheless it's still the

1 DSR-48 engine, that is, it's an in-line 8TDI engine?

2 MR. DYNNER: Well, my understanding is that I
3 don't remember whether it's an in-line eight cylinder
4 engine, but it's my understanding that it's a completely
5 different design of engine. It's their new prototype. It
6 has different heads.

7 It's got a different block. It's got different,
8 many different features about it. It's designed to run at
9 a much higher horsepower per cylinder and it is their next,
10 it is a prototype now. It's my understanding it hasn't
11 come out yet to be sold to the public and it's again, if
12 your question is asked in the context of the block, I mean,
13 again we get into testimony.

14 We have testimony from TDI that the design of the
15 replacement cylinder block for engine 103, we refer to it as
16 that, was never tested in a DSR-48 engine at all. We have
17 testimony that there are many different features in that
18 design for that block and it depends on how you use the
19 words in the English language.

20 One side says, well, all they did is they added
21 some thickness in the material on top here and a different
22 grade of the metal and they made the holes a little bit
23 deeper here and there, but basically it's the same thing.
24 Another side's experts are going to say that those changes
25 are fundamental and important changes and that it's never

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1 been tested in a DSR-48 engine and now they're about to put
2 it in EDG 103 and it's an untested, new design.

3 It's a matter of evidence. Is it a new design?
4 Is it a modified design? We have evidence that that block
5 is cast, testimony that it's cast in one piece. So it's
6 not something that was rivitted on or welded on. So, a new
7 design, old design, I don't know what the answer is. It's
8 a question for evidence.

9 JUDGE BRENNER: All right. Well, your explanation
10 has helped and I asked the question imprecisely because I
11 wasn't sure of the situation and I could understand your
12 view on behalf of the county and I can understand Mr.
13 Stroupe's view on behalf of LILCO and still get the sense
14 of what it is and I was in part testing my own recollection
15 that components from the R-5 were sufficiently interchange-
16 able with the DSR-48 such that they could be applied to it.
17 For example, I think the new piston skirt design may have
18 come out of the R-5 if I remember correctly.

19 MR. STROUPE: Judge Brenner, I think that's pre-
20 cisely correct because I believe if memory serves me
21 properly, the AE piston was tested in the R-5 engine, so
22 I think the components are basically interchangeable.

23 JUDGE BRENNER: I think there's also something
24 about the cylinder heads also in that regard.

25 MR. DYNNER: But a different crank shaft. It's a

1 different - I think the connecting rod is - I mean -

2 JUDGE BRENNER: I understand your point. There's
3 enough differences where you say the block in an R-5 in the
4 county's view is not the same as testing it and proving it
5 in a DSR-48. And if the engines are sufficiently similar
6 to be adjudged as valid testing, you want to hear the
7 evidence as to why.

8 MR. DYNNER: Yes, sir.

9 JUDGE BRENNER: Or test the evidence as to why.

10 MR. STROUPE: Again, Judge Brenner, my problem
11 with that and LILCO's problem is they say the replacement
12 cylinder block for EDG-103 is a new design which is unproven
13 in DSR-48 diesels and has been inadequately tested. Now,
14 what is their view of adequate testing?

15 Again, we don't know. What do they mean by inade-
16 quate testing? We're left with the point of trying to come
17 up ourselves with something that we think will respond to
18 whatever they may in fact try to show which is a guessing
19 game.

20 MR. DYNNER: Judge Brenner, I'd just like to make
21 a real quick response to that because it goes to a number of
22 things which should be said. There isn't any guessing going
23 on here from LILCO's point of view. LILCO knows how long
24 the engine block has been tested and under what circum-
25 stances it's been tested.

1 They probably know a lot more about it than we do
2 because they've been working with TDI. So when we say it's
3 inadequately tested, what is inadequately tested? They know
4 exactly what the testing is that we say is inadequate.
5 When LILCO says it doesn't have any idea what we're talking
6 about about these 15 cylinder blocks, they have these docu-
7 ments.

8 Mr. Stroupe said so before. They've got all the
9 documents that we got from TDI and if they want to know
10 precisely what we're talking about all they have to do is
11 look at the documents which refer to the cylinder block
12 cracking in each of these instances because they have these
13 documents. I did not think that this June eleventh filing
14 was supposed to be filled up with appendices listing all
15 of those documents and reciting what they say because
16 LILCO knows that.

17 JUDGE BRENNER: Okay. I want to stay with those
18 kinds of arguments in the particulars of each instance as
19 we go through, not in the abstract. Let me just comment
20 also briefly, that that was well and articulately said, as
21 you often do, Mr. Dynner, from the point of view of your
22 client.

23 And the other side of the coin is, LILCO is
24 saying from their point of view that you're asking them to
25 disprove a negative in effect and while they may know a lot

1 about it, this technical substance, they don't know what it
2 is about it that the county wants to focus on and they
3 don't want to find out for the first time on the fourth day
4 of cross examination of their witness and we've been through
5 that on other issues in this hearing, also. So I think we
6 understand the competing interests and arguments.

7 MR. DYNNER: Yes, sir. We don't LILCO to dis-
8 prove. We want them to prove that the cylinder blocks are
9 okay. The burden of proof is on LILCO. And we're saying
10 that they've cracked all over the place. LILCO knows
11 precisely how they've cracked.

12 There are other instances of cracking. It's up
13 to them to prove that these blocks are reliable and satis-
14 factory and will not crack. And I think that's where the
15 burden of proof is, sir.

16 JUDGE BRENNER: You have changed the focus of
17 Mr. Stroupe's comment and I'm not going to let him respond,
18 but I recognize that you've changed the focus, that he was
19 talking about being surprised by what you meant by inade-
20 quately tested. He didn't say he know about the cracks.
21 Give us a moment.

22 (Off the record.)

23 JUDGE BRENNER: We can give you a ruling at this
24 time on 2A and B with respect to the cylinder blocks.
25 Briefly, we're going to admit A as an issue in controversy

1 and not admit B with the following explanation.

2 We think that as to A the county has stated a
3 sufficient bases both as to the subject matter of the conten-
4 tion and the nexus. The nexus is easy. It has occurred on
5 the ~~/~~ Shoreham diesel. The reason that it continues to be easy
6 is that even though the block on 103 is replaced, it is
7 still the same design block on 101 and 102 and therefore
8 it would be certainly pertinent to evaluating the continuing
9 to exist 101 and 102 blocks to hear about what happened with
10 the previous 103 block since it was the same design.

11 That would cover the first two sentences. To the
12 extent the location of the cracks may be different, we're
13 going to ignore that. We think LILCO certainly and sooner
14 if not later the county know where the cracks have occurred
15 in the cylinder blocks for the ~~/~~ Shoreham diesels.

16 And if it would assist things to simply reform the
17 first part of the first sentence to say cracks have occurred
18 on the cylinder blocks of all EDG's, we'll do that. And
19 if it turns out that it's the studal area of the blocks
20 LILCO already knows that and the county if they put in
21 testimony that erroneously describes the areas, then their
22 witnesses will be in quick trouble, obviously, if they don't
23 have their facts straight and vice versa, same for LILCO.

24 As to the last sentence, we'll leave it in. We
25 think the county could have said more about it, but in

1 evaluating, that's going to be true about everything and we
2 have to evaluate when enough has been said to determine
3 whether there is adequate bases and specificity and we think
4 in this case the allegation that this is a block that has
5 not been extensively if at all utilized in the DSR-48 diesel
6 is sufficient and LILCO can put on proof showing why in
7 LILCO's view the test, why the testing done be it in the
8 R-5 or any other means, is adequate and we'll hear on the
9 merits the applicability of the testing to the present in-
10 tended useage and so on.

11 We do recognize the possibility of some element
12 of surprise as to the last sentence because to some extent
13 it is asking LILCO to disprove a negative. LILCO does have
14 the burden of proof. We are giving serious consideration
15 to requiring that the county file its testimony first and
16 we will come back to that at the end and judge that based
17 on the nature of the contentions we have admitted.

18 But by admitting contention A, particularly with
19 respect to the last sentence, that would militate in favor
20 of requiring the county to file its testimony first. If
21 we did that, though, we would not strictly follow the 7B
22 procedure.

23 We would still require the staff and LILCO to
24 file their testimony prior to the cross examination of the
25 county's testimony. So we won't have a hearing and then a

1 hiatus and then come back. There are many reasons for that.

2 In the first case, we don't think it would be as
3 necessary here given the comparative concedely broad scope
4 of 7B as opposed to the degree of alleged broad scope of
5 some of these issues which we might admit. In addition, we
6 have a luxury there of being able to fill in the hearing
7 with other issues and that's no longer the case so it's a
8 practicality, also.

9 And unless somebody wanted to request that further
10 relief, we wouldn't apply it on our own, but we are giving
11 of requiring the county to file first and the state if it
12 files testimony. But we'll come back to that at the end
13 and we want to evaluate that in context of all the issues.

14 As to B, we haven't belabored or permitted much of
15 a discussion on it because we don't think it's necessary
16 given our ruling on B. Let me start out by saying that B
17 is an example of where the county could have and should have
18 said more about the nexus of the occurrences on the cylinder
19 blocks in these other engines to Shoreham.

20 Now, the county did begin to make that showing,
21 I might say, in the last paragraph on page 6. However, we
22 would not admit this in any event as a contention in and of
23 itself. If the county believes that some of these occur-
24 rances are relevant to the cracking of the blocks in the 101
25 and 102 engines and may continue to be relevant to the

1 replacement block on the 103 engine, the county's experts
2 can rely on some of these other instances in putting to-
3 gether their proof.

4 And that would be another reason for requiring the
5 county to file its testimony first. And then to the extent
6 the county used some of these instances in its testimony,
7 the LILCO would be on notice that the county has put forth
8 some evidence as to why they think the instances on these
9 other cylinder blocks are probative of our decisions on the
10 merits of the quality and adequacy of the Shorem cylinder
11 blocks.

12 Now, LILCO still has the burden of proof and it
13 might be that the county by cross examination may attempt to
14 go into some of these. We're not going to preclude that
15 absolutely if it's not in the county's testimony, but we
16 will judge the extent to which we will allow relatively
17 collateral inquiries into other instances by cross examina-
18 tion of, cross examination taken by the county in light of
19 what the county's own experts have seen fit to put forward
20 in their own direct evidence.

21 Now, the obvious balance is that the county has
22 quite a bit in its testimony on these other instances,
23 enough to show the apparent relevance, then we'd be more
24 willing to allow the county to go into it in some detail on
25 cross examination of LILCO or staff witnesses, even if

1 LILCO and the staff chose not to discuss it very much in the
2 direct testimony, notwithstanding the notice they will have
3 had of the discussion of it in the county's testimony if we
4 follow the sequential filing. Mr. Dynner?

5 MR. DYNNER: Judge Brenner, if I could just ask
6 two points on this. Number one, I want the Board to be
7 aware of the fact that as I mentioned earlier, in the case
8 of United States Steel Corporation and the State of Alaska,
9 we could not get additional information because they said
10 they could only reply in the event we could get a subpoena.

11 We do know that in the case of U.S. Steel we have
12 a document that indicates that there was significant from
13 the American Bureau of Shipping about the cracks in the
14 engine block on the GOTT and the propagation of those
15 cracks, but we would like to find out more about it and we
16 can't. In the case of -

17 JUDGE BRENNER: We'll come back to your request
18 for additional information which I think is your Roman IV
19 at the end.

20 MR. DYNNER: Yes, and I just want to point out to
21 the Board there were those two cases and then we've been
22 unable to get the information from Saudi Arabia, the over-
23 seas people. Second point, here we have to list all these
24 instances of where there have been cracks or defects that
25 we're going to rely on. Is LILCO going to have to list the

1 instances that it's going to rely on to say that the opera-
2 ting history has been okay?

3 JUDGE BRENNER: No. You'll see it in the testi-
4 mony where you'll have to cross examine them. It's a dif-
5 ferent situation because you have to come forward with the
6 instances that you're going to use to show there's something
7 wrong and we're evaluating in terms of bases and specificity.

8 In this case we said your subpart A has sufficient
9 bases and specificity to admit although in an area where at
10 least I am willing to recognize that things are not always
11 so clear cut, I gave you some indication of the matter of
12 degree and it varied between the first two sentences and the
13 last sentence. Nevertheless, we did admit all of A.

14 We're not admitting B as a separate contention and
15 we're not requiring the county to say what instances it's
16 relying on, which of these instances it's relying on. And
17 to the extent relevant to A, you can put what you think is
18 relevant in the contention, in the testimony I mean, I'm
19 sorry.

20 But we're worried about the element of disproving
21 the negative in the last sentence and that, and we'll
22 evaluate at the end what we have admitted and not admitted.
23 But that would militate in favor of having the county file
24 its testimony first, recognizing that LILCO still has the
25 burden of proof, at least this will reinforce the equities

1 of the situation in our view where the bases or more parti-
2 cularly the specificity is not as strong as we would like
3 but where we think it's unfair to require the county to have
4 more specificity in terms of meeting admissibility require-
5 ments, but nevertheless being anxious to avoid surprise by
6 cross examination.

7 And we're taking into account that the county
8 throughout this has stated that they have experts who have
9 certain beliefs and have looked at things and we're not
10 dealing with a pro se intervener coming in saying I want to
11 talk about A, B and C. And the county, it's reasonable to
12 charge the county to have its experts support what Counsel
13 has been saying can be supported in the direct written
14 testimony because when you start talking about other
15 instances, the inquiry can quickly become collateral and
16 we'll judge whether it's collateral, somewhat relevant, but
17 too collateral to go into in terms of the, you know the
18 obvious balance, the time spent on it versus the probative
19 value towards deciding the issue on the merits and we'll
20 make that judgment in part based on what's in the county's
21 testimony, direct written testimony.

22 MR. STROUPE: Judge Brenner, just to respond to
23 one of Mr. Dynner's comments about whether the Board is
24 going to make LILCO specify instances that they're going to
25 enlarge upon, we'd point out lest anyone feel sorry for

1 Suffolk County and Mr. Dynner that he has in his possession
2 and has had for some time numerous, lengthy, well documented
3 reports by FFA and, FAA and other people which goes into
4 much detail on the various things that we are in fact going
5 to rely upon. And I would be a fool if I told you anything
6 else, but that to a great portion our testimony will be
7 based on those reports and I think Mr. Dynner certainly
8 knows that.

9 JUDGE BRENNER: That's a correct statement in our
10 view and I didn't want to belabor discussing the discovery
11 and so on, but this is a case where beyond the discovery
12 that the county chose to ask for, there is a plethora of
13 reports and documents and so on. The county is still free
14 to allege with bases and specificity, in -- and nexus what
15 they don't like about those reports or what they think is
16 still deficient in those reports and that's what we're
17 still looking at in terms of the issues.

18 But I don't think the county can claim surprise
19 very easily as to what elements LILCO believes supports the
20 conclusion, even though the county is still free to point
21 out why it believes those elements in fact to do adequately
22 support the conclusions. Let's turn to item 3 which would
23 be the cylinder heads. Similar to our discussion on the
24 old crank shaft, why should we talk about the old cylinder
25 heads as an issue in itself, Mr. Dynner?

1 MR. DYNNER: Nothing has changed, to my knowledge,
2 with respect to the admission and specificity concerning
3 the cylinder heads now and the contention concerning the
4 cylinder heads which was originally admitted by the Board.
5 The Board at that time, as you'll recall, we were about to
6 go to litigation on the issue of the cylinder heads with
7 all parties on the Board knowing that by that time LILCO had
8 changed the cylinder heads, including a group of heads that
9 had been manufactured later on.

10 JUDGE BRENNER: Actually there was some disagree-
11 ment or uncertainty as I recall as to whether or not LILCO
12 would in fact make the changes in the cylinder heads before
13 they went to litigation on it and we pointed out somethings
14 that would be pertinent if the heads were not changed and
15 somethings that might remain pertinent if the things were
16 changed.

17 MR. DYNNER: Well, they have changed the heads,
18 Judge Brenner by that time I believe and I think that our
19 position was and our testimony would have shown what I'm
20 about to say now which is that -

21 JUDGE BRENNER: They didn't change the heads at
22 the time we admitted the contention and that's my recollec-
23 tion but we talked about certain -

24 MR. DYNNER: Okay. But they did subsequently -

25 JUDGE BRENNER: Yes.

1 MR. DYNNER: And I think in subsequent discussions
2 and it was --.

3 JUDGE BRENNER: And then the adjustments that I
4 mentioned came into play. Go ahead.

5 MR. DYNNER: The design, the basic design of the
6 head as we've said is the same and I don't think that's
7 contested by anybody. What LILCO has been arguing is that
8 there were changes in the way the heads are manufactured, in
9 the processes and the gates, the risers and there were im-
10 provements in the QA processes under which the heads were
11 inspected.

12 JUDGE BRENNER: But, I'm sorry, you see, what
13 stimulated my comment was, let me say you're telling me
14 things I already know -

15 MR. DYNNER: All right.

16 JUDGE BRENNER: And what stimulated my comment
17 was the third sentence of A wherein you say you don't want
18 to litigate them to the extent the other party cried mea
19 culpa.

20 MR. DYNNER: Well, what I'm saying is, again, this
21 is I think part of the enditia of the confusion as to what
22 you meant by instances. What I was trying to say there is
23 that we could have looked many, many instances of cracked
24 cylinder heads as in fact for example FAA did in its report
25 on the cylinder heads where it's quite clear that there were

1 very heavy problems with cylinder head cracking at least in
2 the period for heads that were manufactured prior to 1978.

3 There was some problem they indicated from '78 to
4 '80 and they said that the post-1980 heads didn't have that
5 problem, by that time that the problems had been solved.
6 We contend that that's not the case, that these are essen-
7 tially the same heads and design, that the changes made with
8 respect to manufacturing processes has not been effective to
9 solve the problems and that the changes made if any in the
10 inspection of the quality of the heads have not been effec-
11 tive.

12 And that I think is the same position we took
13 before. You'll recall that one of the big issues in the
14 earlier discussion was whether the barring over procedure
15 that had been proposed by LILCO would be sufficient and our
16 experts took the position and filed affidavits in the
17 summary disposition proceedings on the cylinder head litiga-
18 tion that showed that we believed that barring over would
19 not be sufficient. Now that we have some contrasting -

20 JUDGE BRENNER: That was, let me just make sure
21 we're on the same wavelength. We've issued several desi-
22 sions relevant to diesels and I think I recall some of them
23 but I'm sure you can help me out when I recall some incom-
24 pletely or incorrectly, but our statements on the barring
25 over procedure which I think was on the June twenty-second

1 or June twenty-third 1983, I'm sorry. It was in the order
2 after that.

3 It was in the order denying summary disposition
4 when we discussed that again which I guess might have been
5 July or August of '83. And in denying the summary disposi-
6 tion we said that they hadn't, well, it was in the first
7 instance, in the June order, we set forth what types of
8 things LILCO might have to show in order to be able to re-
9 ceive a license depending on the diesel prior to the litiga-
10 tion of the adequacy of the replacement cylinder heads or
11 in fact it would also be pertinent if they wanted to go to
12 operation with some of the old heads still in.

13 And what we said was their surveillance procedures
14 which LILCO asserted would give them assurance of being able
15 to catch any problems that might occur could be looked at as
16 providing the assurance not that no problems would occur,
17 but that if problems occurred they'd be caught before any-
18 thing adverse to safety happened and that's why that bar-
19 ring over procedure was discussed. But we're passed that
20 now because now -

21 MR. DYNNER: I don't think we are -

22 JUDGE BRENNER: All right. Go ahead.

23 MR. DYNNER: Because we've got a contradictory
24 views testimony from FAA and LILCO as to what the recom-
25 mendations are. We have testimony from Dr. Wells that even

1 with the, number one, they've only looked at in terms of the
2 operating history of the post-1980 head, the sixteen cylin-
3 der heads at ^{Shoreham} / and then they looked at some brand new
4 heads that had never been used at Cataba and that's the
5 only operating history analysis that they've done. Dr.
6 Wells testified in his deposition -

7 JUDGE BRENNER: Wait. Let me stop you there be-
8 cause you're talking about the dispute as to whether the
9 post-1980 heads have solved -

10 MR. DYNNER: I'm going on to your next point. The
11 next thing Dr. Wells said in his deposition was that FAA
12 would recommend that all cylinder heads of whatever vintage
13 must be subjected to the surveillance of the barring over
14 procedure because they could not state with any certainty
15 that cracking would not occur.

16 JUDGE BRENNER: Where do you have that in your
17 issues set forth here?

18 MR. DYNNER: I don't. I think these are matters
19 of evidence. I don't see where, you know, LILCO's -
20 there's a report that was issued subsequently where appar-
21 ently they changed their mind and they say that you don't
22 have to bar or someplace it says you don't have to bar over
23 the post 1980 heads but you do with the 1978 to 1980 heads.

24 I mean, all of these are complex matters of
25 evidence and proof and we're going to try to show that

1 isn't any real change in these heads and that they still
2 have the same problem they've always had in terms of design,
3 that they had problems as we said before with cooling, that
4 they have problems with the fire deck and the thicknesses and
5 variations in manufacture of the heads, that the heads are
6 not capable of withstanding the firing pressures and opera-
7 ting pressures that they're required to operate with and
8 that the ballgame isn't any different and that this barring
9 over procedure is not sufficient to insure that there won't
10 be a catastrophic failure at the time of an automatic
11 start up.

12 I think that, you know, all of that hasn't
13 changed by anything that's happened since the crank shaft
14 broke except that FAA has done a study it could not do as
15 you will recall, a finite element analysis -

16 JUDGE BRENNER: Okay. Wait. Tell me what you
17 meant by your third sentence again.

18 MR. DYNNER: To the extent LILCO and FAA accept-
19 ing inadequate design and/or manufacture of the pre-1981
20 cylinder heads, those matters will not be litigated. That
21 is, if they're willing to stipulate that there were, that
22 there was excessive cracking of the cylinder heads due to
23 poor design or poor manufacturing, then we won't litigate
24 the issue with respect to that vintage head.

25 That will be, I mean, FAA, as I read the FAA

1 report, basically says at least with respect to the '78 and
2 earlier heads there were significant problems. And we're
3 saying fine, if we can stipulate that we won't have to go
4 through and list all of the instances of failures and
5 cracking of the heads of those vintages because they're
6 accepted as having occurred.

7 Now they say the problem's been solved, so we're
8 going to litigate the issue of did they really solve the
9 problem or not.

10 JUDGE BRENNER: All right. My opening question
11 and maybe I didn't ask it well it why is not that item
12 analogous to what we decided, I think with your agreement
13 as to item A of item 1, that is the crank shaft, that it's
14 not an end in itself and it's not pertinent as an end in
15 itself but to the extent experts want to use the pre-1981
16 cylinder head experience in arguing either that the new
17 heads of allegedly better quality are in fact no better or
18 in fact are better and the comparison depending on which
19 expert is putting on the testimony may go one way or the
20 other.

21 That would be the relevance. That was my first
22 question.

23 MR. DYNNER: Okay. There's -

24 MR. STROUPE: That's exactly the way it ought to
25 be.

1 JUDGE BRENNER: Wait, let me say with Mr. Dynner.
2 I'll give you a chance.

3 MR. DYNNER: I'll give you two reasons why it's
4 different. Number one, the design of the cylinder head
5 hasn't changed. The design of the crank shaft has changed
6 radically. Number two, TDI manufactured the cylinder
7 heads. TDI did not manufacture the crank shaft and there-
8 fore there's no issue and we haven't raised an issue on the
9 crank shafts manufactured by Krupp as to manufacturing
10 quality and how the issue of the quality or the lack of
11 quality in manufacturer enters into and exacerbates the
12 issue of the inadequacies of the design.

13 JUDGE BRENNER: Okay.

14 MR. DYNNER: That's why I think that it's a very
15 different situation from the replacement crank shafts.

16 JUDGE BRENNER: Am I correct, however, that it's
17 still not relevant as an end in itself, only as it may be
18 relevant to the adequacy of the allegedly improved cylinder
19 heads?

20 MR. DYNNER: It's the only, let me put it this
21 way because I'm confused I guess a bit as to what we really
22 mean to say here as part of our written contention and what
23 we're able to allude to to bring in evidence about and to
24 put on the record in connection with the overall litigation.

25 JUDGE BRENNER: I don't want to make a finding

1 per se. I don't think we have to make a finding per se on,
 2 after any merit, that the old heads were good or bad as an
 3 end in itself. Now, in the course of making a finding, if
 4 and when we first admit and then litigate an issue as to the
 5 adequacy of the new heads, as to whether they're adequate or
 6 not, some of the support for our finding, whatever the
 7 finding would be, would come from any evidence put on that
 8 talked about the experience with the pre-1980 head and
 9 showed the relvance.

10 (End of tape.)

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1 MR. DYNNER: I guess my problem is that maybe it
2 was semantics. If --

3 JUDGE BRENNER: I'm not criticizing you for some of
4 the language.

5 MR. DYNNER: No, I meant --

6 JUDGE BRENNER: By putting it in, you get this
7 discussion, and that may or may not help your case
8 later.

9 But I'm just trying to understand the purpose of
10 why you chose to put it in.

11 MR. DYNNER: Okay. As I read your February 22nd
12 ruling, we made a comment there that we would--the
13 proof, at one point you said that proof would be
14 limited to the instances that we list.

15 So I listed this as an instance, if it was in
16 dispute. Now if what we're saying here is that you
17 don't want to name this as an issue to be litigated,
18 that is, whether or not the pre-1981 heads had an
19 operating history of cracking, that nevertheless, we
20 can introduce evidence and put on the record what
21 happened with those heads, what was done with them and
22 why it's relevant.

23 Because it's the only operating evidence we've got.
24 Then I guess we're saying the same thing but with
25 different words.

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1 JUDGE BRENNER: Except that you won't be able to
2 put that evidence on as an end in itself. You're going
3 to have to tie it to what you think is right or wrong,
4 presumably you wrong, and LILCO right about the new
5 heads.

6 How new are they, you know? You're saying they're
7 not very new. LILCO will say, "Well, they're new in
8 terms of what was important to make new."

9 MR. DYNNER: If I can show that the design is the
10 same as the pre-1981 heads, effectively, and then go
11 and use this comparison, the manufacturing processes
12 that were used in the 1981 heads in the pre- and post-
13 1980 heads, and compare those and show what those
14 changes were, then I can show what I need to show to
15 convince you that the heads that are currently in the
16 engines are no good.

17 And I guess that's my answer. I don't much care
18 whether --

19 JUDGE BRENNER: Okay.

20 MR. DYNNER: -- they're stated separately or not.
21 I'm not trying to litigate something that's past
22 history.

23 I'm only trying to litigate something that is
24 current history, but I don't want to be barred from
25 bringing the things that are extremely relevant, if not

1 dispositive, of the current engines.

2 JUDGE BRENNER: In making these rulings, we're
3 trying to give guidance and in fact orders on what's
4 relevant and current and so on, but we can't do that as
5 to each and every thing, obviously.

6 For example, in passing, you mentioned
7 manufacturing processes. I don't know offhand how
8 relevant that's going to be.

9 It depends, a, on whether there's an issue as to
10 cylinder heads at all, if admitted, and then, b, if
11 there is one admitted, what your experts can show or
12 what you can elicit on cross-examination as to the
13 causes of past problems.

14 So we certainly can't rule on relevance as to each
15 and every thing, and things are going to come up, and
16 we'll have to make feature rulings probably also in the
17 course of the evidentiary hearing or in the course of
18 motions to strike testimony, or so on.

19 But you did say, in passing, we told you to list
20 instances, and you want to list this instance. That's
21 a nice use of the word "instance," but in the fourth
22 sentence, you say, "Hey, we've got a lot of instances
23 which we're not going to list here."

24 What's the instances?

25 MR. DYNNER: Instances, as I had understood you to

1 say in your order and interpreting the report, as I
2 said before when I quoted from that portion, what
3 particular happenings or occurrences of failure of
4 heads, of cracking of heads, and we go and list a bunch
5 of them.

6 JUDGE BRENNER: Why don't you list them? You
7 were on notice that you had to list things that you
8 would depend on.

9 If nothing else was clear, that was clear.

10 MR. DYNNER: Because --

11 JUDGE BRENNER: There's a debate as to how much you
12 had to say about each one, but you had to at least list
13 them.

14 MR. DYNNER: All right. I could say mea culpa,
15 except for the fact that the reason I didn't list them
16 is, I thought that LILCO and FAA had accepted that
17 proposition and was hoping that as you suggested, that
18 the parties could narrow the issues by reaching
19 stipulations and agreements on these.

20 It didn't work on Tuesday. And I didn't list them.
21 So I was wrong in that record.

22 JUDGE BRENNER: But it's open-ended now, even if we
23 admit A as written or even if we modified it along the
24 lines of the conversation we've had.

25 MR. DYNNER: If LILCO's going to take the position

1 that whatever went on with the pre-1981 heads is
2 completely irrelevant and that they will not stipulate
3 that any of the pre-1981 heads suffered cracking
4 problems and that there were instances of cracking.

5 Obviously I have to list them. I didn't find that
6 out until Tuesday, and I'm not making excuses, but I'm
7 just telling you what the facts are.

8 JUDGE BRENNER: That's not a full sequetor. They
9 could be taking the position, and yes, some of those
10 things might be relevant, but they don't want to be
11 surprised as to what instances you're going to talk
12 about, especially since you say you have numerous
13 instances but haven't listed them.

14 And the purposes of getting the specification was
15 as to that element of surprise, as well as judging the
16 basis of specificity, the contention.

17 So they have problems to their prejudice by that
18 sentence in your contention, even if they don't take
19 that absolute position that you just stated.

20 MR. DYNNER: Well, if LILCO took the position they
21 took on July 3rd, then I should list the instances so
22 they can know what we're talking about.

23 You're right.

24 JUDGE BRENNER: But you should list them even if
25 they don't take that position. That's my point.

1 MR. DYNNER: All right. Fine. I'm sorry. I was
2 trying to shorten up this thing, and I see I made a big
3 mistake.

4 JUDGE BRENNER: You didn't shorten it up on the
5 other ones we chose to list the instances.

6 MR. DYNNER: Well --

7 JUDGE BRENNER: Okay.

8 MR. DYNNER: Yes, there would have been a
9 considerable weight to this matter, but not necessarily
10 substance that would be commensurate with the weight.

11 JUDGE BRENNER: Let me take B, then I'll go to C,
12 and then I'll turn to the applicant. Why is B relevant
13 to an allegation that the cylinder heads at Shoreham
14 are of improper quality?

15 MR. DYNNER: Well, what we're trying to show in
16 that instance is that in fact, the changes that were
17 made in the product manufacturing processes, namely
18 changes in the gates and the risers and the sand that's
19 used, etc., have not resulted in a product that comes
20 out of that process that's reliable.

21 But there are exceptionally high rates that are
22 caught. What we hope to do by evidence in the trial is
23 to show that where you have--and you do have, in some
24 of these cases, I think, the evidence will show,
25 rejection rates of 60 or 70%, where you get cylinder

1 heads being made under these allegedly marvelous
2 casting processes where you've got to repair basically
3 almost every one of them that's sent out to a customer
4 before it leaves the plant because there are casting
5 defects.

47
6 What you're then doing, really, is relying on your
7 QA to catch everything, and the QA is not reliable to
8 catch everything.

9 And so you're really gambling when you send the
10 product out.

11 You've caught X amount. You can use it, a clever
12 order can use it the other way around, and say, "Well,
13 this just shows how good their QA is."

14 JUDGE BRENNER: I don't think you have to be real
15 clever to think of that argument.

16 MR. DYNNER: We'll address that argument, because
17 that argument goes to whether a QA really was that
18 competent.

19 We think we've got evidence, including evidence
20 from staff, in depositions that indicates that the
21 reading of that bit of evidence in this instance should
22 be the way I first described it, and not the way a
23 clever one would describe it.

24 JUDGE BRENNER: I can understand your proposition
25 in the abstract, and we certainly heard it in other

1 contexts than this hearing, and I've heard it in other
2 hearings that you put too much pressure on QA, that's
3 not the way to go, especially when you're talking about
4 many multitudes of items, piping throughout a plant, or
5 whatever.

6 But when you're talking about a finite population
7 of 24 cylinder heads plus a few replacements, isn't
8 that a different story?

9 And why should I worry about the allegedly
10 improper heads that TDI might be selling to other
11 customers as opposed to worrying about the finite
12 population of 24 cylinder heads plus a few replacments
13 that now or in the future that the Shoreham machines
14 might use?

15 MR. DYNNER: Because what they do on their--number
16 one, it goes, as I said before, to the manufacturing
17 process under which the heads at Shoreham were
18 produced.

19 Number two, it goes to what your faith is in the
20 inspection process. What should be looked at? Which
21 part of the heads did you look at?

22 Can you find everything when you look at it in your
23 inspection? What kind of inspections have they
24 actually carried out on the heads will be revealed,
25 presumably, by the DRQR report that we just got?

1 MR. DYNNER: I guess my problem is that maybe it
2 was semantics. If --

3 JUDGE BRENNER: I'm not criticizing you for some of
4 the language.

5 MR. DYNNER: No, I meant --

6 JUDGE BRENNER: By putting it in, you get this
7 discussion, and that may or may not help your case
8 later.

9 But I'm just trying to understand the purpose of
10 why you chose to put it in.

11 MR. DYNNER: Okay. As I read your February 22nd
12 ruling, we made a comment there that we would--the
13 proof, at one point you said that proof would be
14 limited to the instances that we list.

15 So I listed this as an instance, if it was in
16 dispute. Now if what we're saying here is that you
17 don't want to name this as an issue to be litigated,
18 that is, whether or not the pre-1981 heads had an
19 operating history of cracking, that nevertheless, we
20 can introduce evidence and put on the record what
21 happened with those heads, what was done with them and
22 why it's relevant.

23 Because it's the only operating evidence we've got.
24 Then I guess we're saying the same thing but with
25 different words.

1 cylinder head that is well-designed, that you generally
2 will have a manufacturing--if your manufacturing
3 process is good, it makes it easier to come out with
4 fewer rejects.

5 If you've got a design that's very difficult, its
6 tolerances are suspect, it may be that the design can't
7 be done properly, that the design is such that the
8 product can't be manufactured properly.

9 JUDGE BRENNER: Your experts believe that's true
10 as a general proposition?

11 MR. DYNNER: They believe it's true with respect to
12 these cylinder heads.

13 That's why you will note that this one is connected
14 both to the manufacturing process and the design
15 process, because we believe in where you got that kind
16 of rejection rate on a casting, given the casting
17 processes used, it's a reflection on the inadequacy of
18 the design.

19 You can't make it right, because it's not designed
20 right.

21 JUDGE BRENNER: All right. Let me turn to LILCO as
22 to anything they want to add on A and B and after that,
23 have a question about C, of LILCO first.

24 But starting off, as to A, why doesn't the county
25 at least in part of A have an admissible contention

1 that the replacement cylinder heads are of inadequate
2 design in manufacturing quality to withstand the
3 thermal and mechanical loads based on the fact that
4 there have been these problems with the so-called old
5 heads?

6 But they're old only in the sense that allegedly
7 some improvements have been made. They're really not a
8 totally different design.

9 And we've had some discussion of this a year ago,
10 also.

11 MR. STROUPE: Let me start off by saying further
12 that LILCO's decision, as far as the cylinder heads go,
13 we have the improved cylinder head.

14 We have the post-1980 cylinder head. And we think
15 obviously that cylinder head has to be litigated, those
16 are the cylinder heads that should be litigated.

17 Now the county says the cylinder heads have been
18 adequately designed, manufacturing quality that would
19 withstand satisfactory thermal and mechanical loads
20 during operation.

21 The problem we have with that is, it doesn't tell
22 us why they're inadequate or how they're inadequate.

23 It's a very broad-brushed statement, as is most of
24 the county's contentions, designed to let them get into
25 evidence apparently anything that they feel fit to

1 bring into evidence, to pot shot at these cylinder
2 heads.

3 I think the fact that they have tried to draw in
4 the 1980--the proposed pre-1980 cylinder heads is a
5 prime example of that.

6 I think Mr. Dynner, in his statements this
7 afternoon, has given a vivid illustration of the
8 problem we have with this.

9 He talked about the inconsistencies barring other
10 procedures. Where in this contention does it talk
11 about barring other procedures?

12 I don't find it anywhere in it. He says that his
13 experts have told him that when you have an adequate
14 design, you tend to have more manufacturing problems.

15 They may have told him that; they certainly didn't
16 tell me that. I depose his experts.

17 So we have another situation, I think, where the
18 things that Mr. Dynner is saying himself are exactly
19 the things that I think the board wanted to attempt to
20 avoid, by requiring this specificity, to give parties,
21 to give the board an opportunity to know precisely what
22 was going to be litigated in the hearing on this
23 matter.

24 Now when we sat down with Mr. Dynner in our July
25 meeting, he did give us a little more specificity. He

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1 said that they believe the heads will crack. We
2 weren't told why.

3 They don't believe that the heads cool
4 sufficiently. And again, we weren't given any
5 explanation as to why.

6 They don't believe they're strong enough. We
7 weren't given an explanation as to why.

8 Casting is not correct in these heads. Again, we
9 weren't given any indication why.

10 And I might add we depose their expert, Mr.
11 Anderson, who is a metallurgist, who supposedly is
12 going to be the guy testifying on this.

13 He could tell us what was wrong, and they say there
14 is no redesign of the heads, ergo, it must be defect.

15 We don't think that is the kind of specificity that
16 the parties are entitled to and the board is entitled
17 to.

18 The fact that cylinder heads produced since 1980
19 have had a high rejection rate, I don't know that it's
20 60 or 70%, or about that.

21 Quite frankly, I do not know what it is. As you
22 have said, it would not take a very clever person to
23 ascertain that that could be pretty good evidence of
24 the effective QA program.

25 It also fails to take into account that LILCO had

1 its own program, that LILCO did hydrostatic testing on
2 these cylinder heads.

3 And they've done liquid dye testing. And frankly,
4 we do not think that that for B, that should be an
5 issue.

6 If anything, it relates to a matter of evidentiary
7 proof. In other words, the county can choose to
8 attempt to admit it into evidence or not to bring it
9 into evidence.

10 We want to litigate the cylinder heads as they are
11 on the Shoreham EDG, the 24 cylinder heads that are
12 present on that generator.

13 We don't think whatever happened to pre-1980 heads
14 has any effect on those heads as they sit there. They
15 were manufactured under different standards.

16 And in addition to that, we conducted a severe QA
17 analysis of those heads.

18 But when you come down to the bottom line on both A
19 and B, particularly A, and you listen to the various
20 things that Mr. Dynner had pointed out to the board
21 this afternoon, you have a very difficult--and I say
22 impossible--time determining if those kinds of things
23 are the kinds of things that would be litigated if
24 potentially admitted to the NRC.

25 And if that's the case, then I would think it would

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1 be safe to assume that there are many other instances,
2 which Mr. Dynner tends to use as a bases for these
3 broad contentions that we think we're entitled to know
4 about.

5 I think if the contention is admitted as it is,
6 we're going into the collateral issues, and we're going
7 to be into situations where there's going to have to be
8 some periods of time for the parties to assess the
9 particular situation and get back to this, because we
10 can't anticipate everything that Mr. Dynner would have
11 to come under this very, very broad and general
12 contention.

13 Why can't the county tell us what's wrong with this
14 assignment?

15 Why can't the county tell us what's wrong with the
16 castings?

17 Why can't the county tell us what thermal and
18 mechanical loads they think these heads out to be able
19 to expand?

20 I think it's time that they specified exactly what
21 they want. We're not saying we're unwilling to
22 litigate this.

23 All we're saying is that if we're going to litigate
24 this, we should be able to do it in an informed manner,
25 so that we know exactly what the county wants from us.

1 I don't think we have that, that contention.

2 JUDGE BRENNER: On C, let me --

3 MR. STROUPE: Do you want me to address the common
4 now?

5 JUDGE BRENNER: The C common or the B common? I
6 think Judge Morris has some questions on A and B.

7 JUDGE MORRIS: Mr. Dynner, with respect to A and
8 the last sentence thereof, did the county have in mind
9 some specific thermal and mechanical loads?

10 MR. DYNNER: Yes, Judge Brenner--I'm sorry, Judge
11 Morris. The specific loads that we had in mind were
12 both at full load and at overload.

13 Part of this goes to the issue of the way in which
14 analyses were performed by FAA and the piston firing
15 pressure that was assumed, which we will show as
16 incorrect.

17 What we're saying about the head, and I think that,
18 you know, all this was done ad nauseam in the
19 deposition, so contrary to this idea of litigating in
20 a vacuum, there's nothing really new here.

21 What we said was that a head, cylinder head, is
22 subject to both thermal stresses and mechanical
23 stresses.

24 Where you make a number, for example, the fire deck
25 of a wall, thinner, you increase its ability to cool,

1 and therefore withstand the thermal stress, you
2 decrease its ability to withstand the mechanical
3 stress.

4 We increase the thickness, just the opposite
5 occurs. What we said about these heads is that you
6 have a variation in thicknesses in the fire deck which
7 are inadequate and unpredictable.

8 You have support problems, and we're using the
9 loads at full rated 3500 and 3900, which are the
10 standards we've used throughout, because those are the
11 performance specification standards in the FSAR.

12 We have talked about, in the depositions,
13 therefore, the dimensions of the fire deck and the
14 water deck as being inconsistent.

15 And we've talked about stress risers being created
16 just for the geometry. We've pointed to the cracking
17 problems that have occurred previously, which have
18 occurred because of casting defects, subject to and
19 subjected to the kinds of stresses that this overrated
20 engine puts on them.

21 JUDGE MORRIS: I think you're going beyond the
22 intent of my question.

23 MR. DYNNER: I'm sorry.

24 JUDGE MORRIS: I was interested in specific
25 mechanical or thermal loads on parts of the cylinder

1 heads.

2 MR. DYNNER: As I recall, the maximum load that was
3 calculated by FAA was 1680 psi firing pressure, which
4 is the load that would be put on the head as their
5 maximum.

6 We have produced evidence that the firing pressures --

7 JUDGE MORRIS: Excuse me.

8 MR. DYNNER: On mechanical loads --

9 JUDGE MORRIS: Wait a minute. Let me interrupt
10 you. You're saying that that over-pressure leads to
11 over-stressing of parts of the cylinder heads?

12 MR. DYNNER: We are saying that that--we are saying
13 that, number one, yes, it may, that it may well.

14 JUDGE MORRIS: Well, is this speculative, or do you
15 have some calculations that show this is true?

16 MR. DYNNER: Well, we know that there heads have
17 cracked when they've been running at firing pressures
18 of that.

19 And we know that the firing pressures in fact may
20 be greater than that, that an over-load of firing
21 pressures are greater than 1680 psi.

22 And therefore, there is an understatement of the
23 thermal and mechanical pressures to which the heads are
24 subjected.

25 MR. STROUPE: I would like to inject that I don't

1 believe Mr. Dynner had any evidence. At least I'm not
2 aware of any heads that are presently on EDG's that
3 have cracked.

4 MR. DYNNER: No, I don't know that they have.
5 That's correct. That's 16 heads. So that you know,
6 our experts have done an analysis of the design,
7 they've reached their own conclusions about the
8 adequacy of the design, about the adequacy of the
9 manufacturer.

10 They've looked at the history of these heads of the
11 same design. They've looked at what the manufacturing
12 changes and the processes have been.

13 And they have made these conclusions. And as I
14 said before, the bases, I don't think, are really any
15 different than they originally were in the cylinder
16 head contention that was admitted.

17 We now have more evidence. We've got more facts to
18 look at.

19 We've got an FAA study that said that they couldn't
20 do an adequate finite element analysis of the head.
21 But it says--that certainly raises doubts.

22 JUDGE MORRIS: I think you've answered my question
23 as far as you could go.

24 MR. DYNNER: I don't -- I have this strange feeling
25 that I haven't done a good job answering it

1 specifically, but maybe it's because I'm only talking
2 about the, as I see it, the thermal mechanical load
3 being related to the psi.

4 JUDGE MORRIS: Going to Paragraph B, just so I am
5 clear in understanding what you've said, do you
6 distinguish between QC and QA? Or were you using QA in
7 a very broad sense?

8 MR. DYNNER: I was using it there in the broad
9 sense that encompasses QC.

10 But I think we're talking here about specifically
11 QC.

12 JUDGE MORRIS: Thank you.

13 JUDGE BRENNER: Well, one of your comments causes
14 me to go back to A again, Mr. Dynner, so moving
15 backwards rather than forwards, unfortunately, that
16 last sentence, going to the heads presently in place
17 and for shorthand, I'll call them new heads. I
18 recognize the dispute as to how new is new.

19 I guess I could call them post-1980 heads, and make
20 everybody happy.

21 That's rather a broad sentence. Now you've stated
22 that this sentence is based on the allegation that the
23 firing pressures used for the analyses are too low.

24 Is that the contention? Because that's a universe
25 much more narrow than the possible universe under that

1 sentence.

2 MR. DYNNER: What I'm trying to do in answer to
3 Judge Morris' question is to point out the thermal and
4 mechanical loads during EDG operation were taken to
5 mean, obviously on a sliding scale, if you were running
6 the engine at 20% of capacity, we're not saying that
7 the thermal and mechanical loads at 20% load are going
8 to cause the cylinder head to crack.

9 We were looking at them in terms of the rating
10 specification, which is 3500 KW, continuous, and 3900
11 KW in two hours in any 24.

12 That's the standard that we're using and have been
13 using. And what I was trying to say is that when the
14 analysis was done by FAA, what they looked at was what
15 they used, and this is true with respect to all, as far
16 as I recall, with respect to all of the components of
17 the engine.

18 They use 1680 psi as the maximum firing pressure,
19 which is the pressure produced at 3500 KW, and we know
20 that in actuality, at 3500 KW, you may have firing
21 pressures in excess of 1680 and an overload with firing
22 pressures of up to around 1800.

23 JUDGE BRENNER: Fine. Is that the contention?
24 That's what I'm trying to understand.

25 MR. DYNNER: As far as the thermal and mechanical

1 loads. Thermal and mechanical loads come from the
2 firing pressures, all right?

3 Maybe I'm not making this clear as I might have if
4 I were a scientist. But depending upon the load
5 carried by the engines, which is related to the firing
6 pressure in the cylinder, that determines the quantity
7 or amount of the thermal and mechanical loads of the
8 engine.

9 We're not trying to say that at 20% or 30% the
10 cylinder head would fail.

11 We haven't said that.

12 JUDGE BRENNER: I know that. I'm trying to
13 understand the basis for the allegation in that
14 sentence we've been discussing, the last sentence of
15 paragraph A.

16 Because it's rather broad as stated. And as I
17 understand, some of your overall remarks, I think,
18 that's still what you're saying, but I'm not sure
19 because you keep wanting to hedge it, I think, probably
20 because you're not sure of what I'm asking.

21 But as I understand it, you're saying that the
22 basis for the allegation that the heads are of
23 inadequate design or manufacturing quality to withstand
24 satisfactorily thermal and mechanical loads is because
25 they haven't been analyzed and/or evaluated, and/or

1 tested against what the county believes the loads are
2 that the machines would see.

3 Specifically, they haven't been tested above the
4 psi that you think would be seen for a normal 3500 KW
5 operation, normal flow operation, and certainly not for
6 the overload operation.

7 MR. DYNNER: No. I think I'm getting confused, and
8 maybe I'm confusing you in the process.

9 What we're saying is that these heads, there is a
10 history of these heads cracking, and they crack at
11 thermal and mechanical loads during operation of these
12 EDGs at Shoreham, and they've cracked in other
13 applications.

14 And we know that. Now LILCO has come back and said
15 they've solved the problem at TDI because they've done
16 different manufacturing processes and better QC.

17 And we're saying that we don't think that that's
18 true. We're saying that the factors that involve the
19 inadequate design and manufacturing quality are, a,
20 that the heads have cracked.

21 Heads of the same design have cracked, that the
22 changes in the processes are really not--do not solve
23 the problem.

24 And we will say further, if we get into the
25 evidence, that if you look at some of the design

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1 features, and what we've said is the heads, that they
2 don't cool adequately.

3 You have variations in the fire deck thicknesses,
4 you have stress risers, and these are sort of why they
5 cracked and why they can be expected to crack in the
6 future.

7 JUDGE BRENNER: Do you understand that some of what
8 you're giving me now are arguably specifications within
9 the contention that a party or the board would not be
10 unnoticed if the county intended to use as part of the
11 contention without that statement?

12 Because the statement of the contention is broad,
13 and they'd have to guess at what you're going to
14 litigate.

15 And it's only by your telling me some of these
16 things that I now understand some but apparently not
17 all of what you want to talk about.

18 I'm not talking about detailed evidence; I'm
19 talking about subject matter.

20 MR. DYNNER: Well, I'm understanding the confusion
21 between where you draw the line between what you regard
22 or what one regards as detailed evidence, and what one
23 regards as a further specification of a contention.

24 I mean, we had a contention before. We had
25 contentions before that said the heads crack, ergo, the

1 heads are no good.

2 That's a contention. We had --

3 JUDGE BRENNER: It was a finite universe, then, in
4 the sense that we were going to look at the particular
5 cracks that occurred on the Shoreham diesels and see
6 what was done or not done about them.

7 And that's a matter of litigation. But you're not
8 trying to restrict this contention to that, and that's
9 why we need to understand.

10 Because you think you know more, and that's fine
11 and acceptable, but we need to know what it is you
12 think you know more about in order to understand what
13 the litigation would be.

14 MR. DYNNER: Yes. My difficult, again, is drawing
15 that line. I agree with you. We've been having this
16 dialogue all day.

17 JUDGE BRENNER: This sentence doesn't approach the
18 line, you know.

19 MR. DYNNER: I'm sorry?

20 JUDGE BRENNER: This sentence doesn't approach the
21 line argument.

22 MR. DYNNER: Well, I suppose that the sentence, in
23 the context of what's gone on previously and what the
24 depositions have shown and everything else, I don't
25 think there is any surprise.

4/25

1 I didn't put in here, obviously, all the problems
2 with the design and specifics that, for example, our
3 consultants believe exist.

4 I don't think that we have to show that if they
5 made the head thicker here and thinner there, that X,
6 Y, Z would occur.

7 But we do have more specific evidence and views of
8 our consultants as to what the specific problems are.
9 Yes.

10 MR. STROUPE: Judge Brenner, just let me say this.

11 JUDGE BRENNER: I really think we've heard enough
12 on A and B, but unless it's really important and/or
13 succinct.

14 MR. STROUPE: Well, I'll make it succinct.

15 JUDGE BRENNER: Okay.

16 MR. STROUPE: All we're asking, I think, is the
17 same thing you're asking. We put the heads on, we
18 tested them, and we have what for what we think is a
19 sufficient period of time.

20 We haven't experienced any problems. The county
21 knows of problems or potential problems, we want them
22 to tell us about them.

23 And it's the contention, as presently stated, we
24 want that information.

25 JUDGE BRENNER: Don't make the mistake of inferring

1 a view that I might have by the questions I might ask.

2 MR. STROUPE: I wasn't referring to you. But we
3 have the same problem, I think, in trying to approach
4 this.

5 JUDGE BRENNER: That's a fair way to put it. Item
6 C. Let me ask the county a question first, contrary to
7 what I said my approach would be, and then I'll go to
8 LILCO on it.

9 Do I understand that as to item C, you only want to
10 litigate those other allegedly common instances where
11 it is ascertained that the cylinder heads were
12 manufactured after 1980?

13 MR. DYNNER: Yes, sir. That was based upon the
14 fact that those--that was the operating history we'd
15 be looking at, if we didn't list the instances
16 previously.

17 I list the instances of failures in order to--or am
18 otherwise allowed to present evidence relevant to the
19 current heads by showing what went on with the pre-1981
20 heads.

21 That's fine, but when we get to the post-1980
22 heads, I was trying to list particular instances.

23 Now to show the operating history of the heads,
24 that process under C has not been successful in that
25 we've stricken 3, 4, and 5 because we found out through

1 informal inquiries, on page eight, that in fact the
2 heads under 3, 4, and 5 were pre-1980 heads, not post-
3 1980 produced heads.

4 JUDGE BRENNER: Why do you care about only post-
5 1980 heads for C, when you care about pre-1981 heads
6 for A?

7 MR. DYNNER: Well, --

8 JUDGE BRENNER: Or you telling me your numerous
9 instances, otherwise unspecified, referred to in A?
10 That means only Shoreham instances.

11 MR. DYNNER: No. What I was trying to say was that
12 if one takes it as given, then the pre-1981 heads have
13 had problems, that I won't list the instances.

14 Then I go to the post-1980 heads. I hope we're not
15 confused about pre-1981 and post-1980.

16 We're talking about heads that are produced in the
17 one instance, that is, to say in A, we're talking about
18 heads produced before January of 1981.

19 And in C, we're talking about heads that were
20 produced after January or from January '81 on.

21 JUDGE BRENNER: That maybe was the only point I
22 wasn't confused on in this whole discussion.

23 MR. DYNNER: Okay. All right.

24 JUDGE BRENNER: But you see the apparent
25 inconsistency that I've tried to get you to address by

1 my question?

2 As to C, you're willing to strike, in fact, I infer
3 that and you've said that and demonstrated it just now
4 by taking out 3, 4, and 5, any instances not related to
5 the pre-1981 heads.

6 Yet in A--

7 MR. DYNNER: Post.

8 JUDGE BRENNER: No, you wanted to take out any
9 instances--I'm sorry. You wanted to take out any
10 instances related to the pre-1981 heads.

11 MR. DYNNER: Yes, sir.

12 JUDGE BRENNER: Okay. But as to A, you may still
13 want to litigate very numerous instances of cracking of
14 pre-1981 heads.

15 MR. DYNNER: Right --

16 JUDGE BRENNER: Which instances would not be
17 limited to Shoreham.

18 MR. DYNNER: When we wrote this, we were under the
19 erroneous belief that we might get LILCO to agree that,
20 in fact, the facts demonstrate that with respect to the
21 pre-1981 heads, there were inadequate design and/or
22 manufacturing.

23 And therefore, we wouldn't have to note the
24 instances of them.

25 JUDGE BRENNER: Well, you know, I don't believe

1 that you really thought that you were going to get
2 that kind of broad agreement.

3 Because even if there's agreement that maybe there
4 were some things that were wrong, you're not going to
5 agree that everything that was wrong is just identified
6 by LILCO and further, that it's been corrected.

7 So I'm not sure how much you state your belief in
8 that proposition.

9 But you say erroneous belief. So now that you've
10 been disabused of that belief, why are you still
11 willing to strike things like 3, 4, and 5 out of C, but
12 wanting to put them forward, albeit unspecified, in A?

13 MR. DYNNER: I would seek the board's approval to
14 specify the instances of the pre-1981 heads that we'll
15 rely upon in A.

16 JUDGE BRENNER: Well, would three of them be 3, 4,
17 and 5, which you're taking out of C? I mean, I'm
18 trying to define a rather existing population here.

19 MR. DYNNER: Yes. Yes. Among others. Among many
20 others. So I said it the wrong way.

21 If I am allowed to specify the instances of
22 problems in pre-1981 heads, then I would move C 3, 4,
23 and 5 into the listing of the pre-1981 heads.

24 JUDGE BRENNER: All right. Let me ask LILCO as to
25 the items specified in C, beyond the 3, 4, and 5.

1 Doesn't TDI know which of these instances involved
2 pre-1981 heads?

3 MR. STROUPE: Judge Brenner, I don't think I can
4 answer that question. I would assume that TDI must
5 know what cylinder heads they sold.

6 But we certainly don't.

7 JUDGE BRENNER: Since receiving the county's
8 claim, you didn't endeavor to find out?

9 MR. STROUPE: No, I'm not saying that at all. I
10 think we did endeavor to find out, but we weren't able
11 to get all that information.

12 JUDGE BRENNER: Some of these, as far as you know,
13 that is, some of these listed in C, may involve
14 apparent defects or failures of heads manufactured
15 after 1980.

16 MR. STROUPE: I think we're fairly certain they did
17 not. I think we're fairly certain they're all pre-1981
18 heads.

19 JUDGE BRENNER: When are you going to be certain?

20 MR. STROUPE: Yes, we will be certain.

21 JUDGE BRENNER: When?

22 MR. STROUPE: As soon as we can get the information
23 from TDI.

24 JUDGE BRENNER: That may answer your question?

25 MR. STROUPE: They do, but as you know, we have to

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1 go through counsel, and it does take some time.

2 JUDGE BRENNER: But TDI has the information?

3 MR. STROUPE: Yes, I believe so. Again, give us
4 one moment, and then I'll give you a chance.

5 (Whereupon, a brief discussion took place.)

6 JUDGE BRENNER: You wanted to add something, Mr.
7 Stroupe?

8 MR. STROUPE: Yes. I wanted to say two things. In
9 fact, three things. One, the component tracking list
10 which was part, is part of the DRQR, which the county
11 also has a copy of as does the board, does not have
12 any indication on it of any post-1981 cylinder
13 proposed.

14 And then we have, I understand from our ,
15 contacted TDI. To the best of their knowledge, subject
16 to check, they're not aware of any post-1981 cylinder
17 heads either.

18 The other thing I just wanted to mention is we
19 have--it begins to sound like a broken record, but our
20 problem with these common instances are the same as
21 with the other things.

22 Again, there is no explanation what the instance
23 is of the cylinder head at Shoreham. And again, we
24 think our view is that the county ought to tell us how
25 these instances, if indeed they be instances of post-

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1 1981 cylinder heads, how they relate and impact upon
2 cylinder heads that are presently at Shoreham.

3 JUDGE BRENNER: These are instances in C and I'm
4 addressing this to LILCO, relate to diesels other than
5 just being limited to the DSR 48?

6 And I guess we've seen some of the machines
7 elsewhere and some of the other contentions, and so on,
8 even though the types of machines are not listed,
9 particularly in this place, in the contention.

10 Is it correct that aside from the possible
11 differences between the year of manufacture, which I
12 would say are not totally different heads, in the sense
13 that they fit in the same machines, aside from that
14 difference, is it correct that the heads in these
15 different machines are similar, or is that not correct?

16 MR. STROUPE: Just a second.

17 JUDGE BRENNER: If you know, of course. There is
18 always the unstated condition to any question.

19 MR. STROUPE: I think they are interchangeable.
20 Again, you'd have to look at the pressure under which
21 the various engines are operating.

22 JUDGE BRENNER: Yes, I wasn't talking about the--

23 MR. STROUPE: Physically, though, I think they are
24 interchangeable.

25 JUDGE BRENNER: Let's go on to four. As you

1 notice, on some of these we gave you a ruling right
2 away, or at least on one of them but not on the others.

3 For pistons, I guess, more accurately it should
4 read piston skirts, Mr. Dynner?

5 MR. DYNNER: No, sir.

6 JUDGE BRENNER: Well, pistons. Fine. A relates to
7 the piston skirts. This is similar, I think, to the
8 discussion we had about the crankshaft and the cylinder
9 heads and to the extent there was a difference between
10 those two, obviously much more similar to the
11 discussion we had on the crankshaft.

12 That is, why should we litigate a contention going
13 to the model piston skirts different than the model now
14 in the Shoreham diesels, as an end in itself.

15 MR. DYNNER: We don't want to do it. We're not
16 interested in doing that as an end to itself; we're
17 interested in being able to present on the record facts
18 that these cracks and the piston skirts of the AF
19 piston occurred, the extent to which they occurred,
20 situations in which they were--we can show that they're
21 relevant to the AE in design, operation, and to which
22 they reflect upon TDI.

23 JUDGE BRENNER: All right. In A, we're talking
24 about a universe of the cracking of the AF piston
25 skirts in Shoreham?

1 We will not admit it as a contention because it's
2 not the--the old design is not relevant as an end in
3 itself.

4 If we permit an issue going to the current AE
5 piston skirts in Shoreham, it may be that in the
6 testimony and expert for the county or LILCO or anyone
7 else putting forth testimony, can demonstrate that
8 there is something relevant in terms of deciding the
9 quality of the AE piston skirts, to looking at what
10 occurred on the cracking of the AF piston skirts in
11 Shoreham.

12 That's the universe because that's what was
13 identified in A. And for that, it might be relevant.

14 LILCO might want to argue that this is what went
15 wrong, and this shows we fixed it.

16 The county might want to argue, this is what went
17 wrong and was not addressed, and it chose the new ones
18 are no good.

19 All right. But if would be derivative toward the
20 proof if we've found it admissible--not derivative, but
21 supportive of the proof if we found an admissible issue
22 in B, which we'll look at now.

23 Now, in B, your first sentence sets the stage.
24 Your second sentence has a rather broad allegation, and
25 what is the basis and specificity of that allegation?

1 I would add the because or why or in what way.
2 I'd like you to tell us about that, Mr. Dynner.

3 MR. DYNNER: First of all, what we're going to talk
4 about is again, the FAA report, which predicts that
5 cracks in the AE piston skirts may occur similar to the
6 AF piston skirts by virtue of its analysis, but that
7 such cracks won't propagate.

8 We say that accepting that cracks may initiate that
9 our experts believe that they may well propagate and
10 that the analysis of FAA in their fracture analysis of
11 non-propagation is not reliable.

12 With respect to design, the other things which
13 we've mentioned to LILCO are principally the issue of
14 the excessive side thrust load on the piston skirt,
15 which our consultants believe occurs from their
16 analysis of the drawings of the piston, and which
17 recently when they were able to inspect some wear on
18 the AE pistons at the Shoreham plant, found evidence
19 that they believe demonstrates that there is, in fact,
20 an excessive side thrust which can lead to catastrophic
21 failure.

22 The manufacturing--there would also be evidence
23 concerning the tin-plating of the piston skirt, the
24 fact of that design causing problems with abrasive
25 material becoming imbedded in it, that that can--and we

1 believe that there's evidence that it has caused
2 vertical scoring in the wire, which could cause a gas
3 blow by and result in a piston seizure.

4 JUDGE BRENNER: On the case specifics, you gave me
5 the excessive side thrust load and the tin-plating
6 design.

7 Is that the basis for the disagreement that you
8 would have with the conclusion of the FAA report, or
9 are those in addition?

10 MR. DYNNER: Those are in addition because as we
11 read it, the FAA report did not address those issues.

12 JUDGE BRENNER: Backing up, then, to the FAA
13 report, can you give me a reference and tell me
14 specifically what the basis is for your experts
15 disagreement with FAA's conclusion that the cracks
16 won't propagate?

17 MR. DYNNER: Basically we will have metallurgical
18 testimony as evidence which will evaluate the fracture
19 mechanics analysis of crack propagation, which will
20 show that that analysis is done in an ideal situation
21 without reference to the actual configuration of the
22 piston skirt, that this idealized view did not give a
23 real world view, particularly when one has to meet the
24 issue of the potentiality of some kind of defect,
25 however slight it may be, surface or sub-surface, which

1 throws off completely the fracture mechanics analysis,
2 in that even a very slight variation in what is assumed
3 in the fracture analysis to be a perfect material can
4 have a severe impact on the results of that analysis.

5 Further, that had this been done properly rather
6 than in an idealized way, that it is common and often
7 done to take variations in the results of the fracture
8 mechanics analysis in order to show the potential for
9 variation, and that the result is not as one might be
10 led to believe from the FAA report, something that is
11 absolutely certain.

12 In short, there are many factors which were not
13 considered by FAA in its conclusion, that the cracks
14 will not propagate and one ought not to put that level
15 of confidence in those, the fact that the cracks won't
16 propagate, as to gamble with the potential for a
17 catastrophic failure of the piston in the engine.

18 JUDGE BRENNER: I take it--you didn't give me a
19 reference to the report. I take it it's the FAA
20 report, particularly on the subject of the piston skirt
21 cracking?

22 MR. DYNNER: Yes, sir, the latest one, yes. What
23 is it? May? I think it's the May 1984 report.

24 JUDGE BRENNER: All right. Also, as part of that
25 same paragraph, you allege that the design of the AE

1 pistons was altered prior to installation, in violation
2 of the quality assurance requirements.

3 We've looked at LILCO's answer, and do you agree
4 that that's what transpired?

5 MR. DYNNER: Let me check LILCO's answer for a
6 moment, please.

7 JUDGE BRENNER: Surely.

8 MR. LYNNER: Our position remains that, in fact,
9 the lip or fin or whatever you want to call it, which
10 existed on the AE pistons at Shoreham is in the
11 drawing.

12 And therefore, the piston skirt was designed to
13 have that lip, and that the alteration did not follow
14 the requirements of Appendix B.

15 There was no revised drawing made that we're aware
16 of, and there were no other steps in the process of
17 redesigning the piston and altering its configuration
18 that would conform to the requirements of Appendix B.

19 JUDGE BRENNER: Well, all right. I understand
20 your dispute, but do you agree with the factual
21 proposition of what LILCO says was done, that these
22 were excess material known as fins or from the casting
23 process?

24 MR. DYNNER: No, because we believe that those fins
25 are shown in the drawing. They weren't excess in the

1 sense that they were left on by some error and they
2 should have been ground off at the plant.

3 The drawing shows them to exist, and therefore, the
4 fact they were not ground off was correct.

5 JUDGE MORRIS: Mr. Dynner, could you tell me what
6 drawing that was? Was this --

7 MR. DYNNER: It's the drawing for the AE piston
8 skirt, which we obtained from TDI.

9 JUDGE MORRIS: As installed or as cast?

10 MR. DYNNER: It is purported to be the drawing
11 of the skirt as it's to be manufactured.

12 JUDGE MORRIS: Is there a separate drawing that
13 applies to installation, do you know?

14 MR. DYNNER: No, we don't believe so.

15 JUDGE MORRIS: Is that drawing included in anything
16 that we have in hand?

17 MR. DYNNER: I don't know whether anybody made the
18 drawing available to the board or not. It is available
19 to the county as proprietary data, and we've signed
20 confidentiality agreements, so we haven't used it for
21 anything other than our own analysis at this point.

22 I think it could be made available to the board if
23 TDI will agree.

24 JUDGE MORRIS: I'm not sure we need it, but maybe
25 LILCO can tell me if they're familiar with this drawing.

4/40
end

5/1

1 MR. STROUPE: Judge Morris, I don't have
2 familiarity with that drawing. I do know that as our
3 answer indicates in response to this Friday alteration,
4 it was done with the authorization of TDI personnel at
5 the plant in California, subject to QA review at that
6 time.

7 My understanding is that Mr. Caruso, of the NRC
8 staff, stated that had absolutely no problem with that
9 whatsoever.

10 So I can't answer your question as to this drawing,
11 but at least as far as I know, nobody other than the
12 county has a problem.

13 JUDGE MORRIS: Do you know whether or not these
14 same fins or similar fins occur on the other piston
15 skirt designs?

16 MR. STROUPE: I do not. I can try to find out.

17 MR. GODDARD: Judge Morris, perhaps the staff could
18 comment upon Mr. Stroupe's comments reference to
19 statements made by Mr. Caruso in his deposition.

20 The statements made by Mr. Caruso, that it was a
21 proper and appropriate practice were in the context of
22 grinding it off if it were, in fact, an excess fin or
23 material left over from the casting process.

24 There was no questioning of Mr. Caruso as to
25 whether or not such a--I will call it a lip for

1 purposes of this discussion--was properly shown in the
2 design drawing.

3 Mr. Caruso made no comments as to propriety, and I
4 doubt that he would have commented on the propriety of
5 grinding off a feature which was set forth in the
6 design document.

7 MR. DYNNER: If I can help out, there is an
8 attachment number six to LILCO's response, which has a
9 portion or an extract from the deposition of Mr. Caruso
10 on page 40.

11 I asked Mr. Caruso the question, "Do you know
12 whether those lips of metal appear in the design
13 drawings for the AE piston?"

14 Answer: "I'm not certain whether they do or not."

15 JUDGE BRENNER: And other things that he had no
16 opinion on, as I recall, which were follow-ups to that
17 question.

18 And that was consistent with what Mr. Goddard just
19 paraphrased, I believe. Mr. Stroupe, what's LILCO's
20 basis for saying these are just excess material from
21 the casting process?

22 MR. STROUPE: I think our basis is looking at the
23 fins themselves, as they were created for the process,
24 I think we were there to solve those at the time.

25 I believe at that time they were just a product of

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1 excess metal in the castings and it was, in fact, good
2 procedure to round off that area, and that is all that
3 is done.

4 I think, further, our position would be that that
5 particular procedure is something that's done at any
6 time you have a fin or an excess on a casting, because
7 it could create a stress factor, and that being the
8 case, good practice required that it be rounded off as
9 part of the overall process of manufacturing.

10 That's short and simple, and I think that's our
11 position.

12 JUDGE MORRIS: Would such a procedure be on the
13 drawing itself?

14 MR. STROUPE: That I'm not sure of. I just can't
15 answer that question.

16 So there is no misunderstanding, the entire fin was
17 not removed; it was rounded off, to make it a smooth,
18 rounded surface to eliminate the possibility of any
19 tension being created by that excess.

20 JUDGE BRENNER: All right. Staying with Mr.
21 Stroupe or whoever for LILCO wants to answer, on C and
22 D, these are the alleged common occurrences by the
23 county involving two chips, and they involve alleged
24 defects or cracks or holes in piston AE--well, in
25 piston crowns.

1 And your objection was rather succinct on this one.
2 You said that was crowns; we thought they wanted to
3 talk about skirts.

4 MR. STROUPE: We haven't had any, in LILCO's
5 experience, no problem with any crowns. So we don't
6 believe there can be any defects shown between that and
7 the LILCO EDGs.

8 And in addition, under D, U.S. Steel, there is no
9 specification as to what sort of piston crown that was,
10 so we have no way of knowing whether there could even
11 be an excess.

12 JUDGE BRENNER: Do you know?

13 MR. STROUPE: I do 't.

14 JUDGE BRENNER: Well, I mean you as LILCO.

15 MR. STROUPE: No, we do not.

16 JUDGE BRENNER: With the AE--we've been talking
17 about the AE design in terms of the piston skirts in
18 the past.

19 But when you have an AE design, does that change
20 the piston crown also?

21 MR. STROUPE: It may or may not.

22 JUDGE BRENNER: You mean you don't know, or it
23 varies?

24 MR. STROUPE: It is compatible, as I understand it,
25 with several different types of crowns.

1 JUDGE BRENNER: What's the case with respect to the
2 changes in the LILCO EDGs? Did you just change the AE
3 skirts?

4 MR. STROUPE: Yes, I believe the only thing that
5 was changed --

6 JUDGE BRENNER: To the AE skirts, I mean.

7 MR. STROUPE: In the Shoreham EDGs, it was the AE
8 piston skirts.

9 JUDGE BRENNER: The U.S. Steel ship, the M. V.
10 Gott, as I recall, though it's not specified here, has,
11 I guess, a V-16 engine.

12 Is it correct that the design of the pistons of
13 whatever type TDI was manufacturing at the time would
14 be interchangeable between the V-16s and the straight
15 aids in the other engines?

16 Do you know?

17 MR. STROUPE: I think that's correct that as far as
18 the skirts go. I just don't know the answer to the
19 question, but I think certainly the skirts are.

20 JUDGE BRENNER: Mr. Dynner, the county has not told
21 us much on these alleged common occurrences for C and
22 D, to tie the nexus to Shoreham, to my recollection.

23 We haven't heard much, if anything, about piston
24 crowns before, as opposed to piston skirts, which has
25 come up.

1 What is there about this that makes it relevant to
2 Shoreham, in your mind, in the county's mind?

3 MR. DYNNER: This is a portion of the instances
4 which goes to manufacturing quality and not the design
5 of the crown.

6 And while there have not been any AE crowns at
7 Shoreham that we know of that have had any problems or
8 shown any defects, although I suppose we'll know more
9 about that when we look at the DRQR report of Phase II,
10 it did seem to us that as we were reviewing the
11 operating history data that we obtained from TDI, these
12 two elements, one of which we believe it an AE piston
13 crown from the document itself.

14 And we're trying to ascertain whether that, in
15 fact, is the case.

16 And the other appeared that it may be in a piston
17 crown. That's the U.S. Steel one. When I called U.S.
18 Steel's lawyer and asked him specifically, "Gee, do we
19 really have to subpoena you just for you to tell us is
20 this an AE piston crown or some other type?"

21 He felt that we would still have to subpoena him to
22 get that information.

23 JUDGE BRENNER: As to the -- I'm sorry. To the
24 M.V. Baltimore, the apex Marine ship, you're telling me
25 now that you don't even know if it's an AE piston

1 crown?

2 MR. DYNNER: Yes, it is an AE piston crown. We are
3 trying to ascertain the conditions under which the
4 problems arose, but we have a document, I think, that
5 indicates that.

6 JUDGE BRENNER: Do you know what kind of engine is
7 in the Baltimore?

8 MR. DYNNER: I'm not sure. I'd have to look it up,
9 Judge Brenner.

10 JUDGE BRENNER: Do you know --

11 MR. DYNNER: Well, wait a minute.

12 JUDGE BRENNER: Do you know that it's not a DSR-48?

13 MR. DYNNER: I know it's not a DSR-48; it's got
14 9100 horsepower. I think it's -- you have roughly a
15 600 horsepower cylinder.

16 Somebody do the math for me.

17 MR. STROUPE: It's a V-16.

18 MR. DYNNER: It's a V-16.

19 JUDGE BRENNER: All right.

20 MR. DYNNER: This is a case, I must say, this is
21 the kind of thing that relates. We didn't have the
22 DRQR report when we got this thing on operating
23 history.

24 This is the kind of thing, since it goes directly
25 to the issue of manufacturing quality, that we would

1 want to look at in the context of the DRQR report.

2 And maybe that DRQR report will shed light on the
3 issue of the piston crowns, sir.

4 JUDGE BRENNER: This is also the kind of thing
5 where we said on kind of a continuum that if you were
6 going to show any excesses, you were going to need to
7 show more, as opposed to something that had more in
8 common with the Shoreham engines.

9 And any time you start diverting from an instance
10 in the Shoreham engines themselves, depending on how
11 similar the other situation is with respect to the
12 problem at issue, the degree with which you show a
13 nexus with bases in specificity will vary.

14 And this is one where you're starting to get out
15 there. That's not to say that something might be
16 totally irrelevant in the total scheme of what
17 theoretically may be relevant, but it's the balance on
18 what may become too collateral, given the absence of a
19 present reasonably close nexus in basis.

20 And in recognition of the shortness of human life,
21 of looking at what might be more important rather than
22 less important.

23 This might be a good time for a 15-minute break,
24 until 3:55, and then we'll come back.

25 (Whereupon, a brief recess took place.)

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1 JUDGE BRENNER: We're back on the record. Is Mr.
2 Palamino is still here? Because I don't see him
3 present.

4 No, he left. He was here up until the last break,
5 correct?

6 MR. DYNNER: Judge Brenner, Mr. Palamino had
7 another engagement. He asked me to apologize that he
8 did have to leave.

9 JUDGE BRENNER: Okay. Am I correct that he was
10 here up until the break, or did he leave before then?

11 MR. DYNNER: Yes, he left two minutes or so before
12 the break, sir.

13 JUDGE BRENNER: Okay. As to the part B of the
14 piston contention, the county has given us a
15 specification, in their view, a specification of what
16 they meant by inadequate design and manufacturing
17 quality.

18 And I'd like to get LILCO's response, if it has
19 one, to the allegation that the FAA report conclusion
20 is not reliable because it is based on an analysis of
21 crack propagation in an ideal situation, which would
22 not be valid for the actual operating real world
23 situation.

24 And further, that excessive side thrust load and
25 the tin-plating design causing problems with abrasive

1 materials, thereby causing, I guess, vertical scoring,
2 if I recall correctly, in the cylinder liner, causing
3 gas blow-by.

4 Do you have a reaction to those specifics?

5 MR. STROUPE: Yes, Judge Brenner, I do. First of
6 all, let me say that with regard to the FAA report, we
7 believe the FAA report is an accurate and reliable
8 report.

9 It is well down and supported, and will be
10 supported. We also believe that the experience we've
11 had with the AE piston skirts goes further to support
12 LILCO's view that there isn't any problem with these
13 piston skirts.

14 We do not have indication and we have a good many
15 hours on these AE piston skirts. In addition, I think
16 that there are a good many instances in the field which
17 again are discussed in the FAA report, where the AE
18 piston skirt operated without any problems.

19 So I think the FAA report is a good report. The
20 problem that Mr. Dynner had indicated with the report,
21 his experts see in the report, we don't believe exist.

22 We believe that the FAA personnel will support
23 that. With regard to the tinning problem and the gas
24 blow-by that the county has indicated could result in a
25 tension procedure, our most recent information which is

1 based on both FAA's analysis and to a large extent Dr.
2 (inaudible) analysis is that that's not a problem of
3 blow-by or anything of that nature.

4 It's probably caused by the use of a set of rings
5 prior to the rings that have now been installed on the
6 EDGs which contributed to some extent to this scoring
7 or indication, perhaps, that were seen on the side of
8 the piston and cylinder line.

9 I might add that in Dr. (inaudible)'s deposition,
10 we're talking about the county, he stated that he didn't
11 see any problem.

12 Beyond that, again, at the risk of sounding like
13 another broken record, I say that we have here a very,
14 very broad contention, very, very much like the other
15 contentions that we've seen, where the county is saying
16 this is a piston skirt that is of inadequate design and
17 manufacture.

18 And then Mr. Dynner has proceeded in response to
19 questioning from the board, to illustrate three or four
20 areas where they contend that they will show that these
21 things exist.

22 Again, what we would say is, there may be more--I'm
23 sure there are more than the county tends to rely upon.
24 We would like to know what is wrong with the design of
25 the piston skirt.

1 We would like to know what is wrong with the
2 manufacturing process of the AE piston skirt.

3 We're not told any of this information in any
4 filing that the county has made. To the contrary, it
5 again is a general, broad sort of filing that the
6 county has insisted on making in all of these
7 contentions.

8 We don't think that we can be prepared adequately
9 to litigate the AE piston skirts, based on what's now
10 in print.

11 Above all, we don't think the piston crowns ought
12 to be an issue. We have some piston crowns that I
13 believe have over 1,000 hours on them.

14 This is a good deal beyond the sequence for them to
15 get a failure, analysis. You're going to get it before
16 that, so we don't think that should be looked at at
17 all.

18 JUDGE BRENNER: Let me interject, if I might.
19 What if we agreed with you as to the contention as
20 printed, that is, in the county's filing?

21 That is, it's just too broad but if we limited it
22 to the specific ones, talking about Part B now and
23 staying with the skirts.

24 I understand your position on the crowns, and we've
25 discussed that, but with the piston skirts on Part B,

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1 if we agreed with you but limited the contention to the
2 three items that Mr. Dynner put forth when I asked him
3 for specifics?

4 MR. STROUPE: Well, that obviously would be helpful
5 because our initial position is stated in our filing
6 reports.

7 That is that we think the engines as presently
8 stated does not abide by court's order and should be
9 stricken.

10 Then, I'm not sure I fully understand what Mr.
11 Dynner has related to the board this afternoon about
12 these three areas that were discussed.

13 That is, how the county contends those three hours
14 impact on the reliability of the AE piston skirts.

15 JUDGE BRENNER: Mr. Dynner, I think I understood
16 the county's view as to a basis for the disagreement
17 with the FAA conclusion.

18 Whether or not we think that is an adequate basis
19 is something else, but I understand your connection. I
20 think I also understand your reference to the problems
21 with the cause alleged by you to be the tin-plating
22 design with the scoring in the liner.

23 But I don't understand the basis or the context, if
24 you will, of the proposition that excessive side thrust
25 load has not been considered.

1 Can you help me on that?

2 MR. DYNNER: I'll try. It's a rather, in part, an
3 analysis of the geometry of the ratio of the length of
4 the piston pin, the piston skirt, to the
5 circumference--I may have gotten that wrong.

6 JUDGE BRENNER: Is there something in one of the
7 reports that causes the county to believe there is a
8 problem with this, or is this --

9 MR. DYNNER: No, this issue was not addressed, sir,
10 except by our consultants, who, in their connection
11 with their analysis of the design of the piston skirt,
12 include in their analysis the possibility of piston side
13 thrust.

14 And what brought the matter to their attention was
15 the geometry of the piston skirt. There is a
16 relationship or ratio--I'm sorry I don't remember
17 exactly what it is--of portions of the skirt which is,
18 I am told, accepted by most manufacturers that results
19 in a side thrust figure of about, as I recall, 85 psi.

20 And that is the normally accepted side thrust in
21 this particular piston. The side thrust has been
22 calculated to something on the order of 123 or 124
23 or about 50% more than normally accepted in the design
24 of piston skirts.

25 JUDGE BRENNER: Which one of your experts is it

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1 that has this proposition?

2 MR. DYNNER: Professor Christenson. All of this
3 was, again, part of the deposition that they took of
4 our witnesses.

5 JUDGE BRENNER: That was my next question. Did
6 Professor Christenson disclose his basis and
7 calculations in that deposition?

8 MR. DYNNER: So far as I know, he did.

9 MR. STROUPE: I think I can answer that, because I
10 took Professor Christenson's deposition. He spoke in
11 generalities on almost all occasions.

12 I did not understand at the time what he was trying
13 to say about piston side thrust, and quite frankly,
14 LILCO has retained experts who have looked at that and
15 do not understand it.

16 JUDGE BRENNER: So you don't feel badly,
17 subjectively, then.

18 MR. STROUPE: That's right. We never had any
19 calculations at that time or later, so I quite frankly
20 don't know where these --

21 JUDGE MORRIS: Well, Mr. Stroupe, was side thrust
22 something that the FAA considered in their analysis?

23 MR. STROUPE: I think FAA, Judge Morris, felt that
24 side thrust was not a concern, and I believe the
25 evidence also indicates from TDI personnel depositions

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1 that they didn't feel side thrust had anything to do
2 with the operation and significance in the operation.

3 They had tested these AE skirts in the R-5 engine
4 at cylinder pressures greater than 2,000 psi for about
5 622 hours.

6 And in their opinion, piston side thrust for
7 loading was not something to be concerned about.

8 JUDGE MORRIS: Mr. Dynner, in the question of
9 fracture mechanics and crack propagation, in an ideal
10 material, I understand that your concern is that the
11 material will not be ideal.

12 Am I correct so far?

13 MR. DYNNER: Yes, sir.

14 JUDGE MORRIS: What kind of non-idealities is your
15 consultant thinking about? Is it very local things,
16 almost microscopic?

17 Or is it a macroscopic flaw in the casting? What
18 sort of non-ideality is being considered?

19 MR. DYNNER: As I recall, what he's talking about
20 is that--I'll put it in my layman's terms, because I
21 always get micro and macro mixed up.

22 That a very, very small flaw in the material, for
23 example, a very tiny inclusion, sand inclusion or
24 defect in the material, if it were in the path of the
25 initiating crack, would completely change the result of

1 a idealized fracture mechanics analysis of crack
2 propagation.

3 JUDGE MORRIS: But would that change in the
4 analysis and also be local, or would it persist beyond
5 the non-ideality?

6 MR. DYNNER: I'm sorry, sir. I don't understand
7 the question.

8 JUDGE MORRIS: Well, let me try to explain it in my
9 own thinking, that I can picture very small
10 imperfections in any material.

11 And knowing just a little bit about fracture
12 mechanics, the whole subject is sort of a mathematical
13 exercise, and if the properties don't exist as they're
14 supposed to at the very point of the crack, then I
15 think everyone will agree that the mathematics breaks
16 down.

17 But if you go beyond that small imperfection,
18 you're back into the ideal material again. So you
19 could start a new calculation, which would apply, if I
20 understand it correctly.

21 MR. DYNNER: Yes, sir. I believe at that point, if
22 the size of the crack was therefore increased, and the
23 crack grew because of the propagation through the
24 defective material, that you would, as you have said,
25 have to do a new calculation, because the crack

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1 propagation calculation under the fracture mechanics
2 would depend upon the size of the crack initially.

3 So that if you start off with something 10,000ths
4 of an inch, that would lead to different results than
5 if you started out with something one-thousandths of an
6 inch.

7 Because the properties of the larger crack would
8 behave differently than a smaller crack.

9 And that was not done. In effect, the fracture
10 mechanics did not involve, the study that FAA did on
11 fracture mechanics, did not involve what they call, I'm
12 told, a sensitivity study.

13 A sensitivity study being, as I understand it,
14 something to sort of envelope your idealized study and
15 show the effects of variations, depending upon changes
16 in your assumption.

17 And those assumptions being perfect dimensions,
18 geometrically, perfect material, no flaws or defects,
19 no environmental considerations, and in this case also
20 they assumed a 1680 psi.

21 So that is an assumption of a particular firing
22 pressure for thermal and mechanical stress on the
23 piston skirt.

24 So that any change in all of these assumptions
25 could well result in a difference in the result and

1 there was no attempt made to a sensitivity study to
2 ascertain what kinds of variations in those assumptions
3 might be acceptable or unacceptable.

4 JUDGE MORRIS: Did your consultant go beyond that
5 and make some calculations himself that led him to
6 conclude that this lack of consideration of those
7 things might lead to failure?

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8 MR. DYNNER: No, sir. And that is--my
9 understanding is that what he would need to do that
10 would be the computer program that was used by FAA and
11 that he'd have to go back and run through, in fact, do
12 their work all over by running through with a variety
13 of assumptions.

14 And we're not going to do that. We don't have the
15 resources or ability to do that.

16 And what we're going to be saying is not that the
17 crack will occur; we're not going to predict that a
18 crack will necessarily propagate.

19 What we're going to say is that they can't--once
20 they say that a crack may initiate, that they can't
21 predict with certainty that the crack won't propagate.

22 And in fact, there are a whole variety of
23 assumptions that they're making that are not realistic,
24 given the way the engine is built and the way it's
25 going to operate.

1 Therefore, one cannot be assured that the cracks
2 will not propagate.

3 JUDGE MORRIS: Thank you. I think I understand
4 your position better.

5 MR. STROUPE: If I could just respond to the
6 realism aspect of what Mr. Dynner has said. I do want
7 to get some bottom line realism in this.

8 I think that is that the FAA report in its finite
9 element analysis predicted that there may be cracks.

10 I think it should also be known, and I'm sure
11 everybody's aware of this, that the testing that was
12 actually done on the AE piston showed that there should
13 be no cracks.

14 So if the finite element analysis erred, it erred
15 in the favor of conservatism, whereby stating that
16 there may be cracks.

17 I think the other point that should be made in
18 realistic thinking, the fact that LILCO, and I believe
19 TDF is not aware of any in-service failure or either an
20 AF or an AE.

21 True, there have been some cracks and indications
22 in AF skirts. We're unaware, based on the information
23 we've had, we have, of any of those that have led to
24 failures for operating.

25 MR. DYNNER: We are aware of catastrophic failures

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1 of AF. But I think that what Mr. Stoupe's comments are
2 leading to --

3 MR. STROUPE: For the record, could we have where
4 there is one?

5 MR. DYNNER: I'm not sure. I think it's in the
6 Texas-class vessel. But I'll try to find out for you
7 later.

8 JUDGE BRENNER: I'll let you two have your
9 conversation without us later.

10 MR. DYNNER: Yes, sir.

11 JUDGE BRENNER: Why don't you finish your sentence?
12 We want to move on.

13 MR. DYNNER: Right. I think what Mr. Stoupe was
14 saying goes to the final sentence about the operating
15 history.

16 And he's alluded several times to the operating
17 history of the AE piston. And that is a matter covered
18 in part, I believe, in the FAA study.

19 And our point there is that the AE piston was not
20 tested on the test block in the DSR-48 engine.

21 It was tested in an R-5 engine. I believe there
22 were two of them that were tested.

23 It has run at Shoreham for several hundred hours
24 and the results have been, according to our experts,
25 evidence of excessive side thrust.

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1 Although we don't think that--we have no reason to
2 believe that there is any cracking of the piston
3 skirts.

4 The pistons have also operated in Kodiak, Alaska.
5 That was a non-nuclear utility, I believe. And the
6 data on that is uncertain, but it appears that they
7 have been run at only approximately 1,200 psi, which is
8 substantially less pressure.

9 And I don't think that was in the DSR-48 engine
10 either. So with all these things go to the last
11 sentence about our belief that the operating history is
12 such that the AE piston has been inadequately tested
13 and remains unproven.

14 And that, of course, is the question and fact to be
15 joined by the evidence, some of which we've heard
16 today, just to whether it's adequate or not adequate.

17 JUDGE BRENNER: All right. Let's go--you've got an
18 item five labeled "Other Components." It's then
19 followed by subparts which talk about specific
20 components.

21 We don't think it's necessary to take up time
22 discussing the paragraph numbered five on page ten and
23 continuing over to page 11 of the county's filing.

24 To the extent we understand it, it's not going to
25 be admitted as a contention.

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1 It's too vague, broad, and general. We are prepared
2 and will, in a moment, evaluate on their own merits the
3 particular items set forth under--starting with the
4 capital A on page 11.

5 And we'll look at those as further items in support
6 of the overall EDG contention set forth near the
7 beginning of the county's filing starting at page two
8 of the filing.

9 Frankly, there are some sentences we don't fully
10 understand in that general number five, but even if we
11 understood it, it just is not appropriate of what we
12 have to decide to go through in the understanding of
13 it.

14 We don't need to reiterate this late today that
15 we're looking at the specific instances.

16 We'll look at those further instances you have,
17 starting on page 11, as they may or may not be
18 admissible in support of the general EDG contention of
19 improper design and manufacturing in overrating and
20 undersizing, as relative to the Shoreham diesels.

21 MR. DYNNER: I should clarify for you, Judge
22 Branner, that the listing of the specific instances on
23 page 11 is not supposed to be specific matters to be
24 litigated, that what I intended to do there is shown by
25 the beginning of paragraph five, is to set the context

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1 as we've discussed before, for the litigation.

2 By being able to refer on the record to the fact
3 that there were, in fact, a pattern of defects and
4 failures, by referring to the board notifications, the
5 TDI Owners Group program reports and documents in the
6 NRC morning reports, and inspection reports, which
7 would cover the pattern of defects and deficiencies
8 principally in--I think almost exclusively in the
9 nuclear application of the diesels and at Shoreham, and
10 then to add to your confusion, I tried to list a non-
11 nuclear and Shoreman, which is probably a mistake
12 because Shoreham issues were, I believe, all covered in
13 the board notifications and TDI Owners Group program.

14 So what the specified instances are, beginning on
15 page 11 with the connecting rod bearing shells, is
16 merely an attempt, nothing more than an attempt, to
17 point to some additional non-nuclear TDI diesel defects
18 which in fact occurred, which formed part of the broad
19 pattern of defects and deficiencies in setting the
20 context for the litigation and which we did not intend
21 and do not intend to specifically litigate as to each
22 and every one.

23 JUDGE BRENNER: Well, you have added to my
24 confusion. I know you alluded to this at the outset
25 today, and I let my, what I hoped was temporary

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1 confusion at that time, pass without much comment from
2 me, because I wanted to get it at this point.

3 However, unfortunately, I'm still confused. What's
4 the point of all of it, then?

5 We would not --

6 MR. DYNNER: Maybe it goes to--excuse me.

7 JUDGE BRENNER: Go ahead. Anything you say may
8 help.

9 MR. DYNNER: I think maybe it went in my mind to,
10 again, a concern about whether we'd be able to say
11 anything on the record about how we got here and about
12 how the pattern of, for example, the defects and
13 deficiencies in TDI's ability to adequately and
14 properly design and manufacture diesel led the NRC to
15 take the position it did in saying it wasn't going to
16 license a plant with TDI diesels.

17 And this board, I think, indicating that until the
18 litigation of the diesel contentions, it wouldn't
19 recommend that that be done.

20 And it's really a contract setting thing. We have
21 said--and I hope it's not been overlooked--when we talk
22 about narrowing issues and being precise.

23 I thought one of the major things we did was to cut
24 everything out of the litigation that was in the
25 contentions before, except the four major components

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1 and the issue of the overrating.

2 But I didn't want to lose the right to refer on the
3 record and have put in the record the facts pertaining
4 to the background history of the TDI diesels.

5 JUDGE BRENNER: Well, when you say refer on the
6 record and put in the record facts, you're talking
7 about evidence. Correct? Evidentiary (inaudible).

8 MR. DYNNER: Yes, sir.

9 JUDGE BRENNER: Well, we're going to have evidence
10 only on those issues in controversy, and if you want us
11 to make findings, you're asking us to admit all the
12 issues in your II.

13 And if we did all that--and I don't know that we
14 would--but if we did all that, we would only make
15 findings on those items.

16 We discussed back on February 22nd and I think--in
17 fact, I know alluded to at the outset today the fact
18 that it where you were wanting to go to talk about
19 things not with a nexus to Shoreham, but by which you
20 thought they should show that TDI just can't be relied
21 upon for anything, we'd have to have a very special
22 nexus type showing.

23 And you said, no, you weren't going to have any in
24 that category, and in fact, we've perceived none, on
25 reading your written pleading.

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1 So I don't understand, still. Sorry we're having
2 apparently this much trouble with your explanation.

3 What do you want to do with the items starting on
4 page 11?

5 MR. DYNNER: For example, all the items that had to
6 do with Shoreham, most is listed, and there are many
7 additional deficiencies and defects that occurred on
8 the Shoreham diesel specifically that aren't listed
9 here, but that are in the DRQR, presumably, and the
10 Owners Group program and board notification.

11 This is to set the context that we're not talking
12 about the diesel engine that is made by a manufacturer
13 that had never had any problems except with pistons,
14 crankshafts, cylinder blocks, and cylinder heads, that
15 there is, in fact--it is, in fact, relevant and should
16 be considered by the board that there has been a
17 pattern of problems.

18 And therefore, when you look at the specific
19 instances, that they are against a background of a
20 manufacturer whose engines have had considerable
21 problems both in design and manufacturing.

22 JUDGE BRENNER: Well, I'm sorry. I just don't
23 fully comprehend what you mean by proof that would just
24 set a context or background, when you have specific
25 items like this listed for quite some pages in your

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pleading. I understand proof that that's a background in context when you have evidence by a witness on issue A and maybe as an introductory sentence or two.

He says, "I began to study this item back in 1983," and so on, and you really don't need that for a finding so much.

But it's a kind of a one-sentence warm-up, if you will, and an introduction.

I understand that in context, but I don't understand what you mean by background and context when you have quite a list of items listed here, especially by comparison to what you've told me before, the main items that you do want to litigate as the primary items.

And maybe I can put it in my own terms. I don't know what findings on the merits you would ask us to make as to these items occurring after page 11, in reference to the findings on the merits that I do understand you would ask us to make as to the items one through four in your II.

MR. DYNNER: I guess the answer is the proposition stated in paragraph five, which goes to the number and significance of design and manufacturing defects in the EPGs, which are the Shoreham engines, and identical or similar diesels common to them, being so extensive and

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1 pervasive that you can't have much confidence in TDI,
2 in their current components, in the EDGs at Shoreham as
3 they now exist, to believe that additional problems
4 will not occur.

5 JUDGE BRENNER: Well, that's not just context on
6 the other four items, is it?

7 MR. DYNNER: Well, it's --

8 JUDGE BRENNER: You're asking us to litigate on the
9 merits. What occurred with respect to item A, B, C, D,
10 E, and so on, and F?

11 And for that proposition, yet at the same time, you
12 say you don't want to litigate those items on the
13 merit.

14 And that's why I'm confused.

15 MR. DYNNER: Okay. Let me try again. If we take,
16 for example, A-2, that there were numerous cracks and
17 excessively worn connecting rod bearing shells on the
18 Columbia, Columbia had TDI diesel engines.

19 They're not DSR-48s, but they are TDI diesels. I'm
20 not suggesting that we litigate the issue of whether
21 the Shoreham EDGs have solved the problem or not solved
22 the problem of the connecting rod bearing shells which
23 might make the specific instances of other failures of
24 connecting rod bearing shells applicable to this
25 litigation.

1 Because we're not challenging in this litigation
2 specifically the design and manufacture of the
3 connecting rod bearing shells.

4 JUDGE BRENNER: For Shoreham.

5 MR. DYNNER: For Shoreham.

6 JUDGE BRENNER: I mean, whether or not the Columbia
7 has problems, you don't care.

8 MR. DYNNER: Or anywhere else. We are saying that
9 there is a history of failures and defects both
10 manufacturing and design in connecting rod bearing
11 shells, the TDI engines at Shoreham and in common
12 components, other applications, as well.

13 And there are so many that go into quantity, for
14 instance, there are so many of this kind of thing that
15 are listed in the reports and analyses and in these
16 additional things which we pulled out of the review of
17 the operating history, that consideration, we will
18 argue, shall be given to the fact that the quantity of
19 these facts that, number one, that they occurred, and
20 two, that they occurred as to the components that we
21 say they occurred to.

22 And then that they are so numerous and pervasive as
23 to cast a shadow on the engines at Shoreham, even with
24 the modifications that were made.

25 I repeat. We are not contending to litigate here

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1 whether the connecting rod bearing shells at Shoreham
2 are designed properly.

3 We are going to, I hope, address the manufacturing
4 quality of those when we look at the DRQR, but we are
5 saying that when one addresses those engines, it has to
6 be done in the context that there are a pervasive
7 number and quantity of defects which says something
8 about TDI and its diesel engines.

9 JUDGE BRENNER: Well, let me give you some
10 reactions, and if you want to respond, you can. On the
11 one hand, you're professing that you're not trying to
12 put any items in what I might want to term it special
13 showing category that we discussed at 21,622 and that
14 we discussed here today of items with no nexus to
15 Shoreham, but something that you would show a bases in
16 specificity that the item was so significant with
17 respect to TDI's competence, and I think the transcript
18 had a type where it said "confidence," but what I think
19 I said and, in any event, intended to say was TDI's
20 "competence," that it should be heard in terms of
21 judging whether or not anything TDI does can be relied
22 upon.

23 And we said that it's obviously a more detailed
24 showing than just a simple nexus showing, and you told
25 me that's not what you're trying to do, although --

1 MR. DYNNER: That's correct.

2 JUDGE BRENNER: All right.

3 MR. DYNNER: That's not what I was trying.

4 JUDGE BRENNER: I want to eliminate that, because
5 some of what you said sounds close to that.

6 Putting that aside, to litigate the items listed
7 after your paragraph five, for the purpose of setting
8 context, is a rather--would require, in my preliminary
9 view, a rather detailed litigation of each and every
10 one of those items in and of itself, although you
11 profess not to want to do that, to determine what
12 context, to use your word, they have.

13 If I converted that word, I'd say what relevance or
14 value they have to our findings on the merits of the
15 adequacy of the Shoreham diesels or willing to litigate
16 the adequacy of the Shoreham diesels where you have
17 specific items, and you've attempted to put those
18 forth in your one through four of II.

19 And those are the findings that we would make. To
20 the extent you had other items, we would evaluated it.

21 I understand you're saying you don't have a basis
22 for saying these particular items are still problems on
23 Shoreham.

24 So they're not in that category, either. And you
25 profess them not to be part of either category, and

1 therefore I don't really know what to do with them. It
2 would be quite a collateral inquiry, quite an involved
3 inquiry on arguably a collateral matter, let me phrase
4 it that way, given the value of proceeding that way, as
5 distinguished from the opportunity we've given the
6 candidate to come forward with specifics on things that
7 are wrong with Shoreham, either out of those basic--I
8 forget now whether it's 12 or 16 items--and you've
9 taken four of them, or, as we'll discuss in a moment,
10 anything specific you wanted to point to in the DRQR.
11 And that's things that are still problems.

12 And that opportunity was there. So I'd be
13 inclined--and I'll have to discuss it with the board,
14 because I don't think any of us, based on our
15 discussions among ourselves as a board, understood your
16 intent as you've just expressed it in item five.

17 But I don't think we'd admit any of that in item
18 five, because we don't know what to do with it,
19 frankly, in terms of the merits of what we have to
20 decide, given the other opportunities you have, some of
21 which we've evaluated, some of which we'll continue to
22 evaluate, of telling us specifically what the specific
23 instances are, upon which we should decide on the
24 merits whether or not the Shoreham diesels are adequate
25 for their purposes and meet the requirements necessary

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1 to their purposes. I wanted to give you that
2 reaction in case you wanted to say something.

3 (End of tape)

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1 JUDGE BRENNER: My fellow board members
2 do not disagree. I was preliminary with my pre-
3 liminary reaction, put it that way.

4 MR. DYNNER: I would just like to make
5 one short comment. I was responding, or trying to
6 respond to the point that I thought had been made
7 at the transcript 21635, in the last paragraph.

8 I was trying to do it in a way that said
9 at least, almost as if the Board at least should take
10 judicial notice if you will, of the Board notifications
11 and the other documents that show the pervasiveness
12 and number of events that happened. The fact occurred.

13 The significance of the fact, with respect
14 to each element of the Shoreham engine, is not something
15 that I'm trying to prove, and not something that I
16 think I can litigate, unless we're going to be here
17 for three years.

18 It was an attempt, and this filing was
19 an attempt to focus down on the major components, the
20 overrating issue, but without sacrificing the context
21 that we all know, that as a fact, shown by the Board
22 Notification, shown by the TDI owners group program
23 reports, which refer to numerous other defects, and in
24 some case, talk about them.

25 That those defects and deficiencies did occur.

1 They are facts, and they form a backdrop, if you will,
2 to the drama that may take place soon.

3 JUDGE BRENNER: You give our hearings a label
4 greater than they deserve, in my opinion. Although,
5 I've heard them called worse, also.

6 Well, we've discussed at the beginning
7 of the day, the context of my remarks at 21635 and
8 I'll briefly reiterate that they do indeed have to
9 be put in the context of our other requirements. It
10 was in a supplemental explanation, but not in addition
11 to, but not in derogation of our earlier requirements,
12 as to specificity and basis and nexus.

13 To ask us to take judicial notice of the
14 significance of all these things, and the Board
15 Notifications and so on, for a finding on the merits,
16 goes too far. That's not the kind of thing that can
17 be subject to judicial notice. Many of these details
18 are of varying importance, are undoubtedly the subject
19 of some dispute.

20 We can certainly take notice of the fact
21 that a lot of problems have arisen with respect to
22 the TDI diesels. We incorporated that as part of our
23 ruling on saying that the county had made a sufficient
24 showing to meet these standards for reopening the record
25 to the additional diesel contentions in February.

1 Beyond having previously met the standards
2 on the basis of the knowledge that existed in approxi-
3 mately June or thereabouts, 1983. But, that's as
4 far as it goes. That was a notice in terms of bases
5 not a finding on the merits. So, you've got that notice
6 already. We know about that. But, what we know about
7 them is not going to be the subject of findings on
8 the merit. Unless there are particular items that we
9 litigate before us. On that basis, the reaction that
10 I gave you before would be my ruling, at least, and
11 we'll discuss it with the other Board members. That
12 is, we would not admit these as separate issues, given
13 the purpose that you haven't been putting them forward.

14 We had quite some problem with the bases
15 for some of these, and knowing that draftsmanship is not
16 a problem in the county's pleadings, we couldn't under-
17 stand some of the alleged basis for this, but you've
18 explained that. Now that I better understand your
19 purpose, we were looking for where is there an allegation
20 with bases and specificity that this is a present problem.
21 Present particular problem on the Shoreham Diesel that
22 you want to litigate.

23 And I've spent quite some time going through
24 your items and file for that purpose, as to the other
25 Board members and we discussed it together. And you've

1 explained why I had that problem. I miss interpreted
2 your intent, so I'm glad to clear that up.

3 But, now that I understand your intent,
4 it would not be something that we would litigate on
5 ther merits.

6 But, all the items that we would litigate
7 on the merits, we would look at individually, and
8 then to the extent that there was something we should
9 look at together, we would do that, too. But, it
10 would only be for the specific items set forth.

11 I don't know if it's necessary to get
12 comment from the other parties, but, I'll give look
13 on opportunity and in this case, the staff, too, if
14 it wishes, since I think this was kind of a new
15 explanation. Maybe the other parties appreciated
16 it, the purpose of the county better than the Board did.

17 MR. STROUPE: Judge Brenner, we agree
18 entirely with what you have expressed, this afternoon,
19 with regard to that contention.

20 JUDGE BRENNER: Mr. Goddard, the staff,
21 although in generalities, as we have already indicated,
22 did not object to any items. We think about this one
23 given the explanation.

24 MR. GODDARD: Well, the staff would rely
25 on the statement it made in it, the original filing,

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1 Judge Brenner, brief though it was. To the extent
2 that these could be linked to the admitted contention
3 during the evidentiary hearing, we would consider it
4 irrelevant. We chose to make our rulings on the
5 relevancy at that point. I believe that the staff
6 did not interpret your requirements as specificity
7 anywhere near the degree with which you are applying
8 them today, and it is for this reason I feel that the
9 staff response was informant at that.

10 JUDGE BRENNER: Well, in general, let me
11 say, we weren't overly enamoured of the staff position
12 that we await the hearing for all rulings on relevance.
13 I've already conceded that many rulings on relevance
14 cannot be forshadowed or preordained, and we do have
15 to adjust to situations as they arise, both in motions
16 to strike and then sometimes in rulings on specific
17 objections to specific questions. But, nevertheless,
18 we try to the extent feasible, as I think is typical
19 of any trial, and certainly in our C hearings, as
20 I know them, to define the universe a little better than
21 just saying, here are a lot of instances that we might
22 admit, and we'll worry about the relevance later.

23 And so, that's the concern that we had
24 with the staff's answer. That's of substantitive concern
25 and what we recognize that has to occur is to some items,

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1 and in fact, one of our rulings, already, is consistent
2 with the staff's view as applied to that item. I
3 certainly don't mind noting, and that was the ruling
4 on the cylinder blocks. But, just apply that generally
5 across the board, without some attempt of being able
6 to have a little more detailed analysis of relevance
7 to the extent that we could now, would not be the
8 best way to go.

9 For the record, since I labeled them pre-
10 liminary remarks before, that would be the preliminary
11 remarks would now be transformed into the ruling of
12 the Board on that Item 5.

13 Your Item 111 is the Owners Group Program
14 plan.

15 MR. STROUPE: Judge Brenner, there's also
16 a number 6.

17 JUDGE BRENNER: Thank you, I'm sorry. I
18 missed that, as everybody was quick to remind me. The
19 Item 6, on overrating and under sizing of the diesels.
20 Mr. Dynner, this strikes as being a rather contention,
21 to say the least, particularly coming at this stage of
22 the proceedings. A lot has happened since February,
23 in terms of discovery, among other things, and reports
24 outside discovery. Where do you come forward with
25 something this general, at this point? And what's your

1 purpose on this one?

2 MR. DYNNER: Okay, again, as I indicated
3 earlier, there are, there were diverging interpretations
4 of what the Board wanted us to do on June 11th. The
5 issue of overrating and under sizing of the diesels
6 is supported by an analysis of how the DSR 48 engines
7 at Shoreham were developed through a design in which
8 rather than changes being made in components, the speed
9 and horsepower of the engines were increased, significantly,
10 without any design changes, or changes in the manufacturer.
11 But, rather by simply increasing the air and fuel flow
12 into the engine, without taking into consideration in
13 the design of the components, the additional thermal
14 and mechanical stresses that result from, in effect,
15 hopping up the engine.

16 There is testimony and there is evidence
17 to the effect, that in fact, this is what was done
18 to the engine to get it up to over 600 horsepower,
19 per cylinder. There is also evidence that the way
20 the engine was rated, was done without any testing,
21 there was a 24 hour test on the test band, and the
22 DSR 48 engine, in order to rate it. There is testimony
23 witnesses including a consultant at LILCO, that an
24 engine on the test stand, for purposes of rating it,
25 should be run for something along the line of a thousand

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1 hours. There is agreement, in general with that, our
2 own consultants believe that it is necessary that in
3 rating the engine, I think everybody agrees with this,
4 in so far as the evidence induced to date, to run
5 that engine at it's rated load, for a long period of
6 time, 700 to a 1,000 hours and possibly more, in
7 order to determine whether, what you rated it at is
8 something the engine can run at without suffering
9 failures and problems.

10 In this case, there is testimony that TDI
11 took components, some of which had been used in the
12 DSR 46 engine and another engine, and relied on them
13 without putting them altogether in the R 48 engine,
14 and all they did was a 24 hour test. So, the engine
15 in our view, was not properly rated. And it is overrated
16 as a result shown specifically, by the effects, and
17 this is a tie in to the, in part, the past components.

18 That is to say, that it was overrated for
19 the crankshaft that was in it originally, a we're
20 maintaining that it's still overrated with respect
21 to replace crankshaft. It's overrated with respect
22 to the cylinder heads, because they can't stand up
23 under the rated pressures, stresses to which the engine
24 is put, at 3500 KW, with a two hour, 2900 KW overload
25 requirement. And the same is true with respect to the

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1 AF pistons. They're originally cracked, and we say
2 the AE pistons are going to suffer the same fate. And,
3 finally, we believe that the over radius ties specifically
4 to the problems that have occurred in cracking in the
5 engine block. It's happened in all three of the
6 Shoreham EDGs.

7 To further explain this statement in
8 paragraph 6, the current modifications and changes
9 are so extensive, in that the engine now has a new
10 crankshaft, new pistons, and one of them is soon
11 to have a new cylinder block, and it may already
12 have a new cylinder block, that they are effectively
13 a new prototype of DSR 48. And that in that regard,
14 the some three or four hundred hours that they run
15 has been inadequate to determine whether this affectively
16 new prototype engine is properly rated.

17 JUDGE BRENNER: Are you completed?

18 MR. DYNNER: Yes, sir.

19 JUDGE BRENNER: Well, as to the individual
20 items, one through 4 and 11, we understood. You've
21 alleged that in the written statement, and to the extent
22 necessary, added to that orally, today, and citing what
23 the support is, for your number 6, you've gone back
24 over those various same things, as to each of those
25 four components, if you will.

1 And we understood that, and the question
2 in my own mind, continues to be, that Item 6 is just
3 a very general statement. The actual contention is
4 as defined by the items that you would put forward
5 to prove it. And, in fact, a more concise, but
6 nevertheless, adequate wording of the idea that the
7 Shoreham Diesels are overrated, undersized, is in
8 the, what you've termed the EDG contention, stated
9 at page 2, of your pleading, and as I've said, that
10 contention exist or does not exist, only to the extent
11 of the items that we would admit under 11, one of
12 which we've already admitted.

13 MR. DYNNER: Well, I don't agree...

14 JUDGE BRENNER: And I don't know what
15 the number 6 is.

16 MR. DYNNER: I don't agree in the sense
17 that the other four contentions indicate that the four
18 major components currently in the engine, as we alleged,
19 are inadequate. Six ties everything together. They're
20 inadequate, not because they only, those four contentions,
21 only those four components have problems, but, because
22 the engine, as a whole, has been inadequately tested
23 and inadequately rated.

24 The evidence that we've produced shows
25 how a company rates an engine, and the evidence is that

1 it rates that engine by testing on a test stand
2 for a large number of hours, under the rated speci-
3 fication that it's going to try to give. In this
4 case, 3500 KW for a continuously for a year, with
5 maintenance, except for maintenance addages, and
6 two hours in any 24 hours, at 3900 KW.

7 We have, for example testimony that that
8 would have been the proper way to rate this engine.
9 If you don't rate it and test it in that fashion,
10 you haven't properly rated the engine. If you haven't
11 properly rated the engine, you've put a label on
12 something and said it's capable of producing x, when
13 it can't produce x, and you have no basis for saying
14 that it's going to produce x, and what we've said,
15 then is, the failures that took place at Shoreham are
16 evidence that, that in fact, is the case.

17 And I think it's a difference between saying
18 what broke is going to still break, and saying that
19 the engine is overrated, and evidence of the fact, that
20 among other things, that the engine is overrated, is
21 that these four things, and many other things, did
22 crack and fail.

23 JUDGE BRENNER: Well, what is the definition
24 or the limits of the scope of this issue, then? What
25 are the instances you would depend on to prove Item 6,

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1 beyond the four that said four? You don't have any
2 specifics here, that I can see. See, we already
3 understood that part of those four items would be
4 used to support that proposition because you can
5 get that from the EDG contention. But, now I
6 understand it's not just those four. You want others.

7 MR. DYNNER: It's not just those four.
8 It is the evidence of how the engine was rated, in
9 fact, by TDI. How the engine was tested, how the
10 design was developed.

11 JUDGE BRENNER: This is like ---to our
12 rejection of your proposed contention for, that we
13 weren't interested in the abstract proceses, in that
14 context it was QA to be sure, but, in the abstract
15 processes, except as it maybe tied to items that
16 had specific problems or that you have a basic to
17 show there is not reasonable assurance that they will
18 not have specific problems, and then we could look
19 at those in the context of the quality, testing,
20 whatever, that maybe pertinent to those specific items.

21 MR. DYNNER: Well, I think it's quite
22 different because, in that case we were talking about
23 four particular components. Take somebody saying,
24 I'm going to seel you an automobile, and I'm going
25 to guarantee that this auto is 300 horsepower and can go

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80 miles an hour on the highway, without anything bad happening to it. And then, you take it out and run it that way and you have four components that crack. Well, I don't believe that you should be limited in that, just saying, okay, four components are no good. Because the contention is that the car couldn't reduce 300 horsepower without anything happening to it, and it couldn't run 80 miles an hour, and what you're, the evidence your adducing in order to show that, is that somebody took that automobile, which was really designed to put out 200 horsepower and run it 60 miles an hour, and they goosed it up and they made it into a hotrod, then they put a plate on it and said now, everything is okay. And when you took it out and ran it, things happened to it.

Well, we're going to litigate a particular components, their adequacy now in the existing engine, that seems to me is a separate issue, is that those engines are overrated. Not the four particular components alone, are inadequate, but the engine, as a whole, is overrated, for what the specification of it's component is to be.

And those four components, which we are focusing on, in order to say that the replacement

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1 components are inadequate, is different from saying
2 that the entire engine is overrated.

3 And the evidence is different. I just
4 listed those four. What other ones we're going to
5 list...

6 JUDGE BRENNER: I mean, you're going
7 to tell us to tune in later, for the other ones?

8 MR. DYNNER: No. I'm telling you that
9 I'm a bit at a loss in answer you more completely
10 because I didn't come here believing that I was
11 going to have to state the level of detail that
12 you're asking me to state. I think I've got a
13 reasonable job, I don't have my, all my people here
14 with me, and I've tried to answer to the extent that
15 my memory and some of my notes can serve me. But,
16 frankly, sir, I was not prepared to come in here,
17 because I didn't understand your order of February 22nd,
18 to require this level of detail and the evidence, and
19 yeah, I'm not prepared. I did the best I can do and
20 I've done the best I can do.

21 JUDGE BRENNER: Well, I don't want to
22 debate unnecessarily, but, let me tell you, I don't
23 think, as to this one, at least, whether or not you
24 have an argument as to the other questions that we
25 asked you, and whether or not we need the answers to

1 those questions to make our ruling, as opposed to
2 seeing how much information that we could obtain
3 to make our ruling easier, is one thing. But,
4 under this Item 6, I just have to agree with you
5 that we're asking for a great level of detail,
6 because we're not, to say, you misunderstood our
7 order as to setting forth instances, even if you
8 have some dispute as to what was intended by instances,
9 which, I also disagree with the original dispute,
10 you had to know that you needed more than this paragraph
11 6, and among other things, we had a bit of discussion
12 as to whether we could start the litigation on some
13 items, shortly after February, when LILCO said that
14 there reports out, at least on some items, or at least
15 reports would soon be out, and we said that we would
16 not start it then because it was important to have
17 more of a picture, at least, as to those basic, and
18 I keep forgetting the number, I'm sorry, it's either
19 12 or 16, components that were looked at. Just to
20 know what was ahead, because we didn't want to stand
21 the risk of having to back up and reopen records and
22 so, as other things became pertinent, within the diesel
23 machine. In fear that looking at item 15 and it turns
24 out something they've got there as pertinent to item 3.

25 We didn't want to back up, but, nevertheless,

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1 we said after we do get a better context, by having
2 information on many more of those items, if not all
3 of them, it would still be necessary to go item by
4 item, because that's the only way that one could
5 proceed, as opposed to just talking about everything
6 in general all at once.

7 And we discussed that in a number of places
8 on the transcript, among other places, 21616, and as
9 I say, I just don't think we're pushing you for unfair
10 detail on this Item 6. But, let me ask LILCO if
11 they have any, that we've got your views on it, and
12 let me ask LILCO if they have anything to add to their
13 written answer on this one.

14 MR. STROUPE: No, I think our views are the
15 same as those that have been espoused by the Board.

16 JUDGE BRENNER: Well, they have only been
17 espoused by me so far, and that's not a ruling, yet.

18 MR. STROUPE: Espoused by Judge Brenner.

19 JUDGE BRENNER: I don't know if they're views
20 so much as a stimulation of getting Mr. Dynner to answer.
21 I've got to give you that caveat because we go back
22 and consider some things.

23 MR. STROUPE: Well, we quite frankly, agree
24 with what has been said.

25 JUDGE BRENNER: I didn't want to get too picky.

1 I just, and I understood what you meant. But, again,
2 sometimes we ask questions and say things to stimulate
3 a response that we think might help us.

4 Okay. Roman 3, on this Group Program plan.
5 Mr. Dynner, similar to things that we've said about
6 other items, on this one, LILCO argues that you're
7 talking about the way the plan was scoped and implemented,
8 and also lack of independence, and I'll get back to
9 the incomplete portion, which I think is your item C,
10 under lll, later. But, staying with A and B, these
11 according to LILCO's argument, are vague, and dosen't
12 give anyone notice of what you would prove to support
13 the contentions, and after all this discovery, and
14 all this time, you are obligated, the county was obligated,
15 to come forward with specific evidence that a problem
16 exists with a particular components reviewed by the
17 program, and should have been listed separately and
18 to the extent, you had that, presumably was.

19 And otherwise, we'd have to unfocus litigation
20 in LILCO's view. Why aren't they correct?

21 MR. DYNNER: Well, they're not ...

22 Correct for the same reason
23 that they're not correct about a lot of things, which
24 is to say that they're looking for a level of detail
25 which is different than we think is necessary to support

1 the bases for contentions. And I think that if this
2 were viewed in the light, particularly of matters which
3 are stated, as to the owner's group, that there is
4 plenty of detail in this. Some of these things are
5 not as detailed as they could be because we didn't
6 have the DRQR, and LILCO points out that some of these
7 are things which are not answered in the program plan,
8 aren't in the program plans, as we've said, but, are
9 apparently, they believe adequately addressed in the
10 DRQR report.

11 As I said, we only got a few days ago.
12 Maybe it would help to go through the specifics on
13 this, if you wish. Again, our interpretation of
14 the first part, was we had to list instances, not
15 that we had to list evidence. And the staff had
16 apparently the same interpretation of your February 22nd
17 report. Our interpretation of your order on the DRQR
18 was that we should address the elements of the DRQR,
19 that we wanted to have added to the litigation.

20 Again, maybe I was confused, you used
21 different words. I mean, we didn't say list instances
22 of problems with the engine. It was the elements
23 that I regarded as being those that we should address.
24 And, this entire thing, just starting with A, deficiencies
25 and scope and implementation, the owner's group program

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1 attempts to list them. LILCO has, that it's going
2 to rely on the owner's group program on the position
3 of the diesel. The staff has said that it's going
4 to rely on the owner's group program for it's con-
5 clusions. It's doing it's review of the owner's
6 group program for that purpose. And, accordingly,
7 we feel that the county should be given the opportunity
8 to say, why the owner's group program are not to
9 be relied upon as heavily as the apparently the
10 parties are intending to rely on it.

11 And that there are numerous deficiencies
12 in this scope, and in how that program has been im-
13 plemented, ---the issue as to how those deficiencies
14 might have been addressed in the DRQR report that we
15 haven't seen.

16 JUDGE BRENNER: Well, it't not just a matter
17 of detail. It's a matter of probabitive value and
18 pertinence. What's the sense, for example, litigating
19 an alleged lack of independence in the abstract, we
20 could find that everybody would perform work on this,
21 work for LILCO, where it was paid by LILCO, and so,
22 and as in the words o', the vernacular word, general
23 demerit, so what? in terms of what we have to look at,
24 we would have to look at that only in so far as it
25 manifasted itself in the lack of reasonable assurance

1 finding for the particular things looked at, and,
2 for example, you've got the engine block and you're
3 going to want to talk about the work performed by
4 them on the engine blocks, and you could come for-
5 ward with your evidence as to why the work performed
6 by persons working for, on behalf of LILCO, were
7 shoddy, and whether or not they were LILCO employees
8 or consultants, and how independent they were, is
9 besides the point.

10 It's just digressive, nonprobative---
11 issue, in the absense of some requirement that
12 somebody is violating. And then I use independence
13 as an easy example. So much the same would be
14 true as to the other items put forward under A,
15 would it not?

16 Again, you talk about context and some
17 context is appropriate, and one of the context that
18 we're looking at is the fact that this isn't February
19 any more. This is July, and we certainly have had
20 ample discovery, at a minimum, for issue identification,
21 actually will be on that, in our view.

22 I hadn't gotten to C, myself, but, in your
23 remarks, Mr. Dynner, you did get to that item C, which
24 is the fact that the owner's, key elements of the owner's
25 group program are incomplete.

1 As to that, we had pointed out, I thought
2 rather specifically, that transcript case 21620 to 21
3 and has also been introductory, brief remark, pertinent
4 to 21614, that we'd hear about what the amendment of
5 issues and arguably necessary further discovery,
6 discovery which arguably might be necessary, at this
7 time, the time of your next filing, and now this
8 conferenced based on the filing. But, we said, in
9 order to litigate particular items, add particular
10 items in the, we said the DRQR, on the transcript,
11 that the same reasoning would apply to the owner's
12 group program, although, as I read you item C, you're
13 focusing on the DRQR, also.

14 The party, in this case, the county, would
15 have to particularly tell us what it wants to litigate,
16 and why it's important to litigate it, and why it
17 is necessary to await the issuance of the particular
18 reports that might not be issued, in this case, to
19 await the study of voluminous reports, just as heard,
20 which you, of course, have not had an opportunity to
21 evaluate, thoroughly, if at all, and to tell us why,
22 and that was a rather specific requirement. And
23 just to say that the program is incomplete because
24 a list of reports has not been issued, or has just
25 been issued, we'll transform the point, and you haven't

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1 had a chance to look at it, is not sufficient, given
2 everything that we know that you should know, over the
3 course of the months, as to what was being looked at,
4 and so on. You can at least tell us what items you
5 have problems with and we have nothing of the sort.

6 In fact the reports are not complete or
7 maintenance and inspection activities have not been
8 issued, and some testing program has not been defined.
9 And the abstract, although, are not tied to specifics.

10 Now, as a separate contention, one of them
11 you put down was the cylinder block testing program,
12 and that might be relevant to the merits of the cylinder
13 block issue that we have admitted. I don't know. We'd
14 have to see that in the evidence. We certainly wouldn't
15 preclude that at this time.

16 But, other than, that's an example of where
17 it would be tied to a specific item. But, a general,
18 they are not tied.

19 MR. DYNNER: You know, this is all being
20 turned around. The DRQR report, everybody knows the
21 DRQR report is the one report, it's a nine volume, it
22 addresses the manufacturing quality of the hundreds
23 of components of the engine. It says what we looked
24 at, what inspections were held, how the inspections
25 were done, and what was found. Just issued, we haven't.

1 obviously, had a chance to look at it. It is the
2 only when we look at that can we possibly address
3 what issues in it, where we want to challenge. What
4 are the problems that were found in it. We don't
5 know what they found. We don't even know which
6 parts, out of a particular component that they in-
7 spected, because, as you look at the DRQR or rather
8 the owner's program plan, it dosen't tell you that.

9 And that goes back to the first part of
10 the list of deficiencies. Now, LILCO comes back and
11 says, well, parts of the engine we inspected and
12 those procedures are in the DRQR report. And now
13 we're told that we're not specific enough in saying
14 what we want to do in the DRQR.

15 We have to have an opportunity in order
16 to comment and see what we think of manufacturing
17 quality, to review the DRQR report before we can
18 be specific about it, because we haven't seen it yet.

19 With regard to the instances of the whole
20 program. Look, LILCO is going to rely on this thing,
21 and it seems to me what, on this program. It seems
22 to me what the Board is saying to us, is Gee, LILCO
23 relys on it, LILCO can rely on it. You can't, county,
24 you can't have the opportunity to say why this Board
25 should not accept, at full value, what LILCO is relying

1 upon, and what the staff is relying upon, to the
2 extent that it limits it's own involvement to a
3 review of the owner's group program.

4 We have to take the owner's group program
5 given your remarks to me, as a given. That's something
6 they're going to say, which is the opposite of what
7 we're saying. We have picked out four components
8 to try to focus down and limit this litigation. But
9 with our own understanding that a part of the litigation
10 is when the other fellow says, I'm relying on this.
11 Everything is done perfectly. This is one of the
12 greatest engineering feats of mankind, one of the
13 most extensive reports that's every been filed. We
14 covered this, we covered that..why shouldn't we
15 have the right to say, hey, wait a minute. That's
16 not true. You haven't done inspections of this.

17 You haven't given the procedures under which
18 you're going to do those inspections. You haven't
19 utilized appropriate, you haven't made the necessary
20 commitments. You looked at incomplete records. That
21 is what this entire portion, in part 3, on the deficiencies
22 is aimed at.

23 JUDGE BRENNER: I've already looked pertinence
24 of your point, and I want to tell you that before you
25 go too far with it. Since it's only for our benefit.

1 LILCO can only say that, look at the DRQR
2 and see how great we are, and it's the world's greatest
3 job, and all the other words that you used, as to issues
4 that we've admitted. I'm not interested in how great
5 they are, as to things we're not litigated.

6 That's for other people, presumably LILCO
7 and the staff, and so on, to look at. We're only
8 interested in our issues that we have found that
9 are admissible in litigation. And we're here to sit
10 as a board in a adjudicatory hearing. It's meant
11 to look over their shoulder as to, LILCO's shoulder
12 or the staff's, or anyone elses for that matter, as
13 to everything and anything that they may have done
14 in the DRQR. So, I don't want to hear about all
15 the good things, all the self serving statements
16 that LILCO may be able to make in other forms, or
17 in press releases, or wherever, about their DRQR.

18 I don't care. I'm only interested in terms
19 of the issues that we're litigating. So, I don't
20 understand where you're worried about having an
21 opportunity to respond to those kinds of remarks
22 because they're not going to get away with making
23 those kinds of remarks unless it's pertinent to what
24 we're litigating.

25 MR. DYNNER: And we're not litigating the

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1 entire engine? Unless, of course, we have the
2 overrating, under sizing contention, because, unless
3 we get that in, we're now down to litigating four
4 components.

5 JUDGE BRENNER: Well, maybe. We haven't
6 ruled on those four components, yet. But, ..

7 MR. DYNNER: But, there maybe two, I
8 don't know. I didn't mean to suggest, I meant,
9 at most..

10 JUDGE BRENNER: Well, you know, you're
11 pretending to have a contention in Item 4. You're
12 talking about additional information, and we've
13 discussed in February, because we envisioned then,
14 the fact that we would be back before all our in-
15 formation was in, and in part because we thought
16 we would be back on this item in approximately May,
17 but we gave you more time on discovery.

18 MR. DYNNER: Okay, so you're on Item 4,
19 now? I thought we were talking about Item 3C, and
20 about Item 3A, which is what I was just addressing
21 myself to.

22 JUDGE BRENNER: Well, I'm talking about
23 Item 3C, because, although I may have labeled it
24 additional information, but, you're saying that
25 the program is incomplete, and what you're saying, in part,

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1 is that certain reports have not issued, and in the
2 case of the DROR, as you pointed out, and we agree,
3 that it was issued so recently that you haven't
4 had a chance to evaluate it. As a final report.

5 But, with all the discovery, and your
6 consultants, it seems that, to me at least, that
7 the county should have been able to tell us what
8 specific components there maybe problems with.

9 MR. DYNNER: On the manufacturing side?

10 JDUGE BRENNER: On anything.

11 MR. DYNNER: Well, we've already said
12 on the design side, we've limited it to the four
13 components. We said that we couldn't look at
14 manufacturing because you have this massive program
15 going on, in which we don't know what inspections
16 took place and where they looked for what, on what
17 components. And we don't know what they found, because
18 we haven't seen the report yet. So, we don't know if
19 or what we're going to say about the manufacturing
20 quality, yet, except that we do have on those four
21 components that we're challenging the design of.

22 We do have aspects of that, were noted
23 to go to manufacturing quality, and to the overrating.
24 But, we don't know, we won't have until we review
25 the DRQR, the issues concerning the manufacturing quality

1 of the engine as a whole, and other components of
2 the engine. They were not in that batch of the 16
3 phase 1, so called significant know problems. Which
4 is a design review, principally, if not exclusively,
5 you can call it that.

6 JUDGE BRENNER: All right. I'll let that...

7 MR. FARLEY: Judge Brenner, I'm Milton
8 Farley, counsel for LILCO. I have the responsibility
9 for part three, which I will try to be very brief.

10 You are aware, as the entire Board is,
11 that LILCO strenuously objects to the overall breadth
12 and scope of the proposed litigation that the county
13 is suggesting in this item 3. First of all, we think
14 it is a very untimely proposed contention, or proposed
15 tactic by the county. The county knew in November of
16 1983, exactly what the owner's group program was going
17 to be about.

18 In early January, of 1984, it was provided
19 copies of the DRQR description. And the DRQR procedures
20 and list of components. From that time to the present
21 day, they have been furnished with transcripts of all
22 the owner's group meetings, they have had representatives
23 at all the owner's groups meetings, and there is no
24 reason, when the Board directed on February 22, 1984,
25 as you observed, and the four intervening months that have

1 elapsed, with all of the discoveries and documents
2 that were available to the county, why they could
3 not have come up with the specifics or the bases
4 out of the DRQR, either on design or on manufacturer
5 or anything.

6 No reservation should be permitted the
7 county, with respect to this DRQR. They had their
8 shot and they didn't take it, and it's over with.
9 I mean, it's just too late, and that has to do
10 with the specific deficiencies they talk about, that
11 has to do with not haveing had an opportunity to
12 read it, they've had an opportunity to know everything
13 that is going on about it.

14 It has to do with manufacturing defects
15 and it has to do with the particular deficiencies that
16 they talk about, the particular lack of independence
17 that they complain of, and the, and we have enumerated
18 in our response, and have elobarated on for the Board,
19 today, the report is complete. Everything is complete.
20 They've got everything now. So, that is, there just
21 simply is not basis for complaining about that any longer.

22 Now, I don't think it's necessary for me
23 to go through each one of the alleged, so called alleged
24 deficiencies, each of which we've objected to, and
25 explained as being overly broad, excessively broad, having

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1 no basis, or actually being totally wrong, or being
2 irrelevant. We went through each and every paragraph
3 of their filing. But, we strenuously object to
4 any more discussion or extension being granted to
5 the county in connection with this DRQR.

6 In candor, we agree with you, and your
7 statement on behalf of the Board, that if LILCO
8 or the staff, attempts to use the DRQR to support
9 any of the issues that you have admitted to litigation,
10 after having heard all this, then, they are permitted
11 to use those portions of the DRQR to attack the
12 basis on which we rely.

13 Despite your earlier statement, I would
14 point out that this is one issue on which the staff
15 agrees with us. And we would urge you to adopt
16 the position of the staff and the position of LILCO
17 on Item 3.

18 JUDGE BRENNER: The staff agrees with
19 you in Roman 3, but then when they put forth their
20 schedule, I see some --

21 MR. FARLEY: That's going to be another
22 subject.

23 JUDGE BRENNER: I know.

24 I see some inconsistencies in
25 the staff's view on Item Roman 3, and what they have set

1 forth as their view of the schedule. So, I'm not fully
2 sure I understand that..

3 MR. FARLEY: Well, they do say that they
4 do not think that the owner's group program should
5 be the subject of independent or separate litigation,
6 in this proceeding.

7 JUDGE BRENNER: I know, then they have
8 a schedule for hearing that advises to wait for a
9 staff DRQR evaluation.

10 MR. FARLEY: Yeah, but we depart from
11 them on that.

12 JUDGE BRENNER: Okay. You don't want
13 to agree with them on everything they say.

14 What if it's true, is it not, that the
15 county has not really had an opportunity to properly
16 evaluate the only very recently received, final DRQR
17 report?

18 MR. FARLEY: Well, Your Honor, I agree
19 technically, with not having an opportunity to read
20 the specific 9 volumes, or whatever it is, but, I
21 think it is unfair to take that out of context, from
22 what has occurred, since November, of 1983. Now,
23 for example, on June 21, I tended the taking of the
24 deposition by Mr. Shipe of Mr. Schilling, down in
25 Oakland.

1 On June 22nd, there was an owner's group
2 program meeting at FAA, and it is absolutely amazing,
3 I mean, you have the staff there, you have the staff
4 consultant, you have the outside consultants that
5 the staff has employed, you have all of the FAA
6 people, for each report, on each component, you
7 have the owner's group representatives, and then
8 you have the county's experts, and they go through
9 each report.

10 And this has been going on ever since
11 the thing started, and they go through each report
12 and they make their comments, and the county's
13 expert is taking all these notes, and then at then
14 end he gets up and wants to make a big argument and
15 presentation to these outside consultants, as to
16 how they ought to do things.

17 Now, this has been going on from the very
18 beginning, and I can't see why, at this particular
19 stage, knowing what the scope and the task descriptions
20 and the purpose of the DRQR was, why the county was
21 not in a position prior to June 11, 1984, with respect
22 to either the crankshafts, the cylinder block, the
23 cylinder head, or the piston, to specifically advise
24 the Board, as you had admonished as early as February,
25 to, and you extended it twice, to come up with their

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1 specifics. I don't know what more you could have
2 done.

3 MR. DYNNER: Judge Brenner, I think that
4 counsel has confused the phase 1...

5 JUDGE BRENNER: Well, I was going to..
6 let me say, I don't think he confused it until his
7 last two sentences or so, but I think you did digress
8 from what I understand the county's argument to
9 and 3C, that they've got, that they were not in a
10 position to say the things about the program, other
11 than the 16 basic items, well, there are not even
12 that many because one of the reports on that came
13 out on that later. I understand the difference of
14 opinion on it, but, I'm just trying to define what
15 I understand to be the county's point.

16 Mr. Farley, would you preclude the county
17 at this time, from when they do go through the DRQR,
18 coming up with something that they can show a good cause
19 for coming in with a specific, late, on the basis that
20 it was new information that could not have been reasonably
21 available to them, notwithstanding the earlier reports
22 and transmittals and discovery?

23 MR. FARLEY: Within that broad context,
24 and with the limitations with respect to the issues
25 that you specifically permit to be litigated, and provided,

1 we don't get another motion for deferring the filing
2 of testimony and the commencement of the proceedings,
3 then I don't believe we would have any objections.

4 I should also mention, very briefly, that
5 LILCO took the position in January, that the phase 2,
6 DRQR report was not required for licensing, and we
7 would preserve that, and also...

8 MR. DYNNER: We didn't know one way or the
9 other on that, and we pointed out we wanted to have
10 a better appreciation of what was done today, and still
11 left to do...

12 MR. FARLEY: I'm just reserving what
13 we said at that particular meeting, and also, that
14 the county has had available to it, the component
15 tracking data. I mean, there's nothing that it
16 hasn't had available to it, except the written
17 text.

18 (End of tape)

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1 MR. FARLEY: -- get something from me in
2 order to formulate an objection or specification, I
3 don't know. I don't know why they can't come up with
4 their own decisions.

5 JUDGE BRENNER: Okay, I think I understand
6 your view quite well and I think I understand the
7 county's view also. On -- on Item 4, that's the one
8 you've labeled "additional information" and that's
9 the information of further discovery of the TDI diesel
10 customers, non-nuclear customers, and to some extent
11 the argument there might depend on what issues we
12 admit or do not admit, of course, but we're prepared
13 to give you a ruling on that Item 4 in any event, and
14 I'm going to do so now.

15 Over here you've discussed your desire for
16 further discovery, as I said, of the TDI non-nuclear
17 diesel customers. You say regarding at least three
18 of the four items in your -- three of the first four
19 items in your Part 2, that is cylinder block cracking,
20 cylinder heads and a piston crown, now, as I said, if
21 we didn't admit those contingents then the request for
22 discovery becomes moot.

23 But even if we admitted those contingents,
24 we would now allow for that further discovery or
25 you have a supplemental request, some assistance in

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1 discovery of the Saudia Arabia and Suriname diesels,
2 which I think you noted on page 33 of your filing.

3 This is because in February, transcript
4 page 21,624, we said we would only allow formal dis-
5 covery of the TDI customers based on a particular
6 showing that there was information that cannot be
7 obtained from another source which is in the possession
8 or knowledge of the TDI customers.

9 That is, showing, in other words, that the
10 information would not be cumulative. And also, we
11 asked for a showing that the other -- what particularly
12 the other information would be that you would seek,
13 and you've been unable to get it and you have not given
14 us that specification.

15 We said we would not allow broad type dis-
16 covery of these customers, and that's what you're
17 asking us for. You're saying let us seek documents
18 from them or let us depose them, and you haven't given
19 us any specifics, and we emphasize that.

20 So that would be our ruling, even as to
21 portions we might admit. I don't know if there are
22 going to be any such portions, but I think we had a
23 very clear requirement on that one and you haven't
24 even attempted to meet it.

25 So we're going to deny the request in Roman IV.

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1 We'll take a 15-minute break and, if you'll bear with
2 us, we'll see if we can come back and give you some
3 further oral rulings. I don't know if we'll be able
4 to or not, but we will see. Come back at 5:50.

(Brief recess.)

JUDGE BRENNER: We are prepared to rule, we believe, in all these matters put before us. And then at the end of that we will discuss the schedule, and we have a schedule in mind and we'll give you an opportunity to react if you wish to to that schedule.

First, the rulings. We're in the county's Roman II, Item 1, Crankshafts. One A we have already ruled would not be admitted as a contingent in itself.

One B, we have to -- 1-B-1, we have to divide up a little bit. The first sentence of 1-B-1, we would specify, and with a specification we would admit it.

The specification is as follows: "The replacement crankshafts are not adequately designed for operating at overload (3900 KW) as required by FSAR Section 8.3.1.1.5, and their design is marginal for operation at full load (3500 KW) because they do not meet the standards of the American Bureau of Shipping (ABS), Lloyds, L-l-o-y-d-s, the International Association of Classification Societies (IACS) and the German codes."

In admitting the first part of 1-B-1, as

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1 specified, we will state the obvious, that at this point
2 we do not know or rule on the merits of what the sig-
3 nificance is of meeting or not meeting those codes, even
4 if it is established that those codes and/or standards
5 are not met, but we'll wait for the merits on that.

6 Mr. Dynner?

7 MR. DYNNER: I just wanted to clarify;
8 apparently there's some confusion. What we said in
9 further -- particularizing this sentence -- is that
10 the replacement crankshafts are not adequately designed
11 for operating at full load (3500 KW) or overload
12 (3900 KW) under ABS, Lloyds and IACS.

13 They are not adequate at overload and they
14 are marginal at full load under the German criteria.

15 JUDGE BRENNER: Thank you. We'll accept
16 that specification. What we're going to ask for is a
17 listing from presumably the county as to part of the
18 contention, of the contentions as we have reworded it
19 on the transcripts, and you can circulate that in-
20 formally -- we won't set a time limit -- among the
21 other parties to make sure there's no disagreement on
22 editorials and so on, and then file it with the Board
23 in the case with the notation that the other parties
24 have agreed that it accurately reflects the transcript.

25 And in this case we'll take your wording of

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2 it, Mr. Dwyer. The second sentence of what was 1-B-1
3 was withdrawn by the county. The -- I guess I'd like
4 to call the portion we just previously admitted
5 1B(1)(a), and I'd like to call this next portion
6 1B(1)(b).

7 And we would admit a contention on that
8 subject, however, as specified by us as follows:

9 "The shot peening of the replacement crankshafts was
10 not properly done as set forth by the Franklin Research
11 Institute Report, and the shot peening may have caused
12 nucleation -- I'm sorry, may have caused stress
13 nucleation sites, the presence of which may not be
14 ascertainable due to the second shot peening."

15 I'm not giving editorial on that issue. We
16 don't know if that issue is important enough at this
17 stage and we weren't able to evaluate it officially
18 to make that judgment.

19 We've admitted it based on what we saw in
20 the report and the questions and answers of Mr. Caruso,
21 which stand for themselves. That is that the questions
22 and answers of Mr. Caruso did not fully support what
23 what LILCO -- no, let me back up; I may be confusing
24 that with another subissue.

25 I'll start again. We're admitting it because
we think there's enough of a basis and specificity for

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1 an issue. That's not a judgment on the importance of
2 it, and if it really is a non-issue, this is something
3 that the parties ought to be able to get together on
4 and resolve.

5 I don't -- we never think it's too late in the
6 day for that. In fact, prior actions in this case have
7 shown that it's never too late in the day for resolutions
8 of even relatively modest issues because any hearing
9 time that is saved can more productively be spent on
10 more important issues.

11 That's true about in general and may be true
12 as to this subissue. On 1B(2) we have a difference of
13 opinion. Judge Ferguson and I need further information,
14 and the information we want is whether or not the design
15 of the oil plug on the RAFFA Electricity Corporation
16 in Saudi Arabia, DSR 48 Model Diesel, uses the oil plug
17 of the same design as the present Shoreham Oil Plug.

18 And we want that information just as soon as
19 possible from LILCO. We'd like LILCO to share that
20 information before filing it with us with the other
21 parties in case there is some possible difference of
22 opinion as that -- what we think should be an ascer-
23 tainable fact.

24 If the design of the oil plug is the same,
25 Judge Ferguson and myself think there is a sufficient

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1 nexus to Shoreham with reasonable basis and specificity
2 to admit the issue.

3 If we did so -- and we're not doing so now.
4 We're awaiting the information -- it would have to be
5 slightly rephrased to be a sentence rather than a sen-
6 tence fragment, but that's a minor accomodation.

7 Judge Morris does not agrees with us and he
8 can state why at this point.

9 JUDGE MORRIS: I do not agree because I
10 think even if the design is identical that the lack
11 of other factors doesn't give adequate specificity and
12 basis, such other factors being the environment in
13 which the plug operates; service conditions; operating
14 rules; maintenance and inspection procedures; fuel oil,
15 as examples.

16 JUDGE BRENNER: So to sum up, we are de-
17 ferring our ruling on that item, depending on the
18 further information that may be admitted on the two-
19 to-one vcte.

20 Item 2, Cylinder Blocks, the first part, in
21 capital A, we have already admitted with some minor
22 word changes, as we indicated previously. Let me read
23 it again so we could have it in one relatively concise
24 place in the transcript.

25 "Cracks have occurred in the cylinder blocks

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1 of all EDG's and a large crack propagated through the
2 front of EDG 103. Cracks have also been observed in
3 the camshaft galley area of the blocks.

4 "The replacement cylinder block for EDG 103
5 is a new design which is unproven in DSR-48 diesels and
6 has been inadequately tested." And we're admitting that
7 issue, as we indicated previously.

8 Incidentally, in reading these I'm not
9 repeating the county's code designations. We under-
10 stand what they are. We have them in the original
11 filing for whether it is design manufacturing or alleged
12 over-reading problem.

13 As to Part B of the Item 2 Cylinder Blocks,
14 we have already ruled that that part is being denied as
15 an issue in itself. Number 3, Cylinder Heads, Part A
16 we would not admit the first part of Part A with respect
17 to litigation going to the earlier manufactured cylinder
18 heads because we just do not think it's probative as
19 an issue in itself.

20 With respect to the last sentence of A as
21 put forward by the county, we will admit it with a
22 specification as follows, and I'll read the whole thing
23 and the specification comes at the end.

24 "The replacement cylinder heads for Shoreham
25 are of inadequate design and manufacturing quality to

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withstand satisfactorily thermal and mechanical loads during the EDG operation because they have not been tested above 1680 psi."

I might say a word or two about this one. Despite our strong efforts, we think, to get the county to give us a specification of what it wanted to litigate under the arguable broad issue of cylinder heads, we did not get that specification.

We do not think we're being unreasonable in what we asked for. The county mentioned things here and there that began to sound like specification, but almost always in the same sentence or the next sentence added in all the other things, vague, undefined basis for this contention.

We could have excluded the entire contention given that discussion and our requirements from the February 22nd order, notwithstanding the fact that this contention back in June '83 had been -- the subject of this contention had been an admitted contention back in June '83.

However, the situation is not the same and the county at this time was chargeable with a more detailed understanding of what it wants to litigate under that contention.

Now, withstanding that, we think that part

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1 of the issue, as defined by our specification in the
2 exercise of our discretion, could minimally meet the
3 nexus basis and specificity.

4 That is, the nexus relevance requirement
5 and also with adequate bases and specificity. So we
6 have admitted just that part. As to what may be
7 relevant on that part, we'll await the proof, but it
8 seems to us to be a focused proof rather than
9 collateral litigation of many other instances which
10 would little, if anything, to do with the direct issue
11 of how were these cylinder heads tested.

12 As to Item B, we would not have admitted that
13 in any event as an issue in itself, even if we had
14 admitted A in the broad fashion put forward by the
15 county.

16 It may have been relevant to the evidence
17 on the broad A, as stated. The extent to which it
18 might remain relevant to the evidence, it appears to
19 us it would be much less relevant now, given the way
20 we have specified it, specified the issue under A.

21 But we're not in a position to totally
22 preclude anything and we'll evaluate what evidence
23 parties choose to put forward, but the evidence that
24 should be put forward is to the issue as we phrased
25 it and not the issue as the county would have desired

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1 to litigate it initially. As to Item C, we would,
2 given our ruling on A, particularly, we would not
3 admit that issue.

4 There is just insufficient bases and speci-
5 ficity as to these instances as set forward in terms
6 of the nexus to Shoreham, arguably even under the
7 broad issue, as phrase, and certainly under the issue
8 as we have phrased it.

9 So C would not be admitted for the lack of
10 nexus of -- that is, lack of probative relevance and
11 lack of specificity and bases to the instances set for-
12 ward under C.

13 Item 4, the Pistons, for the first part,
14 Capital A, we have already ruled would not be admitted
15 as an issue in itself, and that goes to the old design
16 piston skirts.

17 For Item B we will have to divide that issue
18 up. You recall the first two sentences, B(1), capital B,
19 l in parens, and we would admit that as an issue sub-
20 ject to the following specifications.

21 I'll read the entire B(1) as we are admitting
22 it. "All AF piston skirts in the EDG's were replaced
23 with TDI model AE piston skirts. The replacement AE
24 pistons are of inadequate design and manufacturing
25 quality to satisfactorily withstand operating conditions

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1 because: (a) the FAA Report concludes" -- let me back
2 up. "The FAA Report conclusion that cracks may occur
3 but will not propagate improperly depends on fracture
4 mechanics analysis of an ideal situation which is not
5 valid for the actual conditions which may be experienced
6 by the Shoreham Diesels.

7 "(b) Excessive side thrust load, which could
8 lead to catastrophic failure, has not been considered
9 adequately. (c) The analysis does not adequately con-
10 sider that the tin-plated design of the pistons could
11 lead to scoring causing excessive gas blow-by which --
12 thereby causing a failure of proper operation."

13 MR. EARLEY: Judge Brenner, could we have
14 the last one again?

15 JUDGE BRENNER: Yeah. You deserve to have
16 a read right. It would be "(c) The analysis docs not
17 adequately consider that the tin-plated design of
18 the pistons could lead to scoring, s-c-o-r-i-n-g,
19 causing excessive gas blow-by, thereby causing a
20 failure of proper operation."

21 I guess we could have said "thereby pre-
22 venting or impeding proper operation," but I'll stay
23 with the original wording because I haven't had the
24 opportunity to labor over each and every glorious word.

25 Our purpose is, however, making sure the

1 issue is defined and understood.

2 MR. STROUPE: Could I -- Judge Brenner, could
3 I impose upon you to read (b) again, please, sir?

4 JUDGE BRENNER: Yes. You mean the -- all
5 right, the --

6 MR. STROUPE: Small B.

7 JUDGE BRENNER: -- small B which would be
8 under Capital B(1)?

9 MR. STROUPE: Excess side thrust, I believe.

10 JUDGE BRENNER: "Excessive side thrust load
11 which could lead to catastrophic failure has not been
12 considered adequately." That would be an issue that
13 we have termed 4B(a).

14 The next issue we would derive from the
15 next sense of the county's contention -- and we would
16 label it B(2) -- and we would admit that sentence as
17 stated.

18 "Further, the design of the Modcal AE pistons
19 and the EDG's was altered prior to installation without
20 compliance with the requirements of 10 CFR, Part 50,
21 Appendix B."

22 Now, our comment as to whether or not the
23 facts of this matter require litigation would apply
24 to this issue, too. It may be the parties can get
25 together and ascertain what the facts are, as to

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1 whether -- what was changed. It's part of the design
2 dependent on as distinguished from appendages related
3 to the casting process and that part of the design
4 should be something that the parties can decide, given
5 the fact that they've got experts they can rely on.

6 Anyway, we hope that that is accomplished on
7 this item, also. Nevertheless, at this stage we find
8 the issue as stated with sufficient basis and
9 specificity.

10 As to the last sentence of the -- yes, I'm
11 reminded that we should add, apropro of something we
12 said back in February, in admitting that sentence as
13 written to the extent it remains an issue, we're not
14 interested in abstract procedural violations of QA.

15 We're interested in what was involved in
16 the substance of the particular fins on these pistons
17 and whether or not they were part of the design and
18 depended upon for anything.

19 All right, the last sentence of the county's
20 B we would not admit. It's just a broad allegation
21 that the Model AE piston has been inadequately tested
22 and is unproven, lack of sufficient specificity and
23 bases.

24 To the extent we've got the issue specified,
25 we've done that already under the portions we did admit

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1 under B, so we're not going to go through the effort
2 of specifying a contention and then leave a sentence
3 like that at the end of B, which would -- could
4 possibly result in an unknown universe of litigation
5 under it.

6 As to C and D, these are the occurrences in
7 the two marine vessels, ships, which involve the piston
8 crowns. We are not admitting those. They lack a
9 reasonably specific specification and basis as to the
10 issue and as to the nexus and relevance to Shoreham,
11 given what we've heard so far.

12 It's just too collateral. On Item 5, the
13 general proposition for which begins at page 10 in the
14 county's filing and continues for several pages there-
15 after, we have already ruled that would not be admitted
16 as a separate issue and would not be admitted for the
17 purposes the county wanted to admit it for the reasons
18 we have expressed and there's no need to repeat those.

19 For Item 6, involving the over-rating and
20 under-sizing of the diesels, the preliminary comments
21 I had earlier would become the ruling of the Board.
22 We would not admit that issue.

23 It is simply too general. It does not comply
24 with our requirements to come forward with the specifics
25 at this point in time, which requirement is reasonable

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in our view and was very clearly set forward, as I indicated earlier.

To the extent there is a basis for the allegation, it is derivative solely of the specific instances and components that will be litigated under Roman II to the extent we have admitted them and the issue comes up there as stated.

The -- I should state that the county's introductory proposition labeled the "EDG Contention" will remain as the contention of the county. However, we would add the word -- and that's the one stated at page 2 -- however, we would add the word "because:" and then it is defined and limited by the instances that we have just admitted under Roman II.

So the general language of that cannot be pointed to to define the issues. They are solely to explain the specifics that follow and it's those specifics which we have admitted which do define the issue.

Roman III involves the county's allegations, proposed contentions, with respect to the TDI diesel generator owners' group program plan. We are not admitting those.

There is just insufficient specificity contrary to our requirements at this late date in the

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proceeding as to what is set forth and the bases for the problems and the context of particular problems.

Moreover, some of the items are not even directly probative or relevant to findings we would have to make on the adequacy of the diesels, and we discussed one of them by example, being the independence or lack thereof of the personnel performing tasks under the owners' group program.

To the extent there was anything specific, the county had every opportunity to bring that forward. As to C, which in part is a -- in effect, an attempt to reserve rights on reports not issued or just issued, and the most important of all mentioned by the county is the DRQR.

Here again, we have required specifics. We made that clear as to the DRQR at the February 22nd transcript, as I mentioned earlier, and more particularly, at TR21620 to 21, and the county has not told us particularly what they would want to litigate.

While the final report has just been received, there has certainly been a lot of information for the county, it seems to us, to be able to come forward with what particular components it still has problems with.

And where it has done so, we have evaluated those and ruled on the admissibility of those in

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Roman II, and we're not just going to have an open-ended reservation of right now as to other items.

Now, having said that, if the county when it goes through the DRQR can find something under the late contention -- and at this point, very late contention -- and in the context also of a re-opening because this is a re-opened proceeding, of something so new and so significant that the county can show that nothing in the earlier information available to it could have led it to believe that this type of problem exists, then the county, of course, can attempt to make the showing as to good cause and all the other requirements as to late contentions and re-opening the record and we'll evaluate it.

But it needs to be a very good showing at this point, given the schedule and given all the opportunity that the county previously had. They'd have to -- the county would have to show us why it had no reason to question the particular component because it would be attempting to -- presumably to bring forward a new -- a new component rather than just further information on a component that it had concerns about which it had timely stated.

The other items in C, my previously general comments as to my comments generally applicable to

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Roman III apply -- again, this is not to say that some of those items cannot be pertinent to some of the particular components which we have admitted contentions on, but we'll leave that for the proof.

But there's nothing here to admit as a separate issue in terms of meeting the requirements for admissibility. As to Roman IV, we have already ruled that we would not order further general broad discovery of those TDI customers because the county did not even attempt to make the showing we clearly in this instance said would be required.

And as I think I stated earlier, the requirements for that showing was set forth at transcript page 21,624. It may be useful to summarize our findings in terms of the elements of the conclusion put forward in the county's filing which it sought -- the rulings it sought from this Board, just as a summary, and that begins at page 34 of the county's filing.

The county has requested us in small I in parens and small double II to accept the consolidation and restatement of the EDG contention as set forth in Part Roman II and accept the particularization of matters as set forth in Part II.

In part we have done that to the extent we have admitted and further specified and defined

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1 the contentions. As to small triple I of the county's
2 conclusion, the county has asked us to add to the EDG
3 litigation the matters concerning the TDI owners' group
4 program as detailed in Part Roman III, and we have denied
5 that request for the reasons we've indicated.

6 In Part Roman IV -- I'm sorry, in small iv the
7 county has asked us to defer the filing of testimony
8 and commencement of EDG litigation until completion and
9 an opportunity for review of the matters specified in
10 Section C of Part III hereof, and we have denied that
11 as impermissible abstract attempt to reserve future
12 rights without specificity or basis when the county has
13 had the opportunity to come forward with specifics by
14 this time.

15 As to the last item in the conclusion, small
16 Roman v, permit the county to obtain additional infor-
17 mation and encourage the staff to obtain additional
18 information as discussed in Part Roman IV, and we have
19 denied that request for the reasons indicated.

20 All this gets us to the discussion of
21 schedule. Judge Morris suggests that, as we did at
22 the February conference, we give you a brief oppor-
23 tunity for any clarification you might seek from our
24 rulings.

25 Again, not requests for reconsideration,

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1 but clarification if you don't understand anything in
2 the rulings so far. All right, hearing none, we'll
3 proceed to the schedule.

4 This would be our proposal, and we'll give
5 the parties an opportunity to comment on it after we
6 give it. We would propose that the county and the
7 state, to the extent it wishes to file testimony, file
8 testimony first, and we'll plug in the dates in a
9 moment.

10 The reason for that is that although we have
11 specified the contentions more particularly than the
12 county had in some instances, there are still elements
13 of the contentions that we think are susceptible to
14 surprise in terms of precisely what the county would
15 seek to put forward under those issues.

16 We think that the contentions have been defined
17 now where that further information is not essential to
18 admitting the contentions, and we have admitted it, but
19 it is essential to an informed reasonably efficient
20 litigation, and for that reason we would require the
21 county and the state, to the extent that it wishes, to
22 file testimony first.

23 Our schedule would be as follows. I'll give
24 you the important steps first and then I'll fill in
25 with some of the subsidiary steps. The important

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1 steps -- and these are all receive dates -- would be as
2 follows: July 31st, the county testimony and the state
3 testimony, to the extent it wishes.

4 August 14th, LILCO and staff testimony.
5 September 4th -- it happens all these dates are Tuesdays --
6 September 4th, the hearing begins on Long Island. I'll
7 note that it's the day after Labor Day and we'll start
8 at 10:30 with the belief that that would give almost
9 everyone an opportunity to get there by leaving early
10 in the morning on Tuesday or at least late at night on
11 Monday, and we'll announce the particular place on Long
12 Island.

13 We hope we can get the Corps Room at Haupog
14 (phonetic), but we're not sure. Why don't you -- we
15 get the reactions to those as the main dates before I
16 spend the time filling in some of the derivative dates
17 on the motions to attract testimony and answers thereto
18 in cross examination plans. Anyone can go first.
19 LILCO, do you have any comment on the schedule?

20 MR. FARLEY: No, Judge.

21 JUDGE BRENNER: County?

22 MR. EARLEY: No, Judge, other than to say
23 we support that schedule.

24 MR. DYNNER: As I understand the schedule,
25 and maybe when you go farther on it will become clearer

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as to the other matters, but if we're to file testimony on July 31st, the LILCO testimony, in effect, will be an opportunity for rebuttal testimony it files on August 14th.

And I'm wondering whether there will be an opportunity for the county and the state to respond and have rebuttal testimony as to matters raised anew by LILCO and the staff.

JUDGE BRENNER: All right, the answer in the abstract is no, but we will apply sensibly and sensitively, we hope, the opportunity for rebuttal testimony provided. I think it's 2.743, if I remember the number correctly.

But as we've done in the past in this proceeding, we're going to try to avoid, unless there's a particular showing that it's absolutely essential, further delays on the filing of written rebuttal.

We would be able -- the county's witnesses would not testify before having had the opportunity to read the LILCO and staff testimony, and we would hope to get any rebuttal as part of the responses to questions or if county counsel wants to tell us that at the beginning there are a few points in rebuttal they'd like to start out with and some indication of what it is, we'd certainly be flexible on that type

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1 of things. And that would be the way to do it. What
2 I did not get to, and will get to now, is that we're
3 also -- the proposal, then notwithstanding this sequence
4 for the filing of testimony at the hearing the LILCO
5 witnesses would be the witnesses that would testify
6 first, that being the normal order, and we see no
7 reason to vary that, and if you will, it's kind of a
8 balance.

9 We've given LILCO the opportunity -- and the
10 staff the opportunity -- not to be surprised by the
11 county's written testimony, and there's no reason at
12 that point not to revert back to the normal order of
13 the party with the burden of proof going first.

14 MR. DYNNER: I would like to say that insofar
15 as we can contemplate now that there will be the need
16 for the county to respond with direct testimony and
17 rebuttal to LILCO's testimony.

18 It seems to us that it would be in the interest
19 of all parties to have the county prefile that so that --
20 again, to avoid any surprise, there would be on the
21 record the prefiled testimony with respect to that
22 matter.

23 And we would suggest that the Board entertain
24 the possibility of our doing that let us say around
25 August 24th. That, of course, would also enable the

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1 LILCO witnesses who are leading off to have the prefiled
2 testimony of the county as to -- as to their views that
3 they had in their original filed testimony.

4 JUDGE BRENNER: I'm sorry, could you repeat
5 your last comment?

6 MR. DYNNER: Yes.

7 JUDGE BRENNER: I was just talking with
8 Mr. --

9 MR. DYNNER: That would mean that the LILCO
10 witnesses would have the advantage when the litigation
11 began of knowing what the county's witnesses are going
12 to say with respect to rebuttal, rather than just having
13 to deal with it on cross examination without knowing those
14 views in advance.

15 JUDGE BRENNER: All right, we'll get the
16 other parties' reaction and think about that in a
17 moment. Did you have any other comments, Mr. Dynner?

18 MR. DYNNER: I can make one more comment,
19 and that is about the hearing commencement date. We
20 have a number of witnesses who, as you may not have
21 recalled, coming from California.

22 Other parties may have similar problems, but
23 we certainly have a real problem in starting the day
24 after Labor Day in that it's going to be an extreme
25 disruption to any plans that people may have made who

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1 are witnesses coming from far away.

2 JUDGE BRENNER: You're right, I did not
3 recall that in setting the date. We'll talk about that
4 and let you know in a moment also. I had forgotten
5 that. Did you have anything else?

6 I'm going to move on -- if you're silent, I
7 don't want to require you to say anything else, I just
8 don't want to cut you off.

9 MR. DYNNER: Mr. Lampher wants to make a
10 comment.

11 MR. LAMPHER: I tried to keep quiet today.
12 I guess it's just too long, but in not commenting
13 concerning the requirement that the Board have the
14 county and state go first with testimony, that should
15 not be taken as acquiescence that we agree with the
16 Board's characterization that there is -- there are
17 elements of surprise.

18 When Mr. Dynner and I talked, we understood
19 you did not want us to be re-arguing things that have
20 been argued today, so our silence should not be taken
21 as acquiescence.

22 JUDGE BRENNER: Okay, that's fine, and you're
23 certainly entitled to make that comment since you made
24 it as brief as you did. I did try to indicate, maybe
25 not very successfully, that to some extent, and I'm

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1 the first to concede that not all these calls are clear
2 calls when ruling on bases and specificity of contentions,
3 that to some extent we balanced the fact that there was
4 a rational argument that the contention still did not
5 have sufficient basis and specificity, given the stage
6 of the proceeding we were at.

7 It was after discovery. That we would be
8 ameliorating that rational argument to some extent by
9 this requirement. And we did it not only for the bene-
10 fit of anyone party, but for our benefit also, in order
11 to be able to under -- get what we think would be a
12 more orderly and better focusing of issues upon which
13 we could rule on the merits. Staff, any comment on
14 the schedule?

15 MR. GODDARD: The staff would rather you
16 took LILCO's comments on the schedule first, but I
17 think --

18 JUDGE BRENNER: I thought they didn't have
19 any.

20 MR. GODDARD: Oh, they had no --

21 JUDGE BRENNER: They liked it so far, subject
22 to any changes we might come back --

23 MR. GODDARD: Liked it so far, okay. The
24 NRC Staff feels that the schedule is somewhat tight
25 from its standpoint because of the fact that the same

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1 parties that are involved with the Shoreham proceeding --
2 by that I mean Dr. Berlinger, the P&L people and their
3 outside consultants are the same people that are in-
4 volved in the TDI owners' group reports.

5 And there is a question of setting priorities
6 between the TDI owners' group work which is going to be
7 done. It affects not only Shoreham, but other dockets
8 and the work that is Shoreham's specific.

9 We will be using the same witnesses.
10 Accordingly, the staff would suggest that possibly --

11 JUDGE BRENNER: What do you mean the same
12 witnesses? I don't know of any other hearing going on.

13 MR. GODDARD: Well, we are expecting four
14 or five hearings this calendar year involving the --

15 JUDGE BRENNER: Well, fine, but not the first
16 week in September.

17 MR. GODDARD: No, but the work that remains
18 to be done with regard to the DRQR and other matters
19 which are going to be involving other facilities will
20 be occurring at the same time.

21 The staff feels that perhaps an accomodation
22 could be worked that they would have the benefit of
23 having LILCO's testimony also filed prior to the
24 requirement that the staff file.

25 Mr. Farley indicated that LILCO would be

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1 ready to file its testimony this month, as a matter of
2 fact.

3 JUDGE BRENNER: Yes, but we've indicated why
4 we think it would help us, beyond whether or not it
5 would help LILCO, for the county's testimony to be filed
6 first.

7 MR. GODDARD: The -- excuse me, Judge Brenner,
8 maybe I --

9 JUDGE BRENNER: So we --

10 MR. GODDARD: -- didn't state what I meant
11 or maybe you misunderstood what I said.

12 JUDGE BRENNER: You're leaning towards what
13 it sounds like a delay in the hearing of a couple of
14 weeks.

15 MR. GODDARD: What I am suggesting is that
16 the county file first, followed by LILCO and the staff
17 and its witnesses have an opportunity to review that
18 testimony.

19 We feel that this would expedite the actual
20 preparation of the staff testimony. We would be ready
21 to proceed in early September. We would hope a little
22 later than the 4th, but we would be ready to proceed
23 in --

24 JUDGE BRENNER: Assuming we started on the
25 4th or the 5th, when would you like to file your

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1 testimony later than August 14th?

2 MR. GODDARD: I'd like to file no more than --
3 well, not earlier than approximately the last week of
4 August. It's a Monday there, would be -- you know,
5 we'd be talking the 27th or 28th of August.

6 The SER of the staff, in fact, will not have
7 issued until at least the 17th of August, and there's
8 a significant possibility that will slip somewhat.

9 JUDGE BRENNER: Well, you've hit on a point
10 I was going to comment on.

11 MR. GODDARD: Pardon?

12 JUDGE BRENNER: You've hit on a point that
13 I was going to comment on, but finish your sentence.

14 MR. GODDARD: For instance, the dates which
15 the staff presented in -- on page 4 of its filing
16 included the status of all technical reviews which
17 essentially involve the same persons.

18 The TDI owners' group DRK Report on Shoreham
19 which is indicated here as received June 30th was not
20 in fact received until the 3rd of July, and a number of
21 our staff and consultants have not yet received --

22 JUDGE BRENNER: Let me try to get to the
23 bottom line because it is late. What did you mean in
24 your schedule by "preparation of testimony"? Did you
25 mean filing?

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1 MR. GODDARD: Well, we meant filing on the 15th.

2 JUDGE BRENNER: We have found, based on our
3 substantive rulings so far, before we got to the
4 schedule, that it wasn't necessary to wait for reviews
5 of things unrelated to the issues we have admitted.

6 The issues we've admitted are ascertainable
7 and we've identified them and we think at this late
8 stage it's reasonable to require the filings essentially
9 on the time frame we've requested without waiting for
10 particular events in the staff review to key after.

11 In the first place, we didn't think we'd have
12 to wait for the reasons we gave. Secondly, that becomes
13 a very slippery game, as we've discovered in this pro-
14 ceeding, because if we make an assumption we have to
15 wait for an evaluation.

16 There's no reason to believe that the staff
17 schedule's going to hold. Now maybe it will and maybe
18 it won't, and we've seen instances of the latter more
19 than the former.

20 And I'm not going to lose control of
21 scheduling the hearing in that matter when the staff's
22 overall evaluation is not relevant to it. There may be
23 some issues within the evaluation that are relevant,
24 and now with our schedule the staff's going to have to
25 change its priorities, hopefully only slightly, and

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focus on getting testimony ready on those issues,
especially since we're not talking about a lot of
issues.

So we're not going to worry about the fact
that the SER may or may not be out because it doesn't
matter. The staff can focus its priorities on the
items that we have in controversy here.

MR. GODDARD: Judge Brenner, the staff did
not mean to imply that this hearing schedule had to be
governed by the SER.

JUDGE BRENNER: Well, I don't want to belabor
it; I just wanted to give you what our concern was.
But in terms of some minor adjustment, we'll talk about
that among ourselves in a moment.

Not an adjustment in the hearing date beyond
maybe a day, given the Labor Day situation, but adjust-
ments in the sequence. Did LILCO want to comment --
Staff, did you want to comment on the county's request
for an opportunity for rebuttal testimony?

MR. GODDARD: The Staff has no problem with
that proposal.

JUDGE BRENNER: LILCO, do you want to comment
on the county and the Staff's views?

MR. EARLEY: Judge Brenner, with respect to
the Staff's proposal, assuming that the hearing date --

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1 hearing starts around September 4th or 5th, as you were
2 discussing, we have no objection to the Staff's
3 proposal.

4 With respect to the county's rebuttal proposal,
5 we believe that the precedent set in the proceeding of
6 requiring some showing of need for rebuttal testimony
7 has worked well in this proceeding in the past.

8 We think that county, if they're going to
9 file rebuttal testimony, ought to make some showing
10 that the rebuttal is in fact necessary, but we don't
11 object to their suggestion of filing a written testi-
12 mony on a certain date, assuming it's made that showing.

13 JUDGE BRENNER: All right, and the Staff's
14 proposal that you didn't object to would be the receipt
15 of the Staff's testimony on August 27th?

16 MR. EARLEY: Yes, Judge.

17 JUDGE BRENNER: Did I understand that
18 correctly? My preliminary view is that's very close
19 to the beginning of the hearing and it's difficult to
20 get testimony in that close, unless you assume it isn't
21 very important, and I don't want to make that assumption.

22 It may be important and it may be complex
23 and it may take some evaluation time by us, if not the
24 parties.

25 MR. EARLEY: Judge Brenner, I was basing our

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1 comments on the experience we've had in the past, that
2 the LILCO witnesses go first, followed by the county
3 witnesses with the Staff witnesses coming on last.

4 The Staff witnesses won't be supporting that
5 testimony for several days or so after we actually
6 start the hearing, depending on how long it takes to
7 go through the other issues and whether we're going to
8 go issue by issue.

9 JUDGE BRENNER: All right. That's another
10 item I'll get to at the end. Give us a moment.

11 MR. DYNNER: Judge Brenner --

12 JUDGE BRENNER: Yes?

13 MR. DYNNER: -- the county would object to --

14 JUDGE BRENNER: It's 7:15.

15 MR. DYNNER: The county would object to the --
16 not having an adequate time to review the Staff's
17 testimony. We're going to start cross examining
18 LILCO's witnesses. We'd like to have an opportunity
19 before we start the hearing to absorb what the Staff
20 is going to say, and we'd like to request that the
21 regulations that provide for 15 days be adhered to in
22 this respect.

23 JUDGE BRENNER: All right. The following
24 accommodations which we hope will assist some of the
25 quasi-substantive logistics and also possible hardship

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1 for people logistics. We'll start on September 5th.
2 We candidly did forget about the possibility of
3 California assistance support under witnesses.

4 We'll set a precise time once we make the
5 arrangements, but it will be 10:30 approximately,
6 perhaps a little earlier or a little later, depending
7 on the plane schedules, so that those parties on the
8 East Coast who can get morning planes will still have
9 the opportunity to do that.

10 With respect to the Staff's request to file
11 testimony after the county, we'll grant it in part,
12 and we agree with the county's comment that they should
13 have time before the hearing starts.

14 It's true, as LILCO's pointed out, that the
15 Staff witnesses will not be up first, but nevertheless,
16 counsel become busy with respect to other matters in
17 the hearing and it is important, where feasible, to
18 get testimony before the hearing starts, even though
19 the complete analyses might not take place at that time.

20 So we'll give the Staff an additional week,
21 until August 21st for the receipt of its testimony.
22 The earlier dates would remain the same, July 31st
23 for the county and any state testimony, and we'll rely
24 on the county to pass these dates on to Mr. Palomino
25 or other counsel for New York, if that's no problem,

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1 Mr. Dynner.

2 MR. DYNNER: No, sir.

3 JUDGE BRENNER: All right. August 14th for
4 receipt of the LILCO testimony. August 21st for receipt
5 of the Staff testimony. Now, any motions to strike
6 and answers to motions to strike will follow the
7 following pattern, and you can plug in the dates
8 yourself.

9 One week after the receipt of the testimony
10 any motions to strike that testimony have to be
11 received. I should make it one week after the ordered
12 received date, so if you receive it late on the night
13 of the day before, don't worry about it.

14 It's one week after the received dates that
15 we have ordered the motions to strike will have to be
16 received. And then two weeks after the received dates --
17 why don't we make it one week after the receipt of any
18 motions to strike, answers to those motions to strike
19 would have to be received.

20 I think if you play that schedule out, you'll
21 find that if there are indeed any motions to strike
22 the Staff's testimony, which would be the last ones,
23 the answers thereto would be received the day before the
24 hearing begins.

25 With respect to the county's point on

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1 rebuttal testimony, we'll allow the county to file a
2 written rebuttal on a received date of August 24th,
3 as requested by the county.

4 However, we do want a showing that it is
5 important in the sense that it would materially add to
6 the record. That is, that it is not cumulative. You
7 don't have to show that it's the world's most earth-
8 shattering evidence, but you have to show that it's not
9 cumulative and genuinely is rebuttal to the LILCO
10 testimony.

11 And you can show that at the same time as the
12 testimony as filed, if any, in a cover motion and tie
13 it to something less specific by reference to the testi-
14 mony which is rebuttal so it cannot be used as a vehicle
15 for the filing of testimony that should have been filed
16 initially.

17 And we agree with the county's comments that
18 if it really has something in that category, it may be
19 helpful and efficient to get it in writing. Notwith-
20 standing that, if you find when you get to the hearing
21 there is some brief point of rebuttal that you want to
22 put on, we will continue to be flexible in that sense,
23 as we have in the past.

24 We also recognize that the August 24th date
25 is very close to the date of the filing of the Staff's

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1 testimony. We're not going to set a separate date for
2 written rebuttal to the Staff's testimony. To the
3 extent that there's something that you can include in
4 the August 24th rebuttal, if any, that rebuts the
5 Staff's testimony, we encourage you to try to do so.

6 To the extent you can't, the additional
7 flexibility that we said we'd have at the hearing should
8 serve as a vehicle for getting that in through the
9 county's witnesses.

10 And if there are still problems, we can deal
11 with it at the hearing. And the sequence would be LILCO
12 testifying first. Then the county, then the state, if
13 it has any testimony, and then the Staff.

14 Now, in terms of whether it's issue by issue
15 or party by party, we generally prefer issue-by-issue
16 testimony. However, to balance -- the idea is so we
17 don't forget the facts too far in time in order to get
18 back to the same subject by another witness for another
19 party.

20 I don't, however, want to hinder the parties'
21 preparation of testimony if the organization of such
22 would not lend itself to that division. Is -- our
23 hope -- well, we'll require the parties to discuss it
24 and to try to agree on whether it's going to be issue
25 by issue or party by party, hopefully before the county

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1 files its testimony since that knowledge should be applied
2 to the organization of the testimony.

3 It would be our hope, and we presume the
4 parties' desire that if it's feasible and does not pre-
5 sent a burden in the presentation of the evidence that
6 any party thinks it needs to put on for the benefit of
7 its case that the testimony could be divided issue by
8 issue for the most part, if not totally, and we could
9 proceed that way.

10 But if the logistics in the parties' view
11 militate doing it differently -- perhaps two issues
12 that should be put together -- perhaps all of them that
13 should be put together -- we're probably going to be
14 willing to accede to whatever agreement the parties
15 might come up with on that score. If there's nothing
16 else, we're prepared to adjourn at this point.

17 As always, we do thank you for your time
18 here, and --

19 MR. EARLEY: Judge Brenner --

20 JUDGE BRENNER: Yes?

21 MR. EARLEY: -- you mentioned the cross
22 examination plan date.

23 JUDGE BRENNER: Thank you. August 28th would
24 be the date for receipt of cross examination plans of
25 all testimony except the Staff's testimony. The

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preferred date -- let me put it that way -- for receipt of cross examination plans of the Staff's testimony would be September 4th.

If you cannot make that, you don't need to file any request for extension. Give it to us at the hearing -- beginning of the hearing on the 5th. I did want to say that when we're in the midst of discussing these filings and in some of our rulings denying issues we have been in obvious disagreement of the county's view, pointed out failures that we saw on the part of having a -- meeting the requirements that we believe we set forth clearly enough to be reasonably understood on February 22nd.

And in the course of doing that the full balance picture does not come through because when we have admitted contentions, we have not belabored the reasons quite in that detail, but obviously by our rulings we have found that the county has issues which should be heard on the merits on potentially significant problems with respect to these diesels and we're going to intend to be very vigorous with respect to the quality and level of proof on those issues and it's LILCO that has the burden of proof.

And we don't want to have to back up and have any problems similar to what we had with -- seems like

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a long, long time ago at the beginning of the hearing on the quality of the evidentiary support. That goes for all parties.

The county -- and we have compared because it assisted us in understanding the county's issues as put forward now in some regard -- we have compared the county's filing in January with this filing and we think the county has made a good faith effort to utilize the discovery time which we gave it, including two extensions, to better focus in on the issues which the county believed was important for it to spend its resources on.

And as I said, in going through the rulings, seriatum (phonetic) and denying some issues, we didn't want the county or anyone else to believe that aspect of the county's preparation and use of its discovery escaped us.

It did not and we appreciate that, and in that sense we think the discovery time which the county back in February said it needed and which we granted it and then extended somewhat on two occasions was well spent.

And so we did appreciate that, Mr. Dynner.
All right --

MR. EARLEY: Judge Brenner, if I may, one other thing. I see I have to return quickly or not at all.

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1 JUDGE BRENNER: Go ahead.

2 MR. EARLEY: Have to beat me. I'd like to
3 renew a request that LILCO made at the end of the
4 February 22nd conference, and that's a request for
5 calculations performed by the county's consultants.

6 We understand from the conference -- from
7 the discussion today that there are such calculations
8 and we have not received them. I believe on February
9 22nd the Board ruled that they wouldn't force turning
10 over preliminary work and we abided by that, but now
11 I think it would be very helpful to get those calculations
12 so that -- so that we can start to prepare.

13 JUDGE BRENNER: I do recall that discussion
14 in February. I'm sure you do, too, and you did allude
15 to calculations today as the bases for some of the
16 contentions we did admit. Obviously, those are the
17 only ones we'd be talking about.

18 MR. DYNNER: Yes, I'll have to check,
19 Judge Brenner, and we'll -- as soon as we can get the
20 calculations, we'll get them to LILCO and the Staff.

21 JUDGE BRENNER: All right. Can you do it in
22 a week?

23 MR. DYNNER: I believe so.

24 JUDGE BRENNER: All right, why don't we make
25 it a week from today. Obviously, to the extent the

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1 county thinks some of them are important, that LILCO
2 will also have the benefit of seeing that in the testi-
3 mony, but nevertheless, Mr. Earley is correct that it
4 would be part of that continuing requirement which we
5 discussed in February to get the calculations in in a
6 week now.

7 I didn't spell out in detail all the procedures
8 we've gone through in the past in this hearing. We do
9 expect the parties to adhere to it, and I guess I hoped --
10 hopefully to be redundant, hopefully my hope is correct.

11 The parties know the simple basic procedural
12 requirements. If you're going to be using references
13 in the testimony, relying on things, the crafting of
14 the testimony should be such that the references are
15 made explicit in the testimony.

16 And to the extent they're not publicly
17 available, should be made available to the other parties
18 at the time the testimony is being produced and/or as
19 soon thereafter as feasible.

20 If you think another party has it and the
21 other party says they do not, where it is not voluminous
22 or expensive, certainly the parties out of courtesy
23 and cooperation can make the copies directly available
24 with the testimony.

25 Where it is somewhat more voluminous, a

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1 nice convenient place for inspection and possible
2 copying of excerpts can and should be made available.
3 We're dealing with sophisticated parties here with
4 ample resources to accomplish those types of things.

5 I just haven't belabored it. Similarly,
6 where items are going to be relied on in cross
7 examination, as in the past, where it would not in
8 the cross examiner's view be unfair surprise to the
9 other party, those other parties informally should be
10 told of what documents or reports will be relied upon
11 in the cross examination so counsel and the witnesses
12 can have copies ready and be somewhat familiar with
13 them and so on.

14 I didn't think it necessary to go through
15 all that, and this brief reminder does not go through
16 it and I just don't expect problems in regard to
17 situations like that to arise at the hearing.

18 All right, we appreciate the time spent in
19 this long day by the parties, just one day after the
20 4th of July, which we hope was more pleasant for all
21 of you than today probably was, and we will adjourn at
22 this point and see you all somewhere on Long Island on
23 September 5th.

24 END OF MEETING
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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the

In the matter of: SHOREHAM NUCLEAR POWER STATION

Date of Proceeding: Thursday, July 5, 1984

Place of Proceeding: BETHESDA, MD.

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

Tom Berry
Official Reporter - Typed

Tom Berry / USB
Official Reporter - Signature

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